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WHEN: February 19; at 9:00 a.m.
WHERE: Office of the Federal Register,
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1100 L Street NW., Washington, DC.
RESERVATIONS: Roy Nanovic, 202–523–3187

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the order issued thereunder, this final rule (1) increases the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1986 seven-market average price for domestic barrows and gilts and (2) changes the schedule for remitting monthly assessments of less than $25 on domestic porcine animals to the National Pork Board (Board) from monthly to quarterly.

DATE: Effective February 24, 1988.

ADDRESS: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610 South; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447–2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the order would not have a significant effect upon a substantial number of small entities. Many producers, importers, and collecting persons may be classified as small entities.

Increasing the assessments per pound on imported pork and pork products by two- to three-hundredths of a cent-per-pound will result in about $200,000 more in assessments over a 12-month period. Changing the schedule for remitting and reporting monthly assessments of less than $25 to the Board from monthly to quarterly will promote greater efficiency and cost-effectiveness. Modifying the remittance schedule for assessments on domestic porcine animals will benefit those persons who remit less than $25 per month to the Board. Any additional costs will be outweighed by the benefits from the improved operation of the pork promotion, research, and consumer information program. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the Office of Management and Budget (OMB) has reviewed and approved the information collection requirements contained in this final rule. The information collection requirements have been assigned OMB control number 0851–0151.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383) and assessments began on November 1, 1986. The order requires importers of porcine animals to pay to the Customs Service, upon importation, the assessment of 0.25 percent of the animal's declared value. The order also requires importers of pork and pork products to pay to the Customs Service, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. As a matter of practicality, the assessment on imported pork and pork products is expressed in dollars per pound for each type of such products. The initial schedule of assessments was listed in a table in the order for each type of pork and pork products identified by a Tariff Schedule of the United States (TSUS) number.

The order requires purchasers of domestic porcine animals or in some special cases producers of such animals to remit all assessments due at the time of sale to the Board by the 10th day of the month following the month in which the animals were marketed.

On October 22, 1987, the Agricultural Marketing Service (AMS) published in the **Federal Register** (52 FR 39538) a proposed rule which would (1) increase the per-pound assessments on imported pork and pork products consistent with increases in the 1986 average price of domestic barrows and gilts to provide comparability between importer and domestic assessments and (2) establish a quarterly schedule for remitting to the National Pork Board domestic assessments of less than $25 monthly. Additionally, the proposed rule provided for removing the section of the order—§ 1230.91—containing the OMB control number assigned pursuant to the Paperwork Reduction Act of 1980 (49 U.S.C. Chapter 35) and adding it to the regulations implementing the order. The proposed rule was published with a request for comments by November 22, 1987. Sixteen comments were received—one from a national pork producers organization, one from a national organization representing importers of pork and pork products, one from the Board, one from a national farm organization, two from State farm organizations, one from a national livestock marketing association, six from State pork producer associations, and three from national swine breeder's associations. All commentors were in favor of the proposed increase in the assessments on imported pork and pork products and the proposed change in the schedule for remitting small domestic assessments. Commentors expressed the

opinion that the increase in assessments for pork and pork products was fair and equitable and would promote comparability between import and domestic assessments. Additionally, commentors believed that the change in the schedule for remitting domestic assessments from monthly to quarterly for amounts of less than $25 per month would result in a reduction in the paperwork for small producers and operators thus saving them time and money. No comments were received on the proposal to delete the Paperwork Reduction Act assigned control number from the order and include it in the regulations.

When the order was first published, the initial per-pound assessment on imported pork and pork products listed in the table in § 1230.71 of the order was calculated using the conversion formula, described in the supplementary information accompanying the order and published in the September 5, 1986, **Federal Register** at 51 FR 31901 and the 1985 annual seven-market average price of $44.50 per hundredweight for domestic barrows and gilts. The discussion of the conversion formula noted that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products. The 1986 annual seven-market average price per hundredweight was $50.59—an increase of slightly more than 13 percent over the comparable 1985 per hundredweight price. Accordingly, the per-pound assessment for each type of pork and pork products subject to assessment under the order is increased proportionately. It is estimated that a corresponding increase in the per-pound assessment for pork and pork products would result in about $200,000 more in importer assessments over a 12-month period.

Since it is anticipated that adjustments, if necessary, will be made on a yearly basis, the table for assessments on imported pork and pork products, which presently appears in § 1230.71(e) of the order, is removed from that section and added to a new subpart containing regulations implementing the order.

The procedures and schedule for the collection and remittance of domestic assessments are specified in § 1230.71 of the order. Under that section, purchasers of porcine animals are required to collect assessments from producers upon the sale of porcine animals if an assessment is due and remit such assessment to the Board by the 10th day of the month following the month in which porcine animals were marketed. As referenced in § 1230.71(b)(1) of the order, a purchaser is any person buying feeder pigs or market hogs; and, for purposes of collection and remittance of assessments, also includes any person engaged as a commission merchant, as well as an auction market, or livestock market in the business of receiving porcine animals for sale on commission for or on behalf of a producer. However, in certain situations, producers are required to pay assessments directly to the Board. Those instances are seed stock producers and producers who slaughter their porcine animals for sale or who sell porcine animals to consumers for custom slaughter. Based on the Board's experience since collection of assessments began November 1, 1986, most purchasers collecting assessments collect and remit substantial amounts of assessments to the Board each month. However, the producers described above who are responsible for remitting assessments to the Board upon sale of their porcine animals may have only a limited number of sales per month and therefore owe relatively small amounts of assessments at the end of each month (i.e., $5 to $10). The time and the costs involved with reporting and remitting these small amounts monthly and the cost of processing them are disproportionally greater than for remitting and processing larger amounts. Establishing a different remittance date for such small volume purchasers and producers based on a minimum monthly dollar amount can facilitate collection and remittance and reduce processing costs.

Accordingly, this rule establishes a quarterly remittance schedule to permit purchasers and producers whose total assessments are less than $25 per month to accumulate such assessments for a designated 3-month period. If, during any month of the quarter, assessments totaled $25 or more, they must be remitted to the Board, together with any previously unremitted assessments, by the 10th day of the following month. A purchaser or producer is required to remit all assessments collected during the quarter by the 10th day of the month following the end of the applicable quarter. Purchasers and producers whose monthly assessment amounts total $25 or more must continue to submit such assessments by the 10th day of the month following the month in which porcine animals were marketed. No change is needed concerning those reporting requirements. Reports are due at the time for remitting assessments to the Board as required by § 1230.80 of the order.

The control number assigned by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) is displayed in § 1230.91 of the order. That section is being deleted. The OMB control number will be included in § 1230.120 of the regulations. Paperwork Reduction Act assigned control numbers are more appropriately included in the regulations.

List of Subjects in 7 CFR Part 1230

Administrative Practice and Procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR Part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

§§ 1230.100–1230.102 (Subpart B) [Redesignated as §§ 1230.400–1230.402 (Subpart C)]

2. Sections 1230.100–1230.102 (Subpart B) are redesignated as §§ 1230.400–1230.402 (Subpart C).

3. Amend Subpart A—Pork Promotion, Research, and Consumer Information Order by revising § 1230.71(b)(3) and (e) to read as follows:

§ 1230.71 [Amended]

* * * * *

(b) * * *

(3) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the "National Pork Board," which, together with the reports required by § 1230.80, shall be sent to the address designated by the Board in accordance with the following remittance schedule:

(i) Monthly assessments totaling $25 or more shall be remitted to the Board by the 10th day of the month following the month in which the porcine animals were marketed.

(ii) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 10th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(iii) Assessments totaling $25 or more during any month of a quarter must be remitted in accordance with paragraph (b)(3)(i) of this section, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(iv) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b)(3) (i), (ii), or (iii) of this section, must be remitted by the 10th day of the month following the end of the quarter regardless of the amount.

* * * * *

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment, which shall be establsihed by regulations prescribed by the Board and approved by the Secretary.

§ 1230.94 [Removed]

4. Section 1230.94 is removed.

5. A new Subpart B is added to read as follows:

Subpart B—Rules and Regulations

Definitions

Sec.

1230.100 Terms defined.

Assessments

1230.110 Assessments on imported pork and pork products.

Miscellaneous

1230.120 OBM control number assigned pursuant to the Paperwork Reduction Act.

Subpart B—Rules and Regulations

Definitions

§ 1230.100 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in Subpart A of this part.

Assessments

§ 1230.110 Assessments on imported pork and pork products.

The following imported pork and pork products are subject to assessment in the amount per pound as follows:

Pork and pork products (U.S. Tariff Schedule No.)	Assessment (dollars per pound)
106.4020	0.0018
106.4040	.0018
106.8000	.0018
106.8500	.0018
107.1000	.0025
107.1500	.0025
107.3020	.0018
107.3040	.0019
107.3060	.0021
107.3515	.0027
107.3525	.0027
107.3540	.0019
107.3560	.0025

Miscellaneous

§ 1230.120 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0151.

Done at Washington, DC on: January 19, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–1319 Filed 1–22–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 47 and 49

[Docket No. 20349; Amdt. Nos. 47–23 and 49–9]

Recordation of Conveyances Affecting Title to, or an Interest in, Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: These amendments adopt rules affecting aircraft registration and the recordation of conveyances, by eliminating the requirement for a conditional sales vendee to have the consent or a release from the conditional sales vendor before transferring the ownership of the aircraft. The amendments are in keeping with the express language of the Uniform Commercial Code. The amendments are in response to petitions for rulemaking filed by Cessna Finance Corporation and the Aircraft Finance Association.

EFFECTIVE DATE: February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Agnes M. Jones, Aircraft Registration Branch, (AAC–250), Airmen and Aircraft Registry, Aeronautical Center, P.O. Box 25082, Oklahoma City, Oklahoma 73125; Telephone (405) 686–2284.

SUPPLEMENTARY INFORMATION:

Background

A Federal system for recordation of instruments transferring or affecting interests in aircraft was first established by Congress in 1938. Currently section 503 of the Federal Aviation Act of 1958 (the Act) requires the FAA to establish and maintain a system for recording conveyances affecting title to, or interest in, civil aircraft. These documents include bills of sale, contracts of conditional sale, mortgages, and other security agreements. The Act also provides that no conveyance shall be valid against any person other than the persons involved in the conveyance, or a person who has actual notice, until the conveyance affecting the aircraft is recorded with the FAA.

Under the Act, an aircraft may only be registered by its owner. Since 1939, as a result of the O'Conner decision (1 C.A.A. 5, 1939), the regulations have recognized the buyer of an aircraft under a contract of conditional sale as the owner for registration purposes. This is true even though the conditional seller retains legal title until the buyer meets the conditions of the contract. The FAA considers certain leases with option to purchase, and bailment leases, as defined in 49 U.S.C. 1301(19), "conditional sales", to be equivalent to conditional sales and wherever the terms "conditional sales" or "conditional sales contract" are used, they include those leases with option and bailment leases.

Parts 47 and 49 of the Federal Aviation Regulations (FARs) historically have recognized this special character of a contract of conditional sale. Section 47.11, Evidence of Ownership, requires the transferee under a contract of conditional sale to submit the contract (unless it is already recorded at the FAA Aircraft Registry (Registry)) and the transfer from the original buyer, bailee, lessee, or prior transferee. The transfer must bear the written assent of the seller, bailor, lessor, or transferee thereof under the original contract. To obtain a certificate of aircraft registration under § 47.31, the applicant must submit evidence of ownership acceptable under § 47.11.

In addition, §§ 47.11 and 49.17 provide that a transfer of the conditional buyer's interest cannot be recorded and the aircraft cannot be registered to the buyer's transferee without the consent of the conditional seller. However, if a person holds any other kind of security interest in an aircraft, such as a security agreement, or a chattel mortgage, the consent of the secured party is not required for recordation of the transfer

and registration of the aircraft to the transferee.

The Uniform Commercial Code (U.C.C. or the code) makes no distinction between contracts of conditional sale and other security agreements. Section 1–201(37) of the code states that the retention or reservation of title by a seller, notwithstanding delivery of the property to the buyer, is limited in effect to a reservation of a "security interest". As provided in section 9–306 of the U.C.C., a perfected security interest continues in the collateral regardless of sale or exchange by the debtor. Section 9–311 further states that the debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment, or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer of making the transfer constitute a default.

ANPRM

On August 11, 1975, the Cessna Finance Corporation (CFC) submitted a petition for rulemaking to the FAA. The CFC petition asks that Parts 47 and 49 be changed to remove the distinction between the FAA's handling of conditional sales contracts and its handling of other security instruments. This would be done by requiring consent of the holder of every outstanding recorded security interest prior to recording any bill of sale or other transfer from the debtor to a third party, as a prerequisite to issuing a certificate of aircraft registration to the transferee.

The CFC petition prompted the FAA to issue an advance notice of proposed rulemaking (ANPRM) on October 20, 1977 (Notice No. 77–24; 42 FR 55897). This notice, in keeping with the intent of the U.C.C. proposed to abolish the distinction between contracts of conditional sale and other security interests recorded with the FAA. The FAA proposed to accomplish this, not in the manner requested by CFC, but by eliminating the requirement of written consent of the conditional vendor to the transfer of the original buyer's interest before recording the transfer and registering the aircraft. The FAA explained in the ANPRM that an amendment similar to the one proposed by CFC would discourage transfer of the buyer's interest in the aircraft and thus be contrary to the intent of the U.C.C. In addition, the amendment would involve a substantial increase in the administrative costs and workload of the Registry. The ANPRM further solicited suggestions of alternative courses of action which would be consistent with the U.C.C., administratively reasonable, and also afford protection to persons who hold security interests in aircraft.

Subsequent to the publication of the ANPRM, the Aircraft Finance Association (AFA) filed a petition for rulemaking, dated March 16, 1979, proposing the same requirement as CFC requested. It did not specify, however, when the burden would fall upon the buyer of the aircraft to obtain the consent or release of the security interest by the creditor and when it would fall upon the seller.

NPRM

In response to the AFA petition and in further response to the CFC petition, the FAA published notice of proposed rulemaking (NPRM) No. 80–9 on May 22, 1980 (45 FR 34286). The notice proposed to delegate regulations affording special consideration to conditional sales contracts in view of modern state statutes which, in accordance with the U.C.C., treat alike all instruments executed for security purposes as they concern the rights, duties, and remedies of the parties. Specifically, the notice proposed to amend § 47.11(a) by eliminating the requirement that the transferee under a contract of conditional sale submit with an Aircraft Registration Application, written assent of the seller, bailor, lessor, or assignee thereof, under the original contract, to the assignment. It also proposed to amend § 49.17 to eliminate the consent of the conditional seller and consolidate the recording requirements for instruments executed for security purposes.

In support of the proposal, the FAA made the following observations. For many years, the special character of the contract of conditional sale, i.e., the retention of legal title by the vendor, was thought to have warranted the special protection of consent to transfer. However, the Act does not specifically authorize the Administrator to refuse to record a conveyance affecting title to, or an interest in, aircraft in the absence of a secured creditor's assent to that conveyance. Section 503(c) of the Act leaves the determination of the substantive validity of any conveyance to state law, specifically, the law of the state where the instrument is delivered. To the extent that the Act does not regulate the rights of parties to, and third parties affected by, these transactions, security interests in aircraft are controlled by Article 9 of the U.C.C., which has been adopted in 49 of the 50 states.

The NPRM noted that the CFC, the AFA, and the commenters to the ANPRM had pointed out that the U.C.C. has eliminated the distinction between conditional vendors and other secured creditors. In view of this virtually uniform policy of state law, the FAA stated, as it did in the ANPRM, that the distinction should be abolished for purposes of aircraft registration and recordation. The NPRM pointed to the policy of the U.C.C. that debtor's rights in collateral be freely transferable notwithstanding a provision in a security agreement making such a transfer a default. The notice concluded that it would be contrary to the policy of the U.C.C. to restrain such transfers by requiring, as a condition of aircraft registration and recordation, the assent of the secured creditor to a conveyance of the aircraft. The FAA stated that it is improper to override these state laws, in the absence of specific Federal statutory authority, unless it is necessary to carry out the provisions of a Federal statute or treaty.

Response to the NPRM

Forty-seven comments were received in response to the NPRM. Thirty-seven commenters oppose the FAA proposal. Twenty of those 37 commenters ask that CFC's proposal be implemented.

Six commenters point out that insurance becomes invalid if ownership is transferred without the lienholder's knowledge. However, maintenance of appropriate insurance is the responsibility of the owner of the aircraft and is not an FAA requirement. While operation of aircraft with appropriate insurance coverage is desirable, and aircraft transfers do affect insurance coverage and the security of the aircraft as collateral, the proposed regulations would not affect the owner's responsibilities as to insurance.

Twenty-four commenters contend that the proposed amendments would adversely affect aircraft financing and commerce. They contend that implementation of the changes proposed in the NPRM would relieve the mortgagor (conditional buyer, lessee, bailee, etc.) of the responsibility of providing either a release of the security agreement or a consent from the security holder, allowing the free transfer of the debtor's interest. The commenters believe that the effect would be that the security holder might then not be aware of the impending transfer, and might not be able to protect its interests or be assured of the continued safety of its collateral.

Although the NPRM invited interested persons to submit data concerning any possible impact, no commenter did so.

As stated in the NPRM, approximately 15 percent of the security transactions filed with the Registry are contracts of conditional sale. The majority of those which require a release or consent to the sale of such aircraft have the required release or consent attached. Sellers who do not submit a release or consent with other documentation of the sale must be advised of the requirement, and this places an additional burden on the Registry. This process impedes expeditious registration to a new buyer. By removing the requirement, a significant amount of time will be saved by the seller, the security holder, and the FAA in documenting and processing such sales and the registration to subsequent buyers.

Nothing the FAA can do will change the prospect that collateral may be sold out of trust, with or without the security holder's consent. While this final rule may remove an obstacle to a sale out of trust, the agency is not persuaded that this will have an appreciable effect on secured transactions generally. Some commenters suggest that removing the release or consent requirement would increase the amount of down payment required in secured sales, or increase the amount of interest charged the buyer, or increase secured party losses, or all three. However, no information in terms of actual increases or events of transfer which result in loss were provided by the commenters, so these anticipated losses must be considered speculative at this time.

One commenter states that the proposed rule will affect a $6 billion industry. Other banks and aircraft financing concerns also commented that their respective involvement may total over one-half billion dollars a year. Many of these concerns state that they are currently carrying $50–100 million in outstanding obligations. However, no commenter states what proportion of their transactions were conditional sales, if any, or how many conditional sales were affected by sales out of trust.

One commenter, citing section 9–104 of the U.C.C., stated that the U.C.C. does not apply to aircraft because a security interest in aircraft is subject to a statute of the United States which governs the rights of the parties to, and third parties affected by, the transaction. Section 9–103(3)(a) specifically names airplanes as one of the mobile goods covered by the code. The Act provides a central location whereby recorded conveyances and instruments shall be valid as to all persons without further or other recordation; however, it does not prescribe the rights, obligations, and remedies of the parties to the transactions.

Three commenters stated that they did not believe security interests in aircraft were covered by the U.C.C. because section 9–302(3) specifies that the filing of a financing statement, otherwise required by Article 9 of the code, is not necessary or effective to perfect a security interest in property subject to a statute or treaty of the United States which provides for a national or international registration or specifies a different place for filing a security interest. The FAA does not have a provision for the filing of a "notice" of interest in aircraft (the financing statement), but rather section 503(a)(1) of the Act provides for the recording of the conveyance which contains all of the terms and provisions of the transaction affecting an interest in aircraft. The Act provides a preempted location for recording security interests, but othewise does not displace the U.C.C. as to any substantive or procedural rights. *Philko* v. *Shacket*, 103 S.Ct. 2476 (1983), *In re Gary Aircraft*, 681 F.2d 365 (5th Cir. 1982), *In re Holiday Airlines*, 620 F.2d 731 (9th Cir. 1980). The validity of any instrument is determined by state law, and in the event of default, remedies are in accordance with the provisions of the security instrument and state law.

The FAA does not expect the adoption of the amendment to have an appreciable effect on the choice of security formats available to financers and their customers. The relations, obligations, and rights of the parties are matters of mutual agreement. The agency action in treating all security transactions alike should not have been an adverse effect on the reciprocal duties of the parties. Most security agreements, by whatever name they are called, contain provisions restricting transfers, perhaps restricting the base or home location of the aircraft, and specifying events of default. FAA regulations and this amendment do not change these provisions; the obligations of the parties remain the same. It should not be the responsibility of the FAA to participate in enforcing the terms of a financing transaction, but rather the parties themselves should select the security format, with its concomitant default and redress clauses, most appropriate to the wishes and needs of the parties.

It appears that only the FAA has the requirement for submission of a consent or release prior to recognition of a sale. Such a requirement would seem to be unenforceable under any state law. The final rule does not change the holder's right to have the security in the collateral continue notwithstanding the sale, nor change specific contract language, if the contract contains any language to the effect that a sale may be an event of default. The FAA recognizes that a sale by a conditional purchaser may result in the seller losing track of the collateral, but since the Registry records are open to the public, the seller or other security holder can check on the current registration at any time. The FAA places its records at the disposal of the public free of charge and in as expeditious a manner as possible.

As a less sweeping alternative, some commenters suggest that notification be made to all lienholders when registration is transferred (as opposed to a refusal to transfer). However, the implementation of such an alternative would be almost identical to implementation of the complete CFC proposal insofar as increased workload is concerned, with questionable gain to the lienholder, to whom an after-the-fact notification may be untimely.

Three commenters favor the proposal offered in the NPRM. All three oppose the cost of implementing and maintaining the procedures requested by CFC, and two object to the Government taking over the responsibility of furnishing information or a service presently available from the private sector, i.e., the services of aviation title search companies.

Finally, five commenters favor continuing the present procedure. Two state that maintaining the "status quo" is preferable to the "halfway" measures requested by the CFC and changes should be made only if issuance of a "clear and absolutely clean" title replaced the present system. Two others want no change only if CFC procedures could not be implemented. The fifth advocates no change, saying the CFC proposal would only increase the backlog and prolong the time span required to issue a certificate of aircraft registration.

The FAA has carefully considered all comments. However, since the U.C.C. has virtually eliminated any distinction between forms of security interests and the Act provides no basis for such a distinction, the FAA is not justified in perpetuating by regulation, one distinction in one singular type of transaction. The FAA is now fully persuaded that, since the validity of the instruments is governed by state law, and since state law prescribes that collateral shall be fully transferable, regulations should be changed to reflect this law. Without an amendment to the Act specifically authorizing it to do so,

the agency cannot continue an archaic practice that has been specifically changed in intent and in fact by the U.C.C.

The expressed purpose of the Administration's regulatory program is to place less, not more, responsibility on the Government for levying requirements on the public and enforcing those requirements. By requiring less documentation for an aircraft transfer, which is subject to a conditional sales contract, the amendment will place all transferors and all holders of security interests on an equal footing; that is, nothing more will be required of persons selling an aircraft subject to a conditional sales contract than of persons selling an aircraft subject to a chattel mortgage or deed of trust. Similarly, a person holding a security interest called a conditional sales contract will be in no different a position than the holder of any other agreement.

Without specific statutory authority to continue the current practice, the FAA has concluded that Parts 47 and 49 should be amended by deleting the requirement for a release or consent of the holder of a conditional sales security interest prior to registration of an aircraft to a buyer who purchases from a conditional sales vendee, or to record a transfer from the same individual.

Paragraph (a)(2) of § 47.47, *Cancellation of Certificate for Export Purposes*, is being revised to eliminate an unnecessary distinction between contracts of conditional sale and other security agreements. These amendments, however, do not change the requirement for a release or consent from the holders of all recorded rights when the aircraft registration is to be cancelled for export purposes. This requirement implements the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830) (Convention), and is set out in § 47.47 of the FARs. In 1985, over 2,000 U.S. registered aircraft were exported, and consents or releases were provided in all cases where the aircraft were subject to recorded rights. This requirement is placed on all exported aircraft regardless of whether the aircraft is being exported to a country which is also a signatory to the Convention.

Editorial Changes From the NPRM

Editorial changes have been made to the Part 49 amendment from the language of the NPRM in the following manner: all references to "mortgage", or "chattel mortgage", have been changed to the more generic term, "security agreement". This is the term generally accepted by the U.C.C. to refer to such instruments, regardless of the historical name; names are not critical for recording purposes. Similarly, wherever reference is made to "FAA recorded document number", that is changed to "FAA recorded conveyance number" in accordance with current Registry practice.

Although the NPRM stated that the proposed amendment would not affect § 47.47(a), which deals with the requirements of the Convention on International Recognition of Rights in Aircraft (4 U.S.T. 1830), editorial changes are made to remove those requirements in that section that distinguish conditional sales contract from other security instruments. Under § 47.47(a) the requirement remains exactly the same: All recorded security instruments must be released or have the consent to cancel registration from the holder of the instrument. This is meant to be an editorial change only, and no substantive change is intended.

Benefit-Cost Analysis

The FAA is amending Parts 47 and 49 of the FAR's to eliminate the current requirement for a release or consent from the holder of a conditional sales security interest to registration of an aircraft to a conditional sales buyer. These amendments would treat conditional sales contract the same as other security agreements in which the FAA does not require the consent of the secured party to record the transfer and registration of the aircraft to the buyer. A conditional sales contract is one in which the buyer and seller agree to fulfill certain conditions; e.g., observe warranties, provide proper maintenence, meet a payment schedule. The buyer takes possession of the aircraft and registers it with the FAA even though the seller retains legal title until all the conditions of the contract are satisfied.

Registry experience is that about 15 percent of aircraft security documents are conditional sales contracts, generally involving 4,725 aircraft on an annual basis. Although this proportion is small, it appears that some of the major lenders in the industry rely heavily on this type of financial arrangement. Both Cessna Finance and Chase Manhattan Aircraft Finance, which acquired Piper Acceptance Corporation in 1985, have indicated that the bulk of their aviation lending consists of conditional sales contracts. Both of those companies also indicated that 20 percent of these contracts were to the dealer for inventory financing and 80 percent went to the end user. In the case of an end user conditional sales contract, the dealer will "assign" the contract to the lender. Although information on individual aviation lenders' use of this type of contract format is very sketchy, it appears that perhaps about half a dozen aviation lenders have significant volume of conditional sales contracts.

The FAA expects that adoption of the proposal would facilitate the sale of used aircraft by requiring less documentation for an aircraft transfer subject to a previously recorded conditional sales contract. As noted above, approximately 15 percent of all security contracts are conditional sales which require the additional documentation. Another expected benefit of this amendment is a reduced workload for the Registry because it would eliminate the need for returning and resubmitting transfer documents when the necessary consents are lacking. This saving in time is not expected to be very significant, however, in view of the fact that only 5 percent of all conditional sales transfer documents (or less than 250 per year) must be returned by the FAA because the required releases have not been obtained.

Another benefit of this rule is consistent treatment of loan collateral involved in conditional sales of aircraft between Federal regulation and the state U.C.C.'s. The U.C.C. makes no distinction between contracts of conditional sale and other forms of security agreements. The validity of the loan instruments is governed by state law and because state law prescribes that collateral shall be fully transferable, the Federal regulation should be consistent.

A half dozen conditional sales lenders were contacted by the FAA. They prefer conditional sales contracts because of the additional protection of the collateral in the form of "registration around liens", under which the FAA will not change registration of an aircraft without the consent of the lienholder. Under a standard loan arrangement, the FAA does not require such a consent prior to registering the aircraft in the name of the purchaser. Some lenders are critical of the proposed rule, claiming it would increase their risk exposure. The lenders assert that they would otherwise have no indication that the borrower was attempting to sell or had sold the collateral and would therefore be forced to search the Registry records to determine if a sale had in fact occurred. Also lenders might lose their collateral insurance because policies terminate with the sale of aircraft. Lenders assert they would be forced to change the terms on aircraft loans by increasing rates and down payment requirements which would ultimately reduce the

overall volume of their aviation loan portfolios. They indicated that the degree of this change would depend largely on their loss experience which cannot be predicted at this time.

The FAA does not expect the adoption of the amendment to have a significant effect on the risk exposure of aviation lenders using the conditional sales format, however. In the first place, the protection of collateral afforded by the FAA requirement for the consent of the lien-holder is not available in the case of conditional sales contract to dealers for inventory financing because the lien would not be enforceable under the state U.C.C.'s after the dealer sells to an end user. Under the U.C.C., a person who buys an aircraft from a dealer takes title to the aircraft free and clear of any security interest in the aircraft. (U.C.C. 9-307(1).)

On the other hand, a person who purchases an aircraft from a person who is not in the business of selling aircraft, i.e., the original purchaser would be legally obligated to release the collateral to the lender in the event the conditional buyer of the aircraft, i.e., the debtor, defaulted on his payments. Effects of this proposal therefore appear limited to "end user" loans.

Conditional sales lenders have expressed concern that implementation of the proposal would force them to institute replevin proceedings (which would take up to 2 years) to recover the collateral in the event of a default, thereby delaying the process and increasing their cost and risk exposure. The FAA maintains that the lenders would not generally be required to follow this protracted course because state laws entitle them to repossess property on which they hold a lien without breaching the peace. Replevin proceedings are not likely to increase since the law presumes that the buyer has knowledge of any debt or security agreement recorded by the Registry that may encumber any purchased aircraft.

In summary, the adoption of the proposal is not expected to have a significant impact on the risk exposure of the lenders. Even if the aircraft is sold out of trust, the lender retains a lien of record on the aircraft in the case of nondealer sales and remains in the same priority with respect to other persons asserting rights in the aircraft. While the possibility exists that FAA may register aircraft to buyers from conditional vendees, thereby creating legal problems for some lenders, lenders can adequately protect rights to the collateral by specifying the obligations of the parties in the loan agreements. The FAA is not persuaded that the terms of loans will be adversely affected by the implementation of this proposal.

Regulatory Flexibility Analysis

The FAA has determined that the rulemaking action will not have a significant economic impact on a substantial number of small entities.

As noted above, the risks of conditional sales agreements involving aircraft dealers would probably not be affected. The cost of new aircraft to commercial operators of all sizes, which to some extent reflects the financing costs of dealers, would therefore not be affected. Any possible effects on the cost of used aircraft are likely to be minimal in view of the prevalence of the standard "chattel" loan format in the aircraft purchase financing industry which would not be affected by this action.

International Trade Impacts

The Registry is aware of only one foreign aircraft manufacturer which specifically selected the conditional sale format for sales to its U.S. distributors in order to take advantage of the requirement for a release or consent before further transfer would be recognized. However, since a purchaser from a dealer takes possession free and clear of any dealer financing, regardless of FAA's requirements, no impact can be shown other than in those situations where the distributor transfers the aircraft to another dealer. This manufacturer did not comment on the proposed rule change. Accordingly, the FAA has determined that the economic impact of the amendment on international trade would be minimal and imposes no significant barrier.

Conclusion

This amendment will provide consistent treatment of aircraft subject to security agreements and result in a minimal cost benefit by requiring less documentation for the registration of certain used aircraft. It is not expected to have a significant impact on the risk exposure of lenders. For these reasons, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the same reasons, it is certified that under the criteria of the Regulatory Flexibility Act this amendment will not have a significant economic impact, positive or negative, on a substantial number of entities. A copy of the final regulatory evaluation prepared for this project may be examined in the public docket or obtained from the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects

14 CFR Part 47

Aircraft, Registration, Security agreements, Transportation.

14 CFR Part 49

Aircraft, Recordation, Security agreements, Transportation.

Denial of Petitions and Adoption of Amendment

For the reasons set out in the preamble, the petitions of Cessna Finance Corporation and Aircraft Finance Association are denied, and 14 CFR, Parts 47 and 49 are amended as set forth below.

PART 47—AIRCRAFT REGISTRATION

1. The authority citations following sections in Part 47 are removed and the authority citation for Part 47 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354, 1401, 1403, 1405, 1406, and 1502; 4 U.S.T. 1830.

§ 47.11 [Amended]

2. Section 47.11(a) is amended by removing the phrase ", that bears the written assent of the seller, bailor, lessor, or assignee thereof, under the original contract."

3. Section 47.47(a)(2) is revised to read as follows:

§ 47.47 Cancellation of certificate for export purpose.

(a) * * *

(2) Evidence satisfactory to the Administrator that each holder of a recorded right has been satisfied or has consented to the transfer.

* * * * *

PART 49—RECORDATION OF AIRCRAFT TITLE AND SECURITY DOCUMENTS

4. The authority citation for Part 49 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354, 1401, 1403, 1405, 1406, and 1502; 4 U.S.T. 1830.

5. Section 49.17 is amended by removing paragraph (e) and revising paragraph (d) to read as follows:

§ 49.17 Conveyances recorded.

* * * * *

(d) The following rules apply to conveyances executed for security purposes and assignments thereof:

(1) A security agreement must be signed by the debtor. If the debtor is not the registered owner of the aircraft, the

security agreement must be accompanied by the debtor's Application for Aircraft Registration and evidence of ownership, as prescribed in Part 47 of this chapter, unless the debtor—

(i) Holds a Dealer's Aircraft Registration Certificate and submits evidence of ownership as provided in § 47.67 of this chapter (if applicable);

(ii) Was the owner of the aircraft on the date the security agreement was signed, as shown by documents recorded at the FAA Aircraft Registry; or

(iii) Is the vendor, bailor, or lessor under a contract of conditional sale.

(2) The name of a cosigner may not appear in the security agreement as a debtor or owner. If a person other than the registered owner signs the security agreement, that person must show the capacity in which that person signs, such as "cosigner" or "guarantor".

(3) An assignment of an interest in a security agreement must be signed by the assignor and, unless it is attached to and is a part of the original agreement, must describe the agreement in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

(4) An amendment of, or a supplement to, a conveyance executed for security purposes that has been recorded by the FAA must meet the requirements for recording the original conveyance and must describe the original conveyance in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

(5) Immediately after a debt secured by a conveyance given for security purposes has been satisfied, or any of the encumbered aircraft have been released from the conveyance, the holder shall execute a release on AC Form 8050–41, Part II—Release, provided to him by the FAA when the conveyance was recorded by the FAA, or its equivalent, and shall send it to the FAA Aircraft Registry for recording. If the debt is secured by more than one aircraft and all of the collateral is released, the collateral need not be described in detail in the release. However, the original conveyance must be clearly described in enough detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

(6) A contract of conditional sale, as defined in section 101(19) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(19)), must be signed by all parties to the contract.

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

T. Allan McArtor,

Administrator.

[FR Doc. 88–1376 Filed 1–22–88; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 4H5427/R931; FRL–3319–7]

Pesticide Tolerances for Cyano(4-Fluoro-3-Phenoxyphenyl)Methyl 3-(2,2-Dichloroethenyl)-2,2-Dimethyl-Cyclopropanecarboxylate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish a food additive and a feed additive regulation to permit residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on cottonseed hulls and cottonseed oil. These regulations to establish maximum permissible levels of the insecticide in or on cottonseed hulls and cottonseed oil were requested in a petition by Mobay Chemical Corp.

EFFECTIVE DATE: January 25, 1988.

ADDRESS: Written objections, identified by the document control number [FAP 4H5427/R930], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2400.

SUPPLEMENTARY INFORMATION: EPA isued a notice, published in the **Federal Register** of April 25, 1984 (49 FR 17809), which announced that Mobay Chemical Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorne Rd., Kansas City, MO 64120, has filed a food/feed additive petition (FAP 4H5427), proposing that 21 CFR Parts 193 and 561 be amended by establishing regulations permitting tolerances for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichlorethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on the food commodities cottonseed oil at 2.0 parts per million (ppm) and soybean oil at 0.09 ppm and in or on the animal feed commodities cottonseed hulls at 2.0 ppm and soybean hulls at 0.3 ppm resulting from application of the insecticide to cottonseed.

On May 14, 1984, Mobay Chemical Corp. amended the food/feed additive petition by deleting the proposed tolerances on soybean oil and soybean hulls.

There were no comments received in response to the notice of filing.

EPA is granting Mobay Chemical Corp. a tolerance for the pesticide in or on the food additive commodity cottonseed oil and the feed additive commodity cottonseed hulls in conjunction with a permanent tolerance petition for cottonseed, PP4F3406. This regulation appears elsewhere in the **Federal Register.**

The data submitted in the petition and other relevant material have been evaluated.

The acceptable daily intake (ADI), based on a NOEL of 2.5 mg/kg body weight/day from a 2-year rat chronic feeding study and a safety factor of 100, is 0.025 mg/kg/body weight/day. The theoretical maximum residue contribution resulting from the established tolerances of 1.0 ppm for residues in or on cottonseed, 0.05 ppm in meat, fat, and meat by-products of cattle, goats, horses, and sheep, and 0.01 ppm in milk is 0.000258 mg/kg body weight/day; this is equivalent to about 1.0 percent of the ADI.

The pesticide may be safely used in the prescribed manners when such uses are in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751, 7 U.S.C. 135(a) et seq.). It has further been determined that since residues of the pesticide may result in cottonseed oil and cottonseed hulls from the agricultural use provided for in the permanent tolerance, the food and feed additive regulations should be established and should include tolerance limitations. In accordance with the provisions for the establishment of the permanent tolerance on cottonseed, the food and feed additive tolerances will expire on July 31, 1991.

The metabolism of the insecticide is adequately understood for these uses, and the analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual, Vol. II. No actions are currently pending against registration of the insecticide.

The scientific data reported and other relevant material have been evaluated, and the Agency concludes that the pesticide may be safely used in the

prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135 et seq.) and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601–612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(c))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: January 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. Part 193 is amended as follows:

PART 193—[AMENDED]

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 193.98, paragraph (a), which is currently designated "reserved," is added to read as follows:

§ 193.98 Cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate).

(a) A tolerance of 2.0 parts per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in cottonseed oil resulting from application of the insecticide to cottonseed.

* * * * *

2. Part 561 is amended as follows:

PART 561—[AMENDED]

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 561.96, paragraph (a), which is currently designated "reserved," is added to read as follows:

§ 561.96 Cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate).

(a) A tolerance of 2.0 parts per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

[FR Doc. 88–1381 Filed 1–22–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 82N–0394]

Technical Revision in Requirement for Serial Numbering of Amendments to Investigational New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adopting revised procedures for numbering amendments to investigational new drug applications (IND's). Previously, IND amendments were required to be numbered serially by scientific discipline. Under the new system, a single, three-digit sequential numbering system will apply to all submissions relating to an IND. This action is intended to assist both IND sponsors and FDA in processing IND amendments.

DATE: Effective January 25, 1988. Comments by March 25, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 19, 1987 (52 FR 8798), FDA adopted new regulations governing the submission and review of investigational new drug applications. The new regulations are called the IND Rewrite. Among other changes, the IND Rewrite adopted new regulations for the format and content of IND amendments. The agency is now revising formatting requirements for IND amendments.

The amendment procedures adopted in the IND Rewrite divided amendments into two classes—protocol amendments and information amendments. Protocol amendments include new protocols, changes in existing protocols, and new investigators added to existing protocols; information amendments cover new information pertinent to each of the scientific disciplines involved in IND review. To assist FDA in processing amendments, the final rule required that both information and protocol amendments prominently identify their contents (e.g., "Information Amendment: Pharmacology-Toxicology," "Protocol Amendment: New Protocol"). In addition, the final regulation required that all amendments be numbered and that all information amendments be serially numbered by discipline (21 CFR 312.31(b)). In numbering amendments, sponsors were expected to adopt separate and unique numbering sequences for chemistry, pharmacology, and clinical information amendments and for protocol amendments. This meant that each IND could have at least four separate sequences of amendment numbers.

Serial numbering was adopted to give the agency a method of assuring that all IND amendments are properly received, identified, and processed. However, both drug firms and the agency have found that serial numbering of amendments by discipline is confusing and difficult to implement, creates unnecessary work, and adds complexity to a system that was intended to be simple. The agency has, therefore, decided to abandon serial numbering by discipline. In its place, FDA is establishing a single, three-digit sequential numbering system.

Under the new numbering system that is being adopted in this final rule, each initial IND will be numbered "000." The

first submission to the established IND (amendment, report, or other correspondence) will be numbered "001." Subsequent submissions will be numbered consecutively in the order in which they are submitted. Numbers will be entered on the IND cover sheet (Form FDA–1571). This new system should significantly improve the agency's ability to track amendments.

Sponsors who are already serially numbering their submissions with a three-digit number may either continue or restart at 001. Prior submissions should not be renumbered. Sponsors who have adopted separate numbering sequences to identify protocol and information amendments should combine future submissions into a single numbering sequence, either by restarting the next new submission at 001 or by continuing in one of the prior numbering sequences.

Although previously only protocol and information amendments were expressly required to be numbered, under the new system all submissions relating to an IND, including reports and correspondence, will be required to be numbered. This action is intended to enhance processing of IND's by improving the identification and tracking of all submissions.

A letter discussing FDA's new policy on numbering of amendments has been sent to all current applicants and holders of new drug applications (NDA's). This technical revision is intended to clarify FDA's policy, and to make all current and future IND sponsors and other interested persons fully aware of the agency's requirements.

Notice and comment is not necessary before issuing this technical revision (see 5 U.S.C. 553(b)(B), 21 CFR 10.40(e)(1)). The requirement for the numbering of all amendments was proposed in the IND Rewrite proposal of June 9, 1983 (48 FR 26720), and adopted in the IND Rewrite final rule (52 FR 8798). This regulation, therefore, does not impose new substantive requirements but merely represents a minor technical revision of the numbering system already in place. The revision is intended to assist both IND sponsors and FDA in processing IND amendments. No purpose would be served by notice and comment or by delaying the effective date. Under FDA's procedural regulations at 21 CFR 10.40(e)(1), the agency has determined for good cause that notice and comment are impracticable, unnecessary, and contrary to the public interest.

This technical revision becomes effective on January 25, 1988, for all new IND submissions.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(9) that this technical revision 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.

Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), the agency has carefully analyzed the economic consequences of this final rule. This final rule is merely a technical revision of an existing rule which will have no economic consequences, and the agency has determined that it is, therefore, not a major rule as defined in Executive Order 12291. Further, the agency certifies that this clarifiction will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Paperwork Reduction Act

The rule relates to sections that contain collection of information requirements already submitted to the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. Sections 312.23, 312.30, and 312.31 have been previously approved under OMB control number 0910–0014.

Interested persons may, on or before March 25, 1988, submit to the Dockets Management Branch (address above), written comments about this clarification. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments, modifications, or revisions to the final rule are warranted. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 312

Drugs, Medical research.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, 21 CFR Chapter I, Part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR Part 312 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10, 5.11.

2. Section 312.23 is amended by adding new paragraph (e) to read as follows:

§ 312.23 IND content and format.

* * * * *

(e) *Numbering of IND submissions.* Each submission relating to an IND is required to be numbered serially using a single, three-digit serial number. The initial IND is required to be numbered 000; each subsequent submission (e.g., amendment, report, or correspondence) is required to be numbered chronologically in sequence.

§ 312.30 [Amended]

3. Section 312.30 is amended in paragraph (d) introductory text by removing the phrase "to be serially numbered,".

§ 312.31 [Amended]

4. Section 312.31 is amended in paragraph (b) introductory text by removing the phrase "to be numbered serially by discipline,".

Dated: December 24, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–1352 Filed 1–22–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 436 and 452

[Docket No. 87N–0154]

Antibiotic Drugs; Erythromycin Estolate Bulk; Thin-Layer Chromatographic, PH, and Identity Testing Methods

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by revising the accepted standards for erythromycin estolate bulk to add a thin-layer chromatographic (TLC) test method to identify and limit unesterified erythromycin, and by revising the pH and the identity test methods. These actions are being taken to provide better quality control of this product.

DATES: Effective January 25, 1988; comments, notice of participation, and request for hearing by February 24, 1988; data, information, and analyses to justify a hearing by March 25, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 6, 1987 (52 FR 25252), FDA proposed to amend the antibiotic drug regulations for erythromycin estolate bulk to: (1) Add a TLC test for free (unesterified) erythromycin content with an upper limit of not more than 3 percent, (2) revise the quantity of sample used in the pH assay procedure from 100 milligrams per milliliter (mg/mL) to 10 mg/mL, and (3) revise the sample preparation method used in the identity test by infrared spectrophotometry from a 1 percent solution of the sample in chloroform to a 1 percent mixture of sample in potassium bromide.

As discussed in the proposal, the TLC test method is intended as a specific test for the detection of an unwanted impurity (unesterified erythromycin) in erythromycin estolate bulk. It has been demonstrated that the proposed test method employs common laboratory equipment and solvents, requires minimal sample preparation, has excellent sensitivity and separation, and can be completed in less than 30 minutes. The agency has determined that the TLC test method provides a fast, sensitive, easily performed inexpensive test that would allow a limit to be set for an unwanted impurity.

The current pH assay procedure for erythromycin estolate bulk uses an aqueous suspension of the sample at a concentration of 100 mg/mL. Because the solubility of erythromycin estolate in water is 0.024 mg/mL, the current sample concentration of 100 mg/mL is excessive for purposes of the test. The agency has determined that a sample concentration of 10 mg/mL would be sufficient for the pH determination of erythromycin estolate bulk.

The current sample preparation method for the identity test by infrared spectrophotometry for erythromycin estolate bulk is a 1 percent solution of the sample in chloroform. It has been determined, however, that erythromycin estolate samples diluted in chloroform show changes in the 1,500 to 2,000 centimeters^{-1} region of the infrared spectrum with time. The agency has determined that a change to a 1 percent mixture of the sample in potassium bromide for the sample preparation method will improve the stability of the erythromycin estolate sample.

Interested persons were given until September 24, 1987, to submit written comments on this proposal and until August 5, 1987, to submit requests for an informal conference. No comments or requests for an informal conference were received in response to the proposal.

Economic Impact

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the final rule imposes an insubstantial amendment to existing requirements and refines existing technical provisions without imposing more stringent requirements. Accordingly, the agency certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Submitting Comments and Filing Objections

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before February 24, 1988, a written notice of participation and request for hearing, and (2) on or before March 25, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 436 and 452 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Section 436.362 is added to read as follows:

§ 436.362 Thin-layer chromatographic test for free erythromycin content in erythromycin estolate bulk.

(a) *Equipment*—(1) *Chromatography tank.* A rectangular tank approximately 23 centimeters long, 23 centimeters high, and 9 centimeters wide, equipped with a glass solvent trough in the bottom and a tight-fitting cover for the top.

(2) *Plates.* Use a 20- by 20-centimeter precoated silica gel 60 F-254 thin-layer chromatography plate. Before using, place the plate in an unlined developing chamber containing approximately 100 milliliters of anhydrous methanol and allow the solvent front to travel to the top of the plate, marking the direction of travel. Remove the plate and allow to drip dry. Store in a dry place.

(b) *Reagents*—(1) *Developing solvent.* Mix 15 milliliters of chloroform and 85 milliliters of anhydrous methanol. Use fresh developing solvent for each test.

(2) *Spray solution.* Dissolve 150 milligrams of xanthydrol in a mixture of 7.5 milliliters of glacial acetic acid and 92.5 milliliters of 37 percent hydrochloric acid.

(c) *Preparation of spotting solutions*—(1) *Sample solution.* Prepare a solution of the sample in anhydrous methanol to contain 10 milligrams per milliliter.

Note.—It is advisable to prepare the sample and standard solutions immediately before spotting to minimize the possibility of degradation in solution.)

(2) *Standard solution.* Prepare a solution of erythromycin base reference standard in anhydrous methanol to contain 1 milligram per milliliter. Weigh 99.5, 99.0, and 97.0 milligrams of erythromycin estolate (propionyl erythromycin lauryl sulfate) reference standard and transfer to separate 10-milliliter volumetric flasks. To these flasks add 0.5, 1.0, and 3.0 milliliters, respectively, of the 1-milligram-per-milliliter solution of erythromycin base reference standard and dilute to volume with anhydrous methanol. These solutions contain, respectively, 0.5 percent, 1.0 percent, and 3.0 percent erythromycin base in erythromycin estolate. Prepare a solution of erythromycin estolate reference standard in anhydrous methanol to contain 10 milligrams per milliliter. Prepare a solution of erythromycin base reference standard in anhydrous methanol to contain 0.1 milligram per milliliter.

(d) *Procedure.* Pour 100 milliliters of developing solvent into the glass trough on the bottom of the unlined chromatography tank. Cover and seal the tank. Allow it to equilibrate while the plate is being prepared. Prepare a plate as follows: On a line 2.0 centimeters from the base of the thin-layer plate, apply 1.0 microliter of each of the following solutions:

(1) 10-milligrams-per-milliliter solution of erythromycin estolate reference standard, equivalent to 10 micrograms of erythromycin estolate;

(2) 0.5 percent base-in-estolate solution, equivalent to 0.05 microgram of base and 9.95 micrograms of estolate;

(3) 1.0 percent base-in-estolate solution, equivalent to 0.10 microgram of base and 9.90 micrograms of estolate;

(4) 3.0 percent base-in-estolate solution, equivalent to 0.30 microgram of base and 9.70 micrograms of estolate;

(5) 0.1-milligram-per-milliliter solution of erythromycin base reference standard, equivalent to 0.1 microgram of erythromycin base; and

(6) Sample solution, equivalent to 10 micrograms of erythromycin estolate. Allow the spots to dry. Place the plate directly in the chromatograph tank. Cover and seal the tank. Allow the solvent front to travel a distance of 7 centimeters (about 27 minutes). Remove the plate from the tank, and allow it to air dry under a hood. With the plate still under the hood, spray uniformly with the spray solution. Heat the sprayed plate in an oven at 100 °C for 5 minutes. (CAUTION: Avoid exposure to the acid fumes while removing the plate from the oven.)

(e) *Evaluation.* Erythromycin base and erythromycin estolate appear as reddish-violet spots on the sprayed and heated plate. Better visualization of the erythromycin base spots may be gained by viewing the plate under long-wavelength (366 nanometers) ultraviolet light, erythromycin base appearing as dark spots on a yellow-green fluorescent background. Erythromycin base has an R_f value of about 0.3. Erythromycin estolate has an R_f value of about 0.7. Compare the size and intensity of any erythromycin base spots in the sample lane with the erythromycin base spots in the erythromycin base reference standard lane and in the 0.5 percent, 1.0 percent, and 3.0 percent base-in-estolate lanes, and report the percentage of erythromycin base (free erythromycin) in the sample. For a more accurate determination of free erythromycin content, it may be necessary to repeat the test using a different set of standards.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 452 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357); 21 CFR 5.10.

4. In § 452.15, paragraph (a)(1)(ii) is added, (a)(3)(i) is revised, (b)(2) is added, and (b)(4) and (6) are revised to read as follows:

§ 452.15 Erythromycin estolate.

(a) * * *

(1) * * *

(ii) Its free erythromycin content is not more than 3.0 percent.

* * * * *

(3) * * *

(i) Results of tests and assays on the batch for potency, free erythromycin content, moisture, pH, crystallinity, and identity.

* * * * *

(b) * * *

(2) *Free erythromycin content.* Proceed as directed in § 436.362 of this chapter.

* * * * *

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous suspension containing 10 milligrams per milliliter.

* * * * *

(6) *Identity test.* Proceed as directed in § 436.211 of this chapter, preparing the sample as described in paragraph (b)(1) of that section.

Dated: January 12, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-1354 Filed 1-22-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

Physical Construction Authorization

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending its regulation regarding the erection of certain signs on Federal-aid construction projects to implement Section 154 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987. Section 154 mandates that those States that currently have a practice of erecting signs identifying funding sources on construction projects without Federal-aid highway assistance shall be required to erect signs displaying sources and amounts of funds on all Federal-aid highway projects. The current regulations provide for the erection of only those signs that conform to the standards developed by the Secretary of Transportation. The FHWA must determine that the States' plans, specifications, and estimates meet these conditions before authorization to advance a Federal-aid project to the physical construction stage. This amendment will allow erection of funding source signs that do not presently conform to standards developed by the Secretary. Furthermore, this amendment requires that provisions be included in the plans, specifications, and estimates, where applicable, that require erection of funding source signs, during the life of the construction project, prior to authorization for physical construction.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-0392 or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 154 of the STURAA of 1987 (Pub. L.

100–17, 101 Stat. 132, 209) provides as follows:

> If a State has a practice of erecting on projects under actual construction without Federal-aid highway assistance signs which indicate the source or sources of any funds used to carry out such projects, such State shall erect on all projects under actual construction with any funds made available out of the Highway Trust Fund (other than the Mass Transit Account) signs which are visible to highway users and which indicate each governmental source of funds being used to carry out such federally assisted projects and the amount of funds being made available by each such source.

This provision is intended to require those States that have adopted innovative funding strategies using a mixture of funds to provide the public with a factual statement of the funding sources. It is not intended to require those States that do not have a practice of erecting such signs at construction sites to begin such a practice. The FHWA believes that those States that desire to initiate such a practice, however, may do so under specifications and provisions developed by the State and approved by the FHWA.

The regulation at 23 CFR 635.309 prescribes the policies and procedures under which a State highway agency (SHA) may be authorized to advance a Federal-aid highway project to the physical construction stage. Paragraph (n) of § 635.309 places explicit restrictions on the erection of signs on Federal-aid highway construction projects. Signs that currently may be erected are information signs and traffic control devices that conform with the standards developed by the Secretary of Transportation and not construction identification or other informational signs regarding such State matters as the identification of responsible State officials. This final rule amends paragraph (n) of § 635.309 to allow the erection of signs mandated by Federal law. Furthermore, this final rule adds paragraph (o) to § 635.309 to ensure that provisions are included in the plans, specifications, and estimates to require the erection of funding source signs in accordance with section 154 of the STURAA of 1987 prior to authorization for physical construction. Funding source signs are temporary signs that shall be erected for the life of the construction project.

The FHWA believes that specifications and provisions for erecting funding source signs on Federal-aid projects should be developed by the States based on their existing practices and approved by the FHWA. These specifications and provisions should consider the physical characteristics, location, and number of signs to be placed on a project as well as traffic control and safety issues. Only essential information regarding the sources and amounts of funding shall be included on funding source signs. Promotional information, such as identification of public officials, contractors, organizational affiliations, and related symbols or logos shall be prohibited.

The FHWA has determined that the cost of furnishing, erecting, maintaining, or removing funding source identification signs is eligible for Federal-aid participation as part of a Federal-aid construction contract. Signs may be considered an incidental item to the construction or bid as a separate pay item. Cost will be reimbursed at the same pro rata share as the construction.

In compliance with paragraphs (n) and (o) of 23 CFR 635.309, the FHWA Division Administrator shall determine that funding source signs are in conformance with the regulation and the intent of section 154 of the STURAA of 1987.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revisions in this document are being issued for the purpose of literally complying with statutory language mandated by Section 154 of the STURAA of 1987, public comment is impracticable and unnecessary. The revisions provide additional information to the public and require no change in FHWA procedures concerning authorization for physical construction. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. 553). Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information because of the ministerial nature of this rulemaking action. It is anticipated that the economic impact of this rulemaking, although mandated by the statutory provisions themselves, will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, and under authority of the STURAA of 1987 (Pub. L. 100–17), the FHWA is amending Part 635, Subpart C, Chapter 1 of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—Transportation, Highways and roads, Signs and symbols.

Issued on January 19, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The Federal Highway Administration hereby amends 23 CFR Part 635, Subpart C as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

Subpart C—Physical Construction Authorization

2. In § 635.309(k), a technical correction is necessary. Amend the reference "§ 645.116(b)" to read "§ 645.119(b)."

3. In § 635.309, paragraph (n) is revised and paragraph (o) is added to read as follows:

§ 635.309 Authorization.

* * * * *

(n) The FHWA Division Administrator has determined that the PS&E provide for the erection of only those information signs and traffic control devices that conform to the standards developed by the Secretary of Transportation or mandates of Federal law and do not include promotional or other informational signs regarding such matters as identification of public officials, contractors, organizational affiliations, and related logos and symbols.

(o) The FHWA Division Administrator has determined that, where applicable, provisions are included in the PS&E that require the erection of funding source signs, for the life of the construction project, in accordance with section 154

of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

[FR Doc. 88-1395 Filed 1-22-88; 8:45 am]
BILLING CODE 4910-22-M

23 CFR Part 635

Convict Labor and Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending its regulation on the use of convict labor and convict produced materials on Federal-aid highway projects to implement provisions mandated by section 112 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987. Section 112 amended 23 U.S.C. 114(b) by prohibiting the use of materials produced by convict labor on Federal-aid highway projects unless (1) produced by convicts who are on parole, supervised release, or probation or (2) if produced by convicts in a prison facility, the quantity is limited to prior usage levels. The regulations implementing 23 U.S.C. 114(b) are revised to reflect the statutory amendment.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-1548, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Surface Transportation and Uniform Relocation Assistance Act (STURAA) became law on April 2, 1987, (Pub. L. 100-17, 101 Stat. 132). Section 112 of the STURAA amends 23 U.S.C. 114(b) to include limitations on convict produced materials. The section as amended will continue the limitation on convict labor and limit the use of materials produced by convict labor for use in Federal-aid highway construction (1) to materials produced by convicts who are on parole, supervised release, or probation from a prison or (2) to materials produced in a qualified prison facility with the amount of such materials produced during any 12-month period not exceeding the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

On January 6, 1983, the President signed into law the Surface Transportation Assistance Act (STAA) of 1982 (Pub. L. 97-424, 96 Stat. 2097). Section 148 of the STAA of 1982 amended 23 U.S.C. 114(b) which provided that convict labor could not be used in the construction of any highway or portion of highway located on a Federal-aid system unless it was performed by convicts who were on parole or probation. Section 148 extended this restriction to materials produced by convict labor. Subsequently, section 202 of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act, 1984 (Pub. L. 98-166, 97 Stat. 1071, 1085) essentially repealed section 148 and again permitted materials to be produced by convict labor for use in the construction of any highway or portion of highway located on the Federal-aid systems, as described in section 103 of Title 23, United States Code. Section 112 of the STURAA repeals section 202 of the Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriation Act, 1984.

Section 112 of the STURAA identifies the construction activities affected by its provisions as "construction of any highway or portions of highways located on a Federal-aid system." This is identical to the terminology used in 23 U.S.C. 114(a) in prescribing requirements applicable to Federal-aid highway construction. Based on this and the language contained in the conference report, it was the clear intent of Congress that the limitations and application of section 112 were addressed to Federal-aid highway construction projects. For this reason, "Federal-aid highway construction" and "Federal-aid construction projects" are the terms used in the regulation.

To implement section 112 of the STURAA, the revised regulation will include the following changes:

1. Section 635.124 will be revised to include language conforming to section 112 of the STURAA permitting convicts on parole, supervised release, or probation to be employed on Federal-aid highway projects. This was previously addressed only in section 114 of Title 23 U.S.C.

2. Section 635.417 will be added to include requirements conforming to section 112 of the STURAA for the use of convict produced materials in construction of Federal-aid highway construction projects. Standard Federal-aid contract procedures will be used to assure compliance with the requirements of this section.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revisions in this document substantially reflect statutory language mandated by section 112 of the STURAA, public comment is unnecessary. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation (DOT) because it is not anticipated that such action could result in the receipt of useful information since the revisions incorporated in the regulation require no interpretation and provide for no discretion.

Accordingly, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant impact on a substantial number of small entities and that the preparation of a full regulatory evaluation is not required.

In consideration of the foregoing, the FHWA hereby amends Chapter 1 of Title 23, Code of Federal Regulations, Part 635 as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 635

Convict labor and materials, Grant programs—Transportation, Highways and roads.

Issued on: January 19, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA hereby amends 23 CFR Part 635 as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for Part 635 is revised to read as follows:

Authority: 23 U.S.C. 112-114, 117, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

2. Section 635.124 is amended by revising paragraph (a) to read as follows:

§ 635.124 Labor and employment.

(a) No convict labor, unless performed by convicts who are on parole, supervised release, or probation, shall be employed in construction or used for maintenance or any other purpose at the

site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the State highway agency.

* * * * *

3. Section 635.417 is added to read as follows:

§ 635.417 Convict produced materials.

(a) Materials produced by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

(1) Produced by convicts who are on parole, supervised release, or probation from a prison or

(2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987.

(b) "Qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-aid highway construction projects.

[FR Doc. 88-1396 Filed 1-22-88; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3046/R9 30; FRL-3319-8]

Pesticide Tolerance for Cyfluthrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the synthetic pyrethroid cyfluthrin in or on the commodity cottonseed. This regulation to establish maximum permissible levels for the combined residues of cyfluthrin was requested pursuant to a petition by Mobay Corp.

EFFECTIVE DATE: January 25, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of April 25, 1984 (49 FR 17809), which announced that Mobay Corp., P.O. Box 4913, Hawthorne Rd., Kansas City, MO 64120, had submitted a pesticide petition, PP 4F3046, proposing to establish tolerances in or on the raw agricultural commodities cottonseed, peanuts, and soybeans, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and milk for the combined residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropanecarboxylate).

No comments were received in response to the notice of filing.

On May 14, 1984, Mobay Chemical Corp. amended the pesticide petition by deleting the proposed tolerances for peanuts and soybeans.

On December 30, 1987 the Agency issued a conditional registration for cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropanecarboxylate) on cotton with a final expiration date of March 31, 1990. One of the conditions for registration is the submission of a simulated and/or actual field test (72-7) to determine the effect of cyfluthrin on aquatic organisms. This study must be submitted to the Agency by March 31, 1990. Another condition of the registration is the submission of a fish life-cycle test (72-5). This study must be submitted to the Agency March 31, 1990. Owing to the lack of field studies, the Agency is establishing the tolerance for this pesticide on cottonseed with an expiration date of July 31, 1991 to cover residues expected to be present from use during the period of conditional registration.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a 12-month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 4.0 mg/kg/day; 24 month rat and mouse chronic feeding study with a systemic NOEL of 2.5 mg/kg/day with no oncogenic effects observed at dose levels up to and including 22.5 and 120 mg/kg/day, the highest dose levels tested for rats and mice, respectively. No teratogenic effects were observed in rats at dose levels up to and including 30 mg/kg/day, or in rabbits at doses levels up to and including 45 mg/kg/day (the highest dose levels tested). The following genotoxicity tests were negative: a gene mutation assay (CHO/HGPRT), a sister chromatid exchange assay, and an unscheduled DNA synthesis assay.

The acceptable daily intake (ADI), based on a NOEL of 2.5 mg/kg body weight/day from a 2-year rat feeding study and a safety factor of 100, is 0.025 mg/kg body weight/day. The theoretical maximum residue contribution from the proposed tolerances is 0.000258 mg/kg body weight/day; this is equivalent to about 1.0 percent of the ADI.

The metabolism of the chemical in plants for this cotton use is adequately understood. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. The methodology is being made available to anyone who is interested in pesticide enforcement when requested from: By mail:

Information Service Section (TS-767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-3262.

The tolerances established by amending 40 CFR Part 180 will be adequate to cover residues in or on cottonseed.

There are currently no actions pending against the registration of this product. This pesticide is considered useful for the purpose for which the tolerance is sought.

Based on the above information and data considered, the Agency concludes that the tolerance would protect the public health. Therefore, as proposed below, the tolerance would be established for a period extending to July 31, 1991.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances

or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

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

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: January 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.436 is added, to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

Tolerances are established for the combined residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, meat	.05
Cattle, mbyp	.05
Cottonseed	1.0
Goats, fat	0.05
Goats, meat	.05
Goats, mbyp	.05
Hogs, fat	.05
Hogs, meat	.05
Hogs, mbyp	.05
Horses, fat	.05
Horses, meat	.05
Horses, mbyp	.05
Milk	.01
Sheep, fat	.05
Sheep, meat	.05
Sheep, mbyp	.05

[FR Doc. 88-1382 Filed 1-22-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Part 208

Department of Defense, Federal Acquisition Regulation Supplement; Acquisition From Sources Other Than the Central Supply System

AGENCY: Department of Defense (DoD).

ACTION: Final Rule.

SUMMARY: The Defense Acquisition Regulatory Council has approved revisions to section 208.470-2 and section 208.7100 of the Defense Federal Acquisition Regulation Supplement (DFARS) to allow greater flexibility to use sources other than the central supply system when such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best satisfies the requirement. This change increases the ability of buying activities to take advantage of local market conditions, as well as emphasize value rather than just cost in making purchases.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Carter, ODASD(L)SD-DSIO, Room 3B740, The Pentagon, Washington, DC 20301-8000, telephone (202) 695-8357.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises DFARS to provide increased flexibility to use sources other than the central supply system (DLA, GSA, and the Military Departments) when such action is judged to be in the best interest of the Government. This increased flexibility will implement DoD Directive 4001.1, which provides that, with few exceptions, installation commanders should be allowed to purchase from sources offering the combination of quality, timeliness, and cost that best meets the requirement.

The revisions also implement key recommendations of the Packard Commission dealing with the need to consider value instead of just price, and the need to give greater authority to DoD acquisition personnel. In addition, the revisions include safeguards that will meet other important acquisition system goals, such as the maintenance of an effective mobilization and wartime capability and proper file documentation so that prospective quality, timeliness, or cost deficiencies of the central supply system may be identified and corrected.

Publicizing is not required as the rule will not have a significant cost or administrative impact on the public since it affects only the internal operating procedures of the Department of Defense.

B. Regulatory Flexibility Act

Since publicizing is not required, the provisions of the Regulatory Flexibility Act do not apply.

C. Paperwork Reduction Act

This rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and OMB approval of this final rule is not required pursuant to 5 CFR Part 1320 *et seq.*

List of Subjects in 48 CFR Part 208

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority for 48 CFR Part 208 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 208.470-2 is revised to read as follows:

208.470-2 Acquisition From General Services Administration Stock.

Items available from the stock system of the General Services Administration which are in Federal Supply Classes (FSCs) assigned to GSA for management should be acquired in accordance with the requirements of Subpart 208.71. DoD policy regarding use of GSA stock items in classes other than those assigned to GSA for managemet is that maximum use of such items should be made *except* in cases where requirements are met by items managed by DLA or the Military Departments. In addition, other sources may be used, provided:

(a) Such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement;

(b) For purchases exceeding $100 per line item, a statement of the specific advantage or advantages of the locally purchased item is included in the purchase file;

(c) For purchases exceeding $1,000 per line item, the statement of the specific advantage or advantages of the locally purchased item is reviewed and approved one level above the contracting officer;

(d) For purchases exceeding $5,000 per line item, a waiver request is forwarded to and approved by GSA prior to initiation of the purchase action.

3. Section 208.7100-1 is revised to read as follows:

208.7100-1 Exclusions—Military Department Assignments (Except DLA).

Except for the types of items excluded below, requiring Departments may purchase locally at their option any centrally managed, commercially available item assigned to a Military Department; provided, such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. Excluded are:

(a) Items that have war reserve requirements, are necessary for the wartime mission, are required to execute the unit deployment mission or are required to support the industrial mobilization base;

(b) Items directly related to the operation of a weapon system or its support equipment;

(c) Items with special security characteristics;

(d) Items of a dangerous nature (e.g., explosives, munitions).

4. Section 208.7100-2 is amended by revising paragraph (a)(9); by revising paragraph (d); and by adding paragraph (e); to read as follows:

208.7100-2 Exclusions—DLA and GSA Assignments.

(a) * * *

(9) Acquisitions of military service-managed or noncataloged items not in excess of $25,000 per line item—This exception permits the Military Departments to acquire a line item (excluding items identified in 208.7100-1 or included in a Federal Supply Schedule mandatory for use by DoD activities) which does not exceed a value of $25,000; provided, the contracting officer judges such action to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement.

* * * * *

(d) *Exclusions for local purchase of integrated materiel managed items.* While maximum use should be made of DLA and GSA centrally managed items, requiring Departments may purchase locally at their option any DLA or GSA centrally managed, commercially available item, provided: (1) Such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement; (2) purchases are not made of those types of items identified in section 208.7100-1; (3) for local purchases of DLA and GSA stock items exceeding $100 per line item, a statement of the specific advantage or advantages of the locally purchased item is included in the purchase file; (4) for local purchases of DLA and GSA items exceeding $1,000 per line item, the statement of the specific advantage or advantages of the locally purchased item is reviewed and approved one level above the contracting officer; (5) for local purchases of DLA and GSA items exceeding $5,000 per line item, a waiver request is forwarded to and approved by the applicable manager prior to initiation of the purchase action. These restrictions on local purchases of DLA and GSA items do *not* apply to items coded by DLA and GSA as authorized for local procurement (AACL).

(e) *Addresses for submission of waiver requests.* Requests for waivers under paragraph (d)(5) of this section for making local purchases of DLA and GSA centrally managed items exceeding $5,000 per line item shall be sent to:

For GSA: Commissioner (F), Federal Supply Service, Washington, DC 20406.

For DLA: Director (DLA-OS), Defense Logistics Agency, Alexandria, VA 22304-6100.

[FR Doc. 88-1362 Filed 1-22-88; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

[Acquisition Circ. AC-86-8, Supp. 2]

General Services Administration Acquisition Regulation; Threshold for Application of Trade Agreements Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC-86-8 extends the expiration date to February 15, 1988. The intended effect is to extend the policies and procedures as established in AC-86-8, which revised Section 525.402 to provide the new dollar threshold required for the applicability of the Trade Agreements Act of 1979 as authorized by the U.S. Trade Representatives under E.O. 12260.

DATES: *Effective date:* January 1, 1988.

Expiration date: February 15, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Majorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-3822.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC-86-8 was originally issued, the GSA certified under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* that the document would not have a significant economic effect on a substantial number of small entities. Therefore, no regulatory analysis was prepared. The circular does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 525

Government procurement.

PART 525—[AMENDED]

1. The authority citation for 48 CFR Part 525 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 525 is amended by the following supplement to Acquisition Circular AC-86-8:

General Services Administration Acquisition Regulation Acquisition Circular AC-86-8; Supplement 2

January 15, 1988.

To: All GSA contracting activities.

Subject: Threshold for Application of Trade Agreements Act.

1. *Purpose.* This supplement extends the expiration date of the General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC-86-8.

2. *Effective date.* January 1, 1988.

3. *Expiration date.* Acquisition Circular AC-86-8 and this supplement will expire on February 15, 1988, unless cancelled earlier.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-1338 Filed 1-22-88; 8:45 am]

BILLING CODE 6820-61-M

Proposed Rules

Federal Register
Vol. 53, No. 15
Monday, January 25, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 62

Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Nuclear Regulatory Commission (NRC) published on December 15, 1987 (52 FR 47578) a proposed rule to establish criteria and procedures for emergency access to non-Federal and regional low-level waste disposal facilities. This notice makes one minor correction to the proposed rule by changing erroneous language used in § 62.26 of the rule. The comment period for the proposed rule remains unchanged.

DATES: Comments should be submitted on or before February 12, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received and the regulatory analysis may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Janet Lambert, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3804.

SUPPLEMENTARY INFORMATION: The NRC published on December 15, 1987 (52 FR 47578) a proposed rule to establish a new Part 62 that would provide the criteria and procedures for emergency access to non-Federal and regional low-level waste disposal facilities. The NRC is correcting erroneous language used in one sentence of the proposed rule.

PART 62—[AMENDED]

In § 62.26, the introductory text of paragraph (b) is correctly added to read as follows:

§ 62.26 Criteria for designating a disposal facility.

* * * * *

(b) The Commission will exclude a disposal facility from consideration if:

* * * * *

Dated at Bethesda, Maryland, this 19th day of January, 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–1416 Filed 1–22–88; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); the Military-Civilian Health Services Partnership Program

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed amendment revises the comprehensive CHAMPUS regulation, DoD 6010.8–R (32 CFR Part 199), to incorporate revisions resulting from section 1096, Chapter 55, Title 10, United States Code, which establishes a Military-Civilian Health Services Partnership Program. Under this program, CHAMPUS beneficiaries can receive inpatient and outpatient care from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. Combining military and civilian health care resources is expected to best utilize available facilities and staff, to provide increased access to health care and to reduce individual incident cost for the CHAMPUS beneficiary and program cost for the Government.

DATE: Written public comments must be received on or before February 24, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Rose M. Sabo, Office of Program Development, OCHAMPUS, telephone (303) 361–4014.

SUPPLEMENTARY INFORMATION: Congress has provided the Department of Defense with a major aid in expanding the concept of a military-civilian partnership program. The Department of Defense Authorization Act for Fiscal Year 1987 contains a provision that permits the sharing of staff, equipment, and resources between the civilian and military health care systems in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. The sharing agreements authorized under section 1096, Chapter 55, Title 10, United States Code, provide for the sharing of personnel, including support personnel, equipment, supplies, and any other item or facility necessary for the provision of health care services. The provider must be otherwise authorized under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The authorized provider must bill for the services rendered by any support personnel and related supplies, equipment, and other resources. Such charges represent an overhead expense incurred by the provider in his or her professional practice. The services rendered by support personnel must be otherwise covered under CHAMPUS and not of a type usually performed only by a physician or other authorized provider, e.g., minor surgery performed by a physician assistant would be excluded even if performed under the direct supervision of a physician.

For care rendered by a civilian health care provider in a military treatment facility, the beneficiary's cost-share shall be the same as that for military treatment facility patients under the care of a military health care provider. Care received in a civilian facility will continue to be cost-shared under the normal CHAMPUS cost-sharing provisions.

The Secretary of Defense has issued implementing instructions for the Partnership Program specifically designating individual commanders of military treatment facilities, through their respective Surgeons General of the military departments, as responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical to the Government than referring the need for health care services to the civilian community under the normal operation of CHAMPUS.

There will be two types of partnership agreements—the external and internal. The external agreement is between a military treatment facility and a CHAMPUS authorized institution, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be paid through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS. Savings will be realized under this type agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

The internal agreement will permit the use of authorized CHAMPUS civilian health care providers and other resources under their supervision to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS. Beneficiary cost-share under internal agreements will be the same as charges prescribed for care in military treatment facilities. Currently, there are no charges for outpatient care provided in military treatment facilities, and there are no charges for inpatient care provided to retired enlisted members of the uniformed services. All other CHAMPUS beneficiaries are charged a subsistence rate for inpatient care as prescribed by the Secretary of Defense. Because the Department of Defense Appropriation Act annually restricts payment for professional charges to no more than the 80th percentile of the customary charges made for similar services in the same locality where the medical care was furnished, it will be necessary for the Secretary of Defense, or designee, to specifically determine that expenditures overall for services under the Partnership Program do not exceed what would have been expended under the CHAMPUS Basic Program reimbursement methodology. This approach provides the Secretary, or designee, the flexibility to use alternatives to the 80th percentile reimbursement methodology for internal agreements when such an alternative is determined more economical in accord with the goals of the Partnership Program.

We feel that the proposed rule will not have a significant economic impact on a substantial number of small entities. Its impact will be limited to catchment areas, which is the geographic area of approximately 40 miles in radius surrounding U.S. medical treatment facilities. The impact within the catchment area will be further limited to specifically identified categories of care determined to be necessary to ensure optimal utilization of Government resources in the most effective, efficient and economical manner. The impact of the program is primarily that of increasing availability of health care services to CHAMPUS beneficiaries. Beneficiaries will be encouraged, but not required, to use the services available under the partnership agreements. No additional requirements for approval as an authorized provider will be imposed. Existing requirements concerning providers and nonavailability statements remain the same. The Partnership Program provides an equal opportunity for any authorized provider to enter into a voluntary agreement, taking into account the needs of, and staffing shortages at, the particular military treatment facility. It does not restrict access to any provider by any beneficiary. Accordingly, the Secretary certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under Executive Order 12291.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, the Department of Health and Human Services, the Department of Transportation and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, it is proposed to amend 32 CFR Part 199, Subchapter M, as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 1096, 5 U.S.C. 301.

2. Section 199.1(p) is redesignated as § 199.1(q).

3. Add a new paragraph (p) to § 199.1 to read as follows:

§ 199.1 General provisions.

* * * * *

(p) *Military-Civilian Health Services Partnership Program.* The Secretary of Defense, or designee, may enter into an agreement (external or internal) providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers if the Secretary determines that such an agreement would result in the delivery of health care in a more effective, efficient or economical manner. This partnership allows CHAMPUS beneficiaries to receive inpatient and outpatient services through CHAMPUS from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. The policies and procedures by which partnership agreements may be executed are set forth in Department of Defense Instruction (DoDI) 6010.12, "Military-Civilian Health Services Partnership Program." The Director, OCHAMPUS, or a designee, shall issue policies, instructions, procedures, guidelines, standards, or criteria as may be necessary to: Provide support for implementation of DoDI 6010.12; to promulgate and manage benefit and financial policy issues; and to develop a program evaluation process to ensure the Partnership Program accomplishes the purpose for which it was developed.

(1) *Partnership agreements.* Military treatment facility commanders, based upon the authority provided by their

respective Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. All such agreements are subject to the review and approval of the Director, OCHAMPUS, or designee, and the appropriate Surgeon General.

(i) *External partnership agreements.* The external partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS authorized institutional provider, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS. Savings will be realized under this type agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

(ii) *Internal partnership agreements.* The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS authorized civilian health care provider which enables the use of civilian health care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS.

(2) *Beneficiary cost-sharing.* Beneficiary cost-sharing under the Partnership Program is outlined in § 199.4(f)(5) of this part.

(3) *Reimbursement.* Reimbursement under the Partnership Program is outlined in § 199.14(f) of this part.

(4) *Beneficiary eligibility and authorized providers.* Existing requirements of this Regulation remain in effect as concerns beneficiary eligibility and authorized providers.

(5) *Range of benefits.* Health care services provided CHAMPUS beneficiaries under the terms of the Partnership Program must be consistent with the CHAMPUS range of benefits outlined in this Regulation. The services rendered must be otherwise covered. Charges allowed for professional services provided under the Partnership Program may include costs of support personnel, equipment, and supplies when specifically outlined in the partnership agreement. However, all CHAMPUS coverage and provider requirements must be met.

* * * * *

4. Section 199.2(b) is amended by adding, in alphabetical order, definitions for the internal and external partnership agreements to read as follows: § 199.2 Definitions.

* * * * *

(b) *Specific definitions.* * * *

External partnership agreement. The external partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS authorized institutional provider, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility under the Military-Civilian Health Services Partnership Program. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS.

* * * * *

Internal partnership agreement. The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS authorized civilian health care provider which enables the use of civilian health care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility under the Military-Civilian Health Services Partnership Program. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources.

* * * * *

5. Section 199.4 paragraphs (f)(5) and (6) are redesignated as § 199.4 paragraphs (f)(6) and (7).

6. Add a new paragraph (f)(5) to § 199.4 to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) *Beneficiary or Sponsor Liability.*

* * *

(5) *Cost-sharing under the Military-Civilian Health Services Partnership Program.* Cost-sharing is dependent upon the type of partnership program entered into, whether external or internal. (See paragraph (p) of § 199.1, for general requirements of the Military-Civilian Health Services Partnership Program.)

(i) *External partnership agreement.* Authorized costs associated with the use of the civilian facility will be financed through CHAMPUS under the normal cost-sharing and reimbursement procedures applicable under CHAMPUS.

(ii) *Internal partnership agreement.* Beneficiary cost-share under internal agreements will be the same as charges prescribed for care in military treatment facilities.

* * * * *

7. Section 199.14, paragraphs (f) and (g) are redesignated as § 199.14, paragraphs (g) and (h).

8. Add a new paragraph (f) to § 199.14, to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(f) *Reimbursement under the Military-Civilian Health Services Partnership Program.* The Military-Civilian Health Services Partnership Program, as authorized by Section 1096, Chapter 55, Title 10, provides for the sharing of staff, equipment, and resources between the civilian and military health care system in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. Military treatment facility commanders, based upon the authority provided by their respective Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. (See paragraph (p) of § 199.1 for general requirements of the Partnership Program.)

(1) *Reimbursement of institutional health care providers.* Reimbursement of institutional health care providers under the Partnership Program shall be on the same basis as non-Partnership providers.

(2) *Reimbursement of individual health-care professionals and other non-institutional health care providers.* Reimbursement of individual health care professional and other non-institutional health care providers shall be based upon the specific terms of the individual partnership agreements. If the agreement does not sepecifically address payment, reimbursement shall be based upon the provisions of § 199.14(e).

* * * * *

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1117–Filed 1–22–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of the Proposed Rule To List Eriogonum humivagans (Spreading Wild-Buckwheat) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule (51 FR 11880; April 7, 1986) to list *Eriogonum humivagans* as an endangered species. Additional botanical collections made in the vicinity of the species' habitat have provided new information on the taxonomic validity and distribution of *Eriogonum humivagans.* An analysis of the specimens demonstrates that the *Eriogonum* population named as *Eriogonum humivagans* lies within the range of morphological variation of *Eriogonum lonchophyllum.* The Service has thus determined that *Eriogonum humivagans* does not meet the definition of species under Section 3(16) of the Endangered Species Act (Act) of 1973, as amended, and therefore does not qualify for protection under the Act.

ADDRESSES: The file for this notice is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Salt Lake City Field Office, Fish and Wildlife Enhancement, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104 or at the Service's Grand Junction Field Office, Fish and Wildlife Enhancement, Independence Plaza, Suite B113, 529 25½ Road, Grand Junction, Colorado 81505.

FOR FURTHER INFORMATION CONTACT: John L. Anderson, Botanist, at the Grand Junction address above (303/241–0563 or FTS 322–0348), or John L. England at the Salt Lake City address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

The proposed rule to list *Eriogonum humivagans* as endangered was published on April 7, 1986 (51 FR 11880). On September 8, 1987, the Service published a 6-month Extension of the Proposed Rule for *Eriogonum humivagans* (52 FR 33849). With this 6-month extension, the new deadline for a final determination of status was October 7, 1987. A new comment period commenced with the publication of this notice and closed on October 8, 1987.

The proposal to list *Eriogonum humivagans* as an endangered species was based on its rarity and the loss of much of its habitat from cultivation of the surrounding area for dry land farming. Previous surveys for *Eriogonum humivagans* were concentrated in Utah and showed it to have a narrow distribution in the vicinity of the type locality east of Monticello in San Juan County, Utah (Anderson 1982). Potential habitat of heavy clay soils of the Mancos Shale formation is limited in that part of Utah; but the type locality is only 5 miles from the Colorado State line, and large outcrops of potential habitat extend eastward in Colorado.

In the type description, Reveal (1968) related *Eriogonum humivagans* to *E. scoparium* Small of western Colorado and *E. nudicaule* (Torrey) Small of northern New Mexico. These two species have subsequently been combined with *E. lonchophyllum* Torrey & Gray, a highly variable suffrutescent species of western Colorado and northern New Mexico, whose type locality is on the Rio Blanco River south of Pagosa Springs, Colorado (Reveal 1976, Torrey and Gray 1870). At about the same time as publication of *E. humivagans,* Reveal (1967) stated that little fall botanizing had been done in the area from Monticello southeast to Cortez, Colorado. *E. humivagans* was then apparently thought to be disjunct by at least 50 miles from the nearest known occurrences of *E. lonchophyllum* in Colorado. In the fall of 1986, after the proposal had been published, a Service botanist made extensive *Eriogonum* collections between the type locality and Cortez (Mesa Verde) and Naturita, Colorado, approximately 50 miles to the southeast and northeast, respectively. These collections narrowed the geographic gap between *E. humivagans* and *E. lonchophyllum* and raised questions about the relationship of these two species and regarding taxonomic distinction, overall distribution, and ecology.

One hundred specimens of suffrutescent to shrubby individuals of *Eriogonum* attributed to *E. corymbosum* Bentham, *E. humivagans* Reveal, *E. leptophyllum* (Torrey) Wooten & Standley, and *E. lonchophyllum* Torrey & Gray from southeastern Utah and southwestern Colorado were analyzed. They consisted of the new specimens collected in 1986 and additional specimens examined at the herbaria of Brigham Young University, Utah State University, Colorado State University, and the University of Colorado, including the holotype of *E. humivagans* at Utah State University and an isotype at Brigham Young University. These herbaria contained no collections nearer to the type locality of *E. humivagans* than the Naturita/Nucla and Cortez/Mesa Verde areas. Eighteen morphological characters were scored, based on those used to distinguish *E. humivagans* (Reveal 1968) or in various keys to *Eriogonum* (Reveal 1967, 1973, and 1976).

The specimens were then analyzed by principal components analysis using the SYSTAT FACTOR program (Wilkinson 1986). While the three other *Eriogonum* species, which are recognized as distinct species in area floras (Goodrich and Neese 1986, Weber 1987, Welsh *et al.* 1987), were separated from each other, the results showed that *E. humivagans* was not separated, but was included within *E. lonchophyllum.*

Most edaphic endemics in the Colorado Plateau are believed to have evolved through the isolation from their nearest relatives provided by different geological strata. Although the *Eriogonum* specimens collected in 1986 were found on various geological formations, they were always on shale-derived soils, and those nearest to the type locality of *E. humivagans* were growing on Mancos Shale. The population named as *E. humivagans* is thus interpreted as the westernmost population of *Eriogonum lonchophyllum* in the Four Corners area and not a separate species.

Based on a review of these new data, the Service concludes that *Eriogonum humivagans* does not appear to be distinct from *E. lonchophyllum* morphologically, geographically, or ecologically, and does not represent a taxon at any rank. Therefore, the Service has determined that *E.*

humivagans does not meet the definition of species in Section 3(16) of the Act and that the withdrawal of the proposed rule to list *E. humivagans* as endangered is consistent with the Act.

A Service botanist is preparing a publication to document these conclusions in the scientific literature. Even though this population is not a separate species, it is of scientific interest in the study of plant geography as the southwesternmost population of *Eriogonum lonchophyllum*, and its management could be considered important from standpoints other than the Act.

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Author

The primary author of this notice is John Anderson, Botanist, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Grand Junction, Colorado. John England, Botanist, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Salt Lake City, Utah, served as editor (see addresses section above).

Accordingly, the proposed rule to list *Eriogonum humivagans* as endangered, published April 7, 1986 (51 FR 11880), is hereby withdrawn.

Dated: January 12, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–1403 Filed 1–22–88; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 53, No. 15
Monday, January 25, 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 AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: February 29–March 1–2, 1988.
Time: 8:00 a.m.–5:00 p.m., February 29, 1988, Pierre Room; 8:00 a.m.–5:00 p.m., March 1, 1988, Pierre Room; 8:00 a.m.–12:00 Noon, March 2, 1988, Pierre Room.
Place: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, D.C.
Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person below.
Purpose: The Board will be preparing a report assessing the President's proposed FY 1989 budget for agricultural research and extension agencies.
Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684.

Done in Washington, DC, this 15th day of January 1988.

John Patrick Jordan,
Administrator.

[FR Doc. 88–1404 Filed 1–22–88; 8:45 am]
BILLING CODE 3410–22–M

Policy Advisory Committee for the Science and Education Research Grants Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Cooperative State Research Service announces the following meeting:

Name: Policy Advisory Committee for the Science and Education Research Grants Program.
Date: March 25, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Place: U.S. Department of Agriculture, Room 104–A Administration Building, 14th and Independence Avenue SW., Washington, DC 20250.
Type of Meeting: Open to the public. Persons may participate in the meeting as the time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.
Contact Person For Agenda and More Information: Anne Holiday Schauer, Associate Chief, Competitive Research Grants Office, Cooperative State Research Service, U.S. Department of Agriculture, Room 112, J.S. Morrill Building, Washington, DC 20251, telephone: 202–475–5022.

Done at Washington, DC this 7th day of January 1988.

Anne Holiday Schauer,
Executive Secretary, Policy Advisory Committee.

[FR Doc. 88–1405 Filed 1–22–88; 8:45 am]
BILLING CODE 3410–22–M

Packers and Stockyards Administration

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below:

Facility No., name, and location of stockyard	Date of posting
AL–168 Limestone Co. Feeder Pig Assn. Inc., Athens, Alabama.	May 22, 1987.
AL–169 Northeast Ala. Feeder Pig Assn., Inc., Section, Alabama.	Do.
AL–170 Upper Coastal Plains Feeder Pig Assn., Fayette, Alabama.	June 4, 1987.
AL–172 Northwest Alabama Feeder Pig Assn., Russellvilla, Alabama.	June 8, 1987.
AL–173 Sand Mountain Feeder Pig Assoc., Albertville, Alabama.	Do.
AL–174 Central Ala. Feeder Pig Assn., Clanton, Alabama.	May 27, 1987.
AL–175 Sand Mountain Horse Auction, Horton, Alabama.	June 2, 1987.
AL–176 Bynum Livestock & Commission Co., Inc., Attalla, Alabama.	Sept. 10, 1987.
AL–177 Taylor's Stockyard, Nauvoo, Alabama.	Sept. 5, 1987.
GA–195 Hwy 20 Horse Auction, Canton, Georgia.	Dec. 8, 1987.
GA–197 Southeastern Livestock Co., Quitman, Georgia.	Nov. 19, 1987.
IN–163 White Livestock Auction, Brookville, Indiana.	Sept. 2, 1987.
NC–157 Farmers Livestock Market of Mount Airy, Mount Airy, North Carolina.	July 24, 1987.
SC–141 Oconee Livestock, Westminster, South Carolina.	Sept. 16, 1987.
SC–142 Hendrix Horse Auction, Hartsville, South Carolina.	Sept. 11, 1987.
TN–184 Beech River Feeder Pig Sale, Inc., Parsons, Tennessee.	Dec. 2, 1987.
VA–158 Farmers Livestock Market, Inc. of Tazewell, Virginia, Tazewell, Virginia.	Dec. 12, 1987.

Done at Washington, DC, this 15th day of January, 1988.

Harold W. Davis,
Director, Livestock Marketing Division.

[FR Doc. 88–1411 Filed 1–22–88; 8:45 am]
BILLING CODE 3410–KD–N

DEPARTMENT OF COMMERCE

Estimates of the Voting Age Population for 1987

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, 2 U.S.C. 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1987, for each state, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam, and the Virgin Islands are as shown in the following table.

I have certified these estimates to the Federal Election Commission.

Date: January 20, 1988.

C. William Verity,
Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE, THE DISTRICT OF COLUMBIA AND SELECTED OUTLYING AREAS: JULY 1, 1987

[In thousands]

Area	Population 18 and over
United States	179,858
Alabama	2,966
Alaska	354
Arizona	2,467
Arkansas	1,741
California	20,362
Colorado	2,422
Connecticut	2,454
Delaware	482
District of Columbia	486
Florida	9,319
Georgia	4,486
Hawaii	797
Idaho	693
Illinois	8,547
Indiana	4,061
Iowa	2,102
Kansas	1,825
Kentucky	2,731
Louisiana	3,145
Maine	884
Maryland	3,410
Massachusetts	4,519
Michigan	6,740
Minnesota	3,135
Mississippi	1,833
Missouri	3,794
Montana	585
Nebraska	1,171
Nevada	755
New Hampshire	791
New Jersey	5,841
New Mexico	1,053
New York	13,464
North Carolina	4,786
North Dakota	485
Ohio	7,947
Oklahoma	2,379
Oregon	2,038
Pennsylvania	9,085
Rhode Island	757
South Carolina	2,484
South Dakota	513
Tennessee	3,604
Texas	11,805
Utah	1,051
Vermont	408
Virginia	4,444
Washington	3,369
West Virginia	1,407
Wisconsin	3,537
Wyoming	342
Outlying Areas	
Puerto Rico	2,027
Guam	77
Virgin Islands	63
American Samoa	20

[FR Doc. 88-1412 Filed 1-22-88; 8:45 am]

BILLING CODE 3510-BP-M

International Trade Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Exact Machine Company, Inc., 2502 Preston Street, Rockford, Illinois 61102, producer of machine tool parts (August 20, 1987); (2) International Marketing Group, Inc., 13726 Saticoy Street, Van Nuys, California 91402, producer of pet doors, aluminum extrusion, aluminum sheet, glass, vinyl extrusion for flap assembly (August 17, 1987); (3) J. Kossar Industries, Inc., P.O. Box 605, Woodridge, New York 12789, producer of wood brooms, maps, brushes, rake handles and dowels (August 24, 1987); (4) Cleartone Reproductions Corporation, 23-14 College Point Boulevard, College Point, New York 11356, producer of diamond styli (needles) (August 24, 1987); (5) The R&R Manufacturing Company, Inc., P.O. Box 49, Auburn, Georgia 30203-0049, producer of men's slacks (August 27, 1987); (6) Marks Polarized Corporation, 25-B Jefryn Boulevard West, Deer Park, New York 11729, producer of optical filters, 3-D glasses & polarized film (August 27, 1987); (7) Black and Webster, Inc., 291 Bear Hill Road, Waltham, Massachusetts 02254, producer of grinding machines (August 28, 1987); (8) Durex, Inc., 5 Stahuber Avenue, Union, New Jersey 07083, producer of stamped metal parts for eyebrow curlers, venetian blinds and office supplies (September 4, 1987); (9) Broyhill, Inc., North Market Square, Dakota City, Nebraska 68731, producer of agricultural sprayers, lawn & garden sprayers, refuse collection systems (September 4, 1987); (10) Atlas Crankshaft Corporation, P.O. Box 846, Fostoria, Ohio 44830, producer of crankshafts, camshafts and valves (September 14, 1987); (11) Golden's Foundry & Machine Company, P.O. Box 96, Columbus, Georgia 31993, producer of compressors, valves and pumps (September 17, 1987); (12) OEMMCCO, Inc., 1800 White Boulevard, Libertyville, Illinois 60048, producer of industrial pins and bushings and other miscellaneous fabricated parts (September 15, 1987); (13) Kings Electronics Company, Inc, 40 Marbledale Road, Tuckahoe, New York 10707, producer of electric connectors (September 25, 1987); (14) Rockford Drop Forge Company, 2031 Ninth Street, Rockford, Illinois 61108-5327, producer of forged metal parts for farm equipment (October 5, 1987); (15) DiFini Sportswear Company, Inc. 395 Brook Avenue, Bronx, New York 10454, producer of men's & women's slacks and women's skirts (October 5, 1987); (16) Kalmus and Associates, Inc., 2424 South 25th Avenue, Broadview, Illinois 60153, producer of printed circuit boards (October 6, 1987); (17) CONMED Corporation, 310 Broad Street, Utica, New York 13501, producer of electrodes and medical devices (October 7, 1987); (18) Richter Aero Equipment, Inc., Ridge Road, Essex, New York 12936, producer of motion picture cameras and reflex auto-collimater instruments, aircraft visual approach indicators and testing probes for carburators (October 7, 1987); (19) Garland-Haswell Foundry Company, 430 W. Park Street, Sidney, Ohio 45265, producer of iron castings for pumps, valves, bearings and transmission housings (October 13, 1987); (20) American Portfolio Company, Inc., 3134 Jerome Avenue, Bronx, New York 10468, producer of leather and vinyl brief cases and folders (October 13, 1987); (21) Alexander and Sawyer, Inc., 471 Cortlandt Street, Belleville, New Jersey 07109, producer of fabricated metal parts for computers and copy machines and bins and caddies for food processing (October 15, 1987); (22) Camtec, Inc., 1628 Keystone Road, Traverse City, Michigan 49684, producer of plastic injection molds, aluminum gravity molds and die cast dies (October 20, 1987); (23) Advance Foundry Company, 107 Seminary Avenue, P.O. Box 1411, Dayton, Ohio 45401, producer of automobile stamping dies, smelting pots, blanks and value bodies (October 20, 1987); (24) Eagle Grinding Wheel Corporation, 2519 West Fulton, Chicago, Illinois 60612, producer of grinding wheels and stones of aluminum oxide and silicon carbide (October 20, 1987; (25) H & H Atlas, Inc., 385 Gerard Avenue, Bronx, New York 10451, producer of women's swimsuits (October 20, 1987); (26) Hammond Candy Company, 2550 West 29th Avenue, Denver, Colorado 80211, producer of candies and confections (November 3, 1987); (27) Palama Shoe Company, Ltd., 961 Akepo Lane, Honolulu, Hawaii 96817, producer of men's and women's sandals (November 5, 1987); (28) Electonic Metal Products, Inc., 21000 East 32nd Parkway, Aurora, Colorado 80011, producer of metal enclosures and fabricated metal parts (November 5, 1987); (29) Graphic Press Corporation, 501-A Cooke Street, Honolulu, Hawaii 96813, producer (November 5, 1987); (30) Plasti-Glas Molded Products, Inc., 720 Sloan Avenue, Trenton, New Jersey 08625, producer of fiberglass parts for medical equipment, office furniture and equipment steel molds and machine metal parts (November 6, 1987); (31) Wrightco Motorcycle Accessories, Inc., 17580 S.E. Sunnyside Road, Boring, Oregon 97009, producer of motorcycle accessories (November 9, 1987); (32) Suffolk Etched Products, Inc., 1556 W. Main Street, Riverhead, New York 11901, producer of etched electronic parts, Christmas decorations and ornaments and awards (November 10, 1987); (33) Planet Corporation, 2150 Apollo Drive, Lansing, Michigan 48906,

producer of material handling machinery and sand and mold systems (November 13, 1987); (34) Hicks U.S.A., P.O. Box 703, Broomfield, Colorado, 80020, producer of luggage (November 16, 1987); (35) Advanced Technologies, Inc., 2490 East Midland Road, Bay City, Michigan 48706, producer of welding, vacuum testing, refrigeration, and miscellaneous equipment (November 16, 1987); (36) Bonanza Investments, Inc., East 4103 Mission Avenue, Spokane, Washington, 99202, processor of beef and pork sausage (November 20, 1987); (37) Woodward Research Company, Inc., 45 Calton Avenue, East Rutherford, New Jersey 07073, producer of jogger-aerator and skid turner machines (November 27, 1987); (38) The Oeser Company, P.O. Box 156, Billingham, Washington 98225, producer of poles and lumber (December 1, 1987); (39) Verticals, Inc., 704 East 133rd Street, Bronx, New York 10454, producer of vertical blinds (December 2, 1987); (40) Honolulu Connection, Ltd., 826 Queen Street, Honolulu, Hawaii 96813, producer of men's swim wear (December 2, 1987); (41) Paramount Manufacturing Company, 1125 West Elizabeth Avenue, Linden, New Jersey 07036, producer of golf ball retrievers, steel tubing and other miscellaneous sports products (December 3, 1987); (42) Malihini Sportswear, Inc., 431 Kuwili Street, Honolulu, Hawaii 96819); (43) American Manufacturing and Technology, Inc., 3841 Buffalo Road, Rochester, New York 14624, producer of parts for automobile body and power system, photo copying machines and blood analyzers (December 7, 1987); (44) Martin Industries, Inc., P.O. Box 128, Florence, Alabama 35631, producer of room dehumidifiers, heaters, furnaces, fireplaces and water coolers (December 7, 1987); (45) Taylor & Friend Enterprises, 1101 South Emerson Avenue, Indianapolis, Indiana 46203, producer of plastic, injection and compression molds and medical and automotive components (December 7, 1987); (46) Hope's Architectural Products, Inc., 84 Hopkins Avenue, Jamestown, New York 14701, producer of security and aluminum windows (December 10, 1987); (47) Park Avenue Design Center, Inc., 4045 Cheyenne Court, Chino, California 91710, producer of bedroom furniture (December 10, 1987); (48) Super Glass Corporation 1020 East 48th Street, Brooklyn, New York 11203), producer of glass vases, lamp & lighting fixture parts (December 10, 1987); (49) Chivas Products, Ltd., 42555 Merrill Road, Sterling Heights, Michigan 48078, producer of automotive components for interior lighting assemblies, interior and exterior trim, etc. (December 11, 1987); (50) Commercial Air Conditioning Company, Inc., 11018 Palmer Avenue, South Gate, California 90280, producer of paint spray booths (December 14, 1987); (51) Hoyt & Worthern Tanning Corporation, 60 Railroad Street, Haverhill, Massachusetts 01820, producer of leather (December 14, 1987); (52) Atlas Crankshaft Corporation, P.O. Box 846, Fostoria, Ohio 44830, producer of valves, crankshafts, camshafts, etc. (December 14, 1987); (53) WFI Industries, Inc., 1441 Northlake Way, Seattle, Washington 98103, producer of ships and commerical fishing vessels (December 16, 1987); (54) Microwave Systems Engineering, Inc., 4221 East Raymond Street, #102, Phoenix, Arizona 85040, producer of signal amplifiers (December 22, 1987); (55) Pincor Power Corporation, 3700 N. Acorn Lane, Franklin Park, Illinois 60131, producer of portable electric generators and metal boxes (December 24, 1987); (56) General Machine Company of New Jersey, 301 Smalley Avenue, Middlesex, New Jersey 08846, producer of industrial blenders, dryers and valves (December 30, 1987); (57) D.H. Thompson, Inc., 11 North Union Street, Elgin, Illinois 60123, producer of fishing gear, tackle and flies (December 30, 1987); (58) Process Timber Sales, Creamery Lane, Ellenville, New York 12428, producer of knock down oak furniture (January 5, 1988); (59) Lore Lingerie, Inc., 1706 West Pico Boulevard, Los Angeles, California 90015, producer of women's pants, bras, slips, gowns, pajamas and robes (January 5, 1988); (60) G.K. Heller Corporation, 7 Mayflower Place, Floral Park, New York 11001, producer of electric motors, controllers, and stirrers (January 7, 1988).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

S. Cassin Muir,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 88–1504 Filed 1–22–88; 8:45 am]

BILLING CODE 3510–DR–M

[A–421–701]

Postponement of Preliminary Antidumping Duty Determination: Brass Sheet and Strip From the Netherlands

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in this investigation to postpone the preliminary determination 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 determination of whether sales of brass sheet and strip from the Netherlands have occurred at less than fair value until not later than February 2, 1988.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–3965.

SUPPLEMENTARY INFORMATION: On August 14, 1986, we published a notice of initiation (52 FR 30416) of an antidumping duty investigation to determine whether brass sheet and strip from the Netherlands 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 determination by December 28, 1987.

As detailed in the initiation notice, the petition alleged that imports of brass sheet and strip from the Netherlands are being, or are likely to be sold in the United States at less than fair value.

On December 1, 1987, counsel for petitioners, American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Copper, Ltd., The Miller Company, Olin Corporation, Revere Copper Products, Inc., The International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL–CIO), Mechanics Educational Society of America (Local 56), and United Steelworkers of America (AFL–CIO/CLC), requested that pursuant to 19 CFR 353.39(b) the Department extended the period for the preliminary determination until not later than 190 days after the date of receipt of the petition in accordance with section 773(c)(1)(A) of the Act. Accordingly, the period for the determination in this case was extended to not later than January 26, 1988.

On January 19, petitioners requested that pursuant to 19 CFR 353.39(b) the Department extend the period for the preliminary determination an additional 7 days until not later than 197 days after the date of receipt of the petition in accordance with section 773(c)(1)(A) of the Act. Accordingly, the period for the determination in this case is hereby extended. We intend to issue our preliminary determination not later than February 2, 1988. This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 20, 1988.

[FR Doc. 88–1401 Filed 1–22–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–401]

Red Rasperries From Canada; Preliminary Results of Antidumping Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

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

SUMMARY: In response to requests by respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on fresh and frozen red raspberries from Canada. The review covers three processors/exporters of this merchandise to the United States and the period December 18, 1984 through May 31, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Dionne C. Calloway or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2933.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1985, the Department of Commerce, ("the Department") published in the **Federal Register** (50 FR 26019) the antidumping duty order on certain red raspberries from Canada. Clearbrook Packers, Inc., Jesse Processing, Ltd., and Mukhtiar & Sons, Ltd. 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 antidumping duty administrative review on July 17, 1986 (51 25923).

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 Schedule of the United States* ("TSUS") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, 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 as well as the TSUS 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 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.

Imports covered by the review are shipments of fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are currently classified under item numbers 146.5400 and 146.5600 of the Tariff Schedules of the United States Annotated (TSUSA), and frozen raspberries under item number 146.7400 of the TSUSA. These products are currently classifiable under HS item numbers 0810.20.90, 0810.20.10, 0811.20.20.

The review covers three processors/exporters of fresh and frozen red raspberries to the United States, Jesse Processing, Ltd., Mukhtiar & Sons, Ltd., Clearbook Packers, Inc., and the period December 18, 1984 through May 31, 1986.

United States Price

As provided in Section 772(b) of the Tariff Act of 1930 ("The Act"), we used the purchase price of certain sales of red raspberries to represent the United States price, when the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the f.o.b. cold storage packed price. We made deductions, where applicable, for U.S. customs duties, brokerage and handling, and foreign inland freight.

As provided in section 772(c) of the Act, we used the exporter's sales price of certain sales of red raspberries to represent the United States price when the merchandise was sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the f.o.b. cold storage, packed price. We made deductions, where applicable, for brokerage and handling, U.S. and foreign inland freight, credit expenses, commissions to unrelated agents, and indirect selling expenses.

Foreign Market Value

In accordance with section 773(b) of the Act, as applied to Mukhtiar and Sons Packers, Ltd. ("M&S") and Jesse Processing, Ltd. ("Jesse"), certain home market sales at prices below the cost of production were disregarded when they constituted more than ten percent of total home market sales quantity. Only the remaining sales above the cost of production were used to represent FMV. When these above-cost-sales made by M&S were not contemporaneous with any U.S. sales, construction value was used. No cost of production information was requested from Clearbrook Packers, Inc. ("Clearbrook") since there was no allegation that its sales were below the cost of production. For M&S and Jesse, the cost of production consisted of the processors' materials and fabrication costs plus their actual general, selling

and administrative (GS&A) expenses. Since in both cases the processors purchased some unprocessed berries from related as well as unrelated growers, the cost of production also included a weighted average of berry costs and berry prices respectively.

The constructed value was calculated by adding the cost of materials, labor, factory overhead, packing, general expenses and profit. Actual costs for GS&A and actual profit figures were used in the constructed value since they exceeded the 10 percent and eight percent statutory minimums. The costs of the unprocessed berries produced by M&S Growers were used in the constructed value calculation instead of their prices, because these prices were less than unprocessed berry prices paid to unrelated growers. Only commissions were deducted from the constructed value, and no adjustments were made to offset U.S. selling expenses since there were no selling expenses on those U.S. sales the prices of which were compared to the constructed value.

With respect to all sales made by Clearbrook and Jesse, and with respect to all contemporaneous sales made by M&S, home market price was used in calculating foreign market value. Home market price was based on the f.o.b. plant or cold storage delivered packed price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, credit expenses, brokerage and handling, commissions, discounts, and differences in packing costs. When exporter's sales price was used as United States price, we also made adjustments to the home market for indirect selling expenses to offset U.S. indirect selling expenses. 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 determine that the following margins exist for the period December 18, 1984 through May 31, 1986:

Processor/exporter	Margin (percent)
Jesse Processing, Ltd	7.65
Mukhtiar & Sons Packers, Ltd	.92
Clearbrook Packers, Inc	1.30

Interested parties may request disclosure and/or an administrative protective order within 5 days 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 U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rates published in the antidumping duty order (50 FR 26019, June 24, 1985) for each of those firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 7.65 percent shall be required.

These deposit requirements are effective for all shipments of Canadian fresh or frozen red raspberries 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.

[FR Doc. 88-1402 Filed 1-22-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Incidental Taking of Marine Mammals; Issuance of Letter of Authorization

Notice is given that on January 19, 1988, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B—Taking and the Ringed Seals Incidental to On-Ice Seismic Activities, to the following: Geophysical Service Inc., 5801 Silverado Way, Anchorage, Alaska 99502.

This Letter of Authorization is valid for 1988 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subpart A and B).

Issuance of this letter is based on a finding that the total taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC,

and

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: January 19, 1988.

Nancy Foster,

Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 88-1279 Filed 1-22-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 2, 1988; Tuesday, February 9, 1988; Tuesday, February 16, 1988; and Tuesday, February 23, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibilities to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considerd by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Linda M. Bynum,

Alternate OSD Federal Register Liasion Officer, Department of Defense.

January 20, 1988.

[FR Doc. 88–1363 Files 1–22–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 9–11 February 1988.

Times of Meetings: 0800–1700 hours, 9 and 10 February 1988; 0800–1200 hours, 11 February 1988.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet for briefings by personnel from HQ TRADOC, U.S. Navy and others on technological developments and potential applications of directed energy. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–1442 Filed 1–22–88; 8:45am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 88–04; Certification Notice–9]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant To Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Cogen Energy Technology, Inc., Shaker Heights, OH	Dec. 18, 1987	Combined cycle	49.5	Castleton-on-Hudson NY.
MidSun Partners, L.P., Radnor, PA	Dec. 30, 1987	Combined cycle	26	Kern County, CA.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on January 19, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–1365 Filed 1–22–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Innovative Clean Coal Technology Program Opportunity Notice

AGENCY: Office of Fossil Energy, DOE.

SUMMARY: The United States Department of Energy (DOE), Office of

Fossil Energy (FE), is issuing a Program Opportunity Notice (PON) (Number DE-PS01-88FE61530) in response to Pub. L. No. 100-202, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1988, and for Other Purposes." This Act, among other things, provides funds to conduct cost-shared Innovative Clean Coal Technology (ICCT) projects to demonstrate emerging clean coal technologies that are capable of retrofitting and repowering existing coal burning facilities. The purpose of this PON is to solicit proposals to demonstrate technologies that are capable of being commercialized in the 1990's, more cost effective than current technologies, and capable of achieving significant reduction of SO_2 and/or NO_x emissions from existing coal burning facilities, particularly those that contribute to transboundary pollution.

Pub. L. No. 100-202 provides that the Secretary of Energy shall not finance more than 50 percent of the total costs of each innovative clean coal technology project as estimated by the Secretary of Energy as of the date of award of financial assistance. The PON will contain qualification criteria, and each offeror will need to demonstrate ability to meet these qualification criteria.

There are three objectives of this announcement. First, this announcement is to request written public comment on the draft PON for this program. For those on the DOE mailing list, copies of the draft PON will be mailed on January 28, 1988. Instructions for being placed on the mailing list to receive copies of the draft PON are contained below. In addition, copies can be picked up at DOE Headquarters on or after January 28, 1988.

DOE is requesting input from all interested parties to have the benefit of a broad range of public viewpoints as guidance in developing the final PON. Included in the draft PON will be DOE's proposed strategy for compliance with the National Environmental Policy Act. Oral or written responses to, or acknowledgement by DOE, of public comments received with respect to the draft PON will not be possible due to the limited time available to issue the final PON. The final PON will contain no discussion of the responses received. However, all timely comments received will be considered in finalized the PON.

Second, this announcement also serves as notice that the final PON for the Innovative Clean Coal Technology program will be mailed no later than February 22, 1988. In addition, a copy can be picked up at DOE Headquarters on or after February 22, 1988. Proposals in response to this PON will be due on May 23, 1988.

Third, this announcement is to give notice that a preproposal conference for the Innovative Clean Coal Technology program will be held on March 15, 1988, to provide prospective offerors the opportunity to gain a better understanding of the objectives of this PON and to receive answers in response to written questions submitted regarding the PON.

All persons receiving the draft PON should retain their copies of this draft since the issuance of the final PON may be accomplished through substitution of pages, if needed. In order to have a complete PON, offerors may therefore need copies of the draft PON and the substitution pages.

Date of Preproposal Conference: March 15, 1988 at 10 a.m., e.s.t.

Location of Preproposal Conference: U.S. Department of Commerce Auditorium, Herbert C. Hoover Building, 14th and Constitution Ave., NW., (Enter through Main Lobby) Washington, DC 20004.

Date for Submission of Public Comment on Draft PON: The deadline date for receipt of comments at the address identified below is 3:30 p.m., e.s.t., on February 5, 1988.

Address for Submission of Public Comment on Draft PON: Comments must be submitted in writing to the U.S. Department of Energy, Office of Procurement Operations, Attn: Mr. Herbert D. Watkins, MA-452.1, Room 11-065, 1000 Independence Avenue, SW., Washington, DC 20585.

For Copies of the Draft and Final PON: Written requests must be sent to U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, MA-451.1, Washington, DC 20013. Written requests to be placed on the mailing list for the draft and final PON should be received by January 28, 1988. Also, copies of the draft and final PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Document Control Specialist, Forrestal Building, Room 1J005, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.s.t., Monday through Friday, except Federal holidays. The draft PON is anticipated to be available on or after January 28, 1988, and the final PON on February 22, 1988. Requests for copies of the draft and final PON after February 22, 1988, will be filled only to the extent that copies are available.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert D. Watkins, Tel (202) 586-1026.

Issued in Washington, DC, January 19, 1988.

Edward T. Lovett,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 88-1364 Filed 1-22-88; 8:45 am]

BILLING CODE 6540-01-M

Office of Fossil Energy; Coordinating Subcommittee on Petroleum Storage & Transportation; National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Friday, February 26, 1988, 9 am.

Place: Unocal Corporation, Conference Room 1401, 911 Wilshire Boulevard, Los Angeles, California.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of The Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of The Meeting: Discuss study assignment and review task group assignments.

Tentative Agenda

Opening remarks by the Chairman and Government Cochairman.

Discuss study assignment.

Review task group assignments.

Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Donald L. Bauer,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 88–1409 Filed 1–22–88; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Senior Performance Review Board Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Service Performance Review Board.

DATE: January 12, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis E. Owens, Chief, Program Division, Office of Personnel, 500 C Street, SW., Washington, D.C. 20472, 202–696–3966.

The names of the members of the FEMA Senior Executive Service Performance Review Board established pursuant to 5 U.S.C. 4314(c) are:

Members: Frank H. Thomas, William K. Chipman, John D. Hwang, Caesar A. Roy, Joe D. Winkle, George H. Orrell, John R. Curran, Sr.

Spence W. Perry,

General Counsel.

[FR Doc. 88–1360 Filed 1–22–88; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL MARITIME COMMISSION

Cancellation of Inactive Tariffs

AGENCY: Federal Maritime Commission.

ACTION: Order cancelling inactive tariffs; correction.

SUMMARY: The Federal Maritime Commission is correcting the listing of inactive tariffs to be cancelled as shown in Attachment B to the Order which appeared in the Federal Register on December 9, 1987.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, 202/523–5796.

SUPPLEMENTARY INFORMATION: In the Order cancelling inactive tariffs published in the **Federal Register** on December 9, 1987 (52 FR 46660), Attachment B listed those common carriers whose tariffs were to be cancelled. Through inadvertant error, that listing included TIC Line. TIC Line should have been shown on Attachment A as a carrier responding to the Federal Maritime Commission's notice of intent to cancel. Therefore, the tariff of TIC Line will be retained in the Commission's active files.

This correction is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation, by § 9.04 of Commission Order No. 1 (Revised), dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88–1400 Filed 1–22–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

AmeriTrust Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AmeriTrust Corporation,* Cleveland, Ohio; to acquire AT Investment Services Corp., Cleveland, Ohio, and thereby engage in the purchase and sale of gold and silver bullion and gold coins for the account of its customers and for its own account; to underwrite and deal in government obligations and money market instruments and to provide financial or investment advice to relation thereto pursuant to §§ 225.25(b)(16) and 225.25(b)(4) of the Board's Regulation Y through its wholly-owned subsidiary, AT Investment Services Corp., Cleveland, Ohio, which is currently engaged in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

2. *National City Corporation,* Cleveland, Ohio; to acquire National City Financial Corporation, Cleveland, Ohio, and thereby engage in making acquiring, or servicing loans or other extensions of credit for NCFC's account or the account of others as permitted under § 225.25(b)(1); acting as investment of financial advisor pursuant to § 22.525(b)(4); providing management consulting advice pursuant to § 225.25(b)(11); and performing appraisals of real estate and tangible and intangible personal property pursuant to § 225.25(b)(13) 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. *Baldi Bros. Construction Co.,* Beaumont, California; to engage in making and servicing loans pursuant to § 225.25(b)(1); and leasing of real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

2. *Baldi Bros. Construction Co. Retirement Trust,* Beaumont, California; to engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–1345 Filed 1–22–88; 8:45 am]

BILLING CODE 6210–01–M

First Commercial Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The Companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why 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 12, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commercial Bancshares, Inc.*, Jasper, Alabama; to acquire 100 percent of the voting shares of the Bank of Tuscaloosa, Tuscaloosa, Alabama, a *de novo* bank.

2. *Sea Island Bankshares, Inc.*, Statesboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Sea Island Bank, Statesboro, Georgia.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1348 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; 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 February 9, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Margie A. Sheik*, Bern, Kansas; to acquire an additional 30.5 percent of the voting shares of Bern Bancshares, Inc., Bern, Kansas, and thereby indirectly acquire State Bank of Bern, Bern, Kansas.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1346 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

Southold Bancorp, Inc., Correction of Previous Document

This notice corrects a previous **Federal Register** notice (FR Doc. 87-27757) published at page 46004 of the issue for Thursday, December 3, 1987.

Under the Federal Reserve Bank of New York, the entry for Southold Bancorp, Inc. is revised to read as follows:

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Southold Bancorp, Inc.*, Southold, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Southold Savings Bank, Southold, New York, which engages directly in the sale of Savings Bank Life Insurance and through a subsidiary in activities which will, following consummation of the proposal, be permissible under section 4(c)(8)(C) of the Bank Holding Company Act.

Comments on this application must be received by February 9, 1988.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1347 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

West Bancshares, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1988.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *West Bancshares, Inc.*, West, Texas; to engage *de novo* in providing individual, business and non-profit organizations tax planning and tax preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. This activity will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1349 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 01/04/88 AND 01/13/88

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
(1) Consolidated Electrical Distributors, Inc.; Robert D. Fink, Sr.; Efengee Electrical Supply Co., Inc	88-0509	01/04/88
(2) Consolidated Electrical Distributors, Inc.; Raymond E. Fink, Sr.; Efengee Electrical Supply Co., Inc	88-0510	01/04/88
(3) Ronald O. Perelman; TW Services, Inc.; TW Services, Inc	88-0521	01/04/88
(4) Florida Rock Industries, Inc.; The Arundel Corp.; The Arundel Corp	88-0560	01/04/88
(5) Applebee's International, Inc.; W. R. Grace & Co.; W. R. Grace & Co	88-0603	01/04/88
(6) Thomas & Betts Corp.; Nevada Western Supply, Inc.; Nevada Western Supply, Inc	88-0624	01/05/88
(7) Intercontinental Affiliates; United Technologies Corp.; DC-9T-1, Inc., et al	88-0625	01/05/88
(8) Jet Florida, Inc.; United Technologies Corp.; DC-9A-1, Inc. et. at. and UT Credit Corp	88-0627	01/05/88
(9) Koninklijke Royal Ahold N.V.; FNS Holding Co.; FNS Holding Co	88-0628	01/05/88
(10) Minnesota Power & Light Co.; Capital Re Corp.; Capital Re Corp	88-0639	01/05/88
(11) Baltimore Gas and Electric Co.; Capital Re Corp.; Capital Re Corp	88-0640	01/05/88
(12) USF&G Corp.; Capital Re Corp.; Capital Re Corp	88-0641	01/05/88
(13) N.V. Bekaert S.A.; Bekaert Dyersburg Steel Cord Co.; Bekaert Dyersburg Steel Cord Co	88-0540	01/06/88
(14) U.S. Cable Television Group, L.P.; Essex Communication Corp.; Essex Communication Corp	88-0544	01/06/88
(15) U.S. Cable Television Group, L.P.; Essex 1984-1 Investment Limited Partnership; Essex 1984-1 Operating Partnership	88-0545	01/06/88
(16) U.S. Cable Television Group, L.P.; Essex 1985-1 Limited Partnership; Essex 1985-1 Limited Partnership	88-0546	01/06/88
(17) U.S. Cable Television Group, L.P.; Essex 1985-2 Limited Partnership; Essex 1985-2 Limited Partnership	88-0547	01/06/88
(18) U.S. Cable Television Group, L.P.; Essex 1986-1 Limited Partnership; Essex 1986-1 Limited Partnership	88-0548	01/06/88
(19) George S. Mann; Robert S. Howard; H & H Energy Services, Inc	88-0556	01/06/88
(20) Bridgestone Corp.; Bekaert Dyersburg Steel Cord Co.; Bekaert Dyersburg Steel Cord Co	88-0557	01/06/88
(21) Eastman Kodak Co.; NeoRx Corp.; NeoRx Corp	88-0568	01/06/88
(22) Barry Diller; The News Corp. Limited; The News Corp. Limited	88-0664	01/06/88
(23) Meyer International, plc; Charles E. Stottlemeyer; Stottlemyer & Shoemaker Lumber Co.; Stottlemyer	88-0505	01/07/88
(24) Meyer International, plc; John W. Shoemaker; Stottlemyer & Shoemaker Lumber Co.; Stottlemyer	88-0506	01/07/88
(25) American Continental Corp.; Media General, Inc.; Media General, Inc	88-0577	01/07/88
(26) Jangfrau Trust; Wickes Companies, Inc.; Wickes-Leath Furniture Division	88-0647	01/07/88
(27) Heco, Inc.; Bernard R. Kossar; Home Quarters Warehouse, Inc	88-0594	01/11/88
(28) Hook-SupeRx, Inc.; Compact Video, Inc.; Brooks Drug, Inc	88-0595	01/11/88
(29) Stephen Adams; Lewis Manderson, Jr.; Turner Outdoor Advertising, Ltd	88-0600	01/11/88
(30) Sisters of the Resurrection; John F. Kennedy Health Care Corp.; John F. Kennedy Medical Center	88-0621	01/11/88
(31) Beverly Enterprises, Inc.; Richard D. Segal; Beverly Healthcare Properties Limited	88-0637	01/11/88
(32) Peter W. May; CJI Industries, Inc.; CJI Industries, Inc	88-0653	01/11/88
(33) Nelson Peltz; Avery, Inc.; Avery, Inc	88-0654	01/11/88
(34) CJI Industries, Inc.; Avery, Inc.; Avery, Inc	88-0655	01/11/88
(35) Nelson Peltz; CJI Industries, Inc.; CJI Industries, Inc	88-0656	01/11/88
(36) CJI Industries, Inc.; Nelson Peltz; Triangle Industries, Inc	88-0657	01/11/88
(37) Beverly Enterprises, Inc.; Richard D. Segal; Encore Retirement-Naples, Ltd	88-0659	01/11/88
(38) Noranda Inc.; Arthur Hale; American Mag, Inc	88-0676	01/11/88
(39) Noranda Inc.; Linda Rodman; Metal Products of California, Inc	88-0677	01/11/88
(40) Cilcorp Inc.; Emerson Electric Co.; Emerson Leasing Ventures, Inc	88-0685	01/11/88
(41) William G. Benton; Forum Group, Inc.; Excepticon of Kentucky, Inc., RLI, Inc. and Forum Group	88-0687	01/11/88
(42) Fireman's Fund Corp.; Donald F. Clarke, Jr.; Central Pacific Mortgage Co	88-0708	01/11/88
(43) Thomson S.A.; Northrop Corp.; Wilcox Electric, Inc	87-1994	01/12/88
(44) Thomas W. Wathen; American Brands, Inc.; Pinkerton's, Inc	88-0525	01/12/88
(45) Donald G. Jones; North American Communications Corp.; North American Communications Corp	88-0585	01/12/88
(46) Saul Levy; Guarantee Auto Stores, Inc.; Guarantee Auto Stores, Inc	88-0620	01/12/88
(47) Caroico Investments B.V.; The Vista Organization Partnership, L.P.; The Vista Organization Home Video Corp	88-0631	01/12/88
(48) Industri AB Euroc; Transtech Industries, Inc.; Allentown Cement Co.; and Chester Cement Co., Inc	88-0667	01/12/88
(49) A/S Norcem; Transtech Industries, Inc.; Allentown Cement Co. & Chester Cement Co., Inc	88-0668	01/12/88
(50) Farm House Foods Corp.; Frederick Goldberger and Edythe Goldberger; Protimex Corp	88-0688	01/12/88
(51) Attwoods plc; Eastern Waste Industries, Inc.; Eastern Waste Industries, Inc	88-0581	01/13/88
(52) Procordia AB; The Sidelift Group, Inc.; The Sidelift Group, Inc	88-0604	01/13/88
(53) Tele-Communications, Inc.; CVN Companies, Inc.; CVN Companies, Inc	88-0614	01/13/88
(54) J.P. Industries, Inc.; Aluminum Company of Americas; TRE-Modern, Inc. and The Weslock Corp	88-0622	01/13/88
(55) The Bellfonte Co.; PepsiCo, Inc.; Pepsi-Cola Bottling Co. of Estherville, Inc., et al	88-0650	01/13/88
(56) Imperil Sugar Co.; Holly Sugar Corp.; Holly Sugar Corp	88-0695	01/13/88
(57) Indian L.P.; Maxway Holdings, Inc.; Maxway Holdings, Inc	88-0703	01/13/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580 (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-1371 Filed 1-22-88; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to reauthorize expiring information collection 3090-0080, General Services Administration Acquisition Regulation (GSAR), Part 532, Contract Financing, requiring contractors to submit a release of claims before they receive final payment.

AGENCY: Office of Acquisition Policy, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW, Washington, DC 20405.

Annual Reporting Burden: Number of respondents, 2,000; responses per respondent, 1; 6 minutes per response, on average; burden hours, 200.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, 202-523-4765.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-566-0668.

Dated: January 14, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-1339 Filed 1-22-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of the Work Practices Guide for Manual Lifting; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: January 29, 1988.
Time: 8:30 a.m.—3:00 p.m.
Place: Room B-32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
Purpose: To discuss revisions to the formula for calculating Action and Maximum Permissible Limits and factors for non-sagittal plane lifting tasks. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Donald W. Badger, Ph.D., Division of Biomedical and Behavioral Sciences, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, *Telephones*: FTS: 684-8291; commercial 513/533-8291

Dated: January 20, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-1552 Filed 1-22-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 88N-0018]

Drug Export; Cytovene ™ (Ganciclovir)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Syntex Laboratories, Inc., has filed an application requesting approval for the export of the human drug Cytovene ™ (ganciclovir) to the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolph Apodaca, Center for Drug Evaluation and Research (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Syntex Laboratories, Inc., 3401 Hillview Ave., P.O. Box 10850, Palo Alto, CA 94303, has filed an application requesting approval for the export of the drug Cytovene ™ (ganciclovir) to the United Kingdom. Ganciclovir has been used for the treatment of sight-threatening and life-threatening cytomegalovirus infections. The application was received and filed in the Center for Drug Evaluation and Research on December 28, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 4, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate

consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated 21 CFR 5.44.

Dated: January 5, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-1379 Filed 1-22-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0015]

U.S. Products, Inc., et al.; Proposal To Withdraw Approval of New Drug Applications; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for hearing on a proposal to withdraw approval of five new drug applications because the applicants have failed to submit required annual reports.

DATE: Requests for hearing are due by February 24, 1988; and the data, information, and analyses relied on to justify a hearing are to be submitted by March 25, 1988.

ADDRESS: Requests for hearing in response to this notice should be identified with Docket No. 88N-0015, and directed to: Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drug Evaluation and Research (HFN-46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-43200.

SUPPLEMENTARY INFORMATION: An applicant is required to report periodically to FDA concerning each of its approved new drug applications (NDA's) in accordance with 21 CFR 314.81. Although in the past some exemptions from these reporting requirements have been granted, all such exemptions were rescinded (43 FR 20556; May 12, 1978). The holders of the following NDA's have not submitted annual reports and have not responded to the agency's requests by certified mail for submission of the reports. Four of the certified letters were returned because the firm is either out of business or did not leave a forwarding address:

NDA	Drug name	Applicant's name and address
6-811	Parasal Calcium Capsules and Tablets; Parasal Sodium Enteric Coated Tablets, Tablets and Capsules; and Parasal Tablets.	U.S. Products Inc., 16636 N.W. 54th Ave., Miami Lakes, FL 33014.
8-428	Isoniazid Tablets	U.S. Products Inc.
9-678	Isoniazid Tablets	Vitamix Pharmaceuticals, Inc., 5051 Lancaster Ave., Philadelphia, PA 19131.
13-234	Nitrofurantoin Tablets	Arlin Chemicals Inc., P.O. Box 137, Carlstadt, NJ 07072.
13-473	Pas-C Tablets	Hellwig Pharmaceuticals, 5836 W. 117th Pl., Worth, IL 60482.

Therefore, notice is given to the holders of the new drug applications and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the new drug applications and all amendments and supplements thereto on the grounds that the applicants have failed to submit the reports required under 21 CFR 314.81.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants are hereby given an opportunity for a hearing to show why approval of their new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products named above.

An applicant who decides to seek a hearing shall file (1) on or before February 24, 1988, a written notice of appearance and request for hearing, and (2) on or before March 25, 1988, the data, information, and analyses relied on to justify a hearing as specified in 21 CFR 314.200.

The failure of the applicant to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the action proposed for the drug product and constitutes a waiver of any contentions about the legal status of the drug product. The drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will begin appropriate regulatory action to remove it from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action ay any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accord with 21 CFR 314.81. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request a hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice must be filed in two copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (see 21 CFR 5.82).

Dated: December 31, 1987.

Gerald F. Meyer,

Acting Deputy Director, Center for Drugs and Biologics.

[FR Doc. 88-1353 Filed 1-22-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-88-1768]

Privacy Act of 1974; Deletion of Systems of Records

AGENCY: Office of the Secretary, HUD.

ACTION: Deletion of Privacy Act systems of records.

SUMMARY: Notice is given that Privacy Act systems of records are deleted.

EFFECTIVE DATE: January 25, 1988.

ADDRESS: Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, Telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has determined that the following systems do not meet the Privacy Act criteria and will no longer

be maintained as Privacy Act systems of records: (1) HUD/DEPT-17, Experimental Housing Allowance Program—Participant Files; (2) HUD/DEPT-18, Fellowship Files, Urban Studies; (3) HUD/DEPT-55, Executive Personnel Files; (4) HUD/DEPT-60, Employee Emergency Reference Files; (5) HUD/PD&R-1, Urban Homesteading Evaluation Data; (6) PD&R-2, Solar Energy Demonstration Survey Files; (7) HUD/PD&R-3, Urban Reinvestment Task Force Data; (8) HUD/PD&R-4, Prepurchase Counseling Demonstration and Evaluation Records; (9) HUD/PD&R-5, HUD Community Development Block Grant Evaluation Files; (10) HUD/PD&R-9, Elderly Home Maintenance Demonstration Evaluation Data Files; (11) HUD/PD&R-10, Home Repair Service for the Elderly: Baltimore Sample Data File; (12) HUD/PD&R-11, Community Development Block Grant State Transfer Evaluation Files. Previously, the systems and a prefactory statement containing the general Routine Uses applicable to most of the Department's systems of records were published in the "Federal Register Privacy Act Issuances, 1986 Compilation, Volume II."

Authority: 5 U.S.C. 552a, 88 Stat. 1896; section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

Issued at Washington, DC on January 15, 1988.

Judith L. Hofmann,

Assistant Secretary for Administration.

[FR Doc. 88-1389 Filed 1-22-88; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-88-1767]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 14, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Preference Rule
Office: Housing
Description of the Need for the Information and its Proposed Use: The information will be used by owners and PHAs to determine whether prospective tenants are eligible for preference in obtaining housing because they are occupying substandard housing, involuntarily placed, or paying more than 50 percent of income for rent. This information is needed by HUD to determine if owners and PHAs are properly administering the program.
Form Number: None
Respondents: Individuals or Households, State or Local Governments, and Businesses or Other For-Profit
Frequency of Respondents: On Occasion
Estimated Burden Hours: 828,417
Status: New
Contact: Eugene R. Fogel, HUD, (202) 755-6887; John Allison, OMB, (202) 395-6880

Date: January 5, 1988.

Proposal: Evaluation of Housing Voucher Portability
Office: Housing
Description of the Need for the Information and its Proposed Use: This form is needed to evaluate the degree to which the housing voucher portability is utilized, i.e., families moving from one public housing authority's (PHA's) jurisdiction to another, taking their portable voucher with them. It is used to record vital information on administrative and other costs to the PHAs.
Form Number: None
Respondents: State or Local Governments
Frequency of Respondents: On Occasion
Estimated Burden Hours: 250
Status: New
Contact: Gerald J. Benoit, HUD, (202) 755-6477; John Allison, OMB, (202) 395-6880

Date: December 20, 1987.

Proposal: Request for Financial Information
Office: Housing
Description of the Need for the Information and its Proposed Use: The information provided on this form is needed and used to help evaluate a mortgagor's eligibility for assistance under HUD's mortgage assignment program.
Form Number: HUD-92068F
Respondents: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees
Frequency of Respondents: On Occasion
Estimated Burden Hours: 38,000
Status: Extension
Contact: Thomas H. Hitchcock, HUD, (202) 755-6664; John Allison, OMB, (202) 395-6880

Date: December 22, 1987.

Proposal: Community Development Block Grant (CDBG) Entitlement Program
Office: Community Planning and Development
Description of the Need for the Information and its Proposed Use: The need for the submission requested from entitlement grantees is based on statutory requirements. The law specifically requires submission of the final statement of the housing assistance plan and the annual report. The records are necessary for the

Secretary of HUD to make his annual statutory review of performance and compliance.
Form Number: SF–424 and Narrative; HUD–4949.1 thru 4949.7, 7091.1, and 7091.2
Respondents: State and Local Governments
Frequency of Respondents: Annually
Estimated Burden Hours: 251,625
Status: Revision
Contact: James R. Broughman, HUD, (202) 755–5977; John Allison, OMB, (202) 395–6880

Date: January 5, 1988.

Proposal: Title I Monthly Statement Reconcilement of Insurance Charges
Office: Administration
Description of the Need for the Information and its Proposed Use: Title I of the National Housing Act provides authority for HUD to coinsure loans made by private institutions for the purpose of financing property improvements, purchasing a manufactured home, or preserving historic structures. The information is used by HUD-approved lending institutions as a vehicle for reconciling the differences that occur between the lender's records and HUD's monthly billing statement.
Form Number: HUD–646
Respondents: Businesses or Other For-Profit
Frequency of Respondents: On Occasion and Monthly
Estimated Burden Hours: 2,085
Status: Extension
Contact: Cynthia H. Palmer, HUD, (202) 755–5264; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 10, 1987.

Proposal: Compilation of Data on Low-Income Housing Tax Credit
Office: Policy Development and Research
Description of the Need for the Information and its Proposed Use: This data collection will inform HUD, Treasury, OMB, Congress, and other interested parties how extensively and in what ways the new low-income housing tax credit is being used. HUD needs the results of this data collection to assess the housing needs of low-income families and to administer housing assistance programs.
Form Number: None
Respondents: State or Local Governments
Frequency of Submission: Semi-annually
Estimated Burden Hours: 558
Status: New
Contact: Arthur J. Reiger, HUD (202) 755–5537; John Allison, OMB, (202) 395–6880

Date: December 14, 1987.

Proposal: Performance Funding System Data Collection Forms
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: These forms are needed by the Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to calculate the annual operating subsidy eligibility under the Performance Funding System. These forms are used by HUD to evaluate the PHAs'/IHAs' annual operating budgets.
Form Number: HUD–52720A, 52720B, 52720C, 52721, 52722A, 52722B and 52723
Respondents: State or Local Governments
Frequency of Submission: Annually
Estimated Burden Hours: 13,331
Status: Reinstatement
Contact: Joan DeWitt, HUD (202) 426–1872; John Allison, OMB, (202) 395–6880

Date: December 8, 1987.

Proposal: Low-Rent Public Housing Construction Report
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: This form is needed and used by HUD to identify problem areas and/or inadequacies of a public housing project under construction so that corrective action can be taken in a timely manner.
Form Number: HUD–5378
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Submission: Other (Semimonthly)
Estimated Burden Hours: 720
Status: Reinstatement
Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880

Date: December 18, 1987.

[FR Doc. 88–1386 Filed 1–22–88; 8:45 am]
BILLING CODE 4210–01–M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D–88–871]

Acting Manager, Region IV (Atlanta); Designation for Greensboro Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Greensboro Office.

EFFECTIVE DATE: November 18, 1987.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Manager for Greensboro Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager.
2. Director, Housing Development Division.
3. Director, Housing Management Division.
4. Director, Community Planning and Development Division.
5. Director, Administration Division.

This designation supersedes the designation effective February 25, 1987, (52 FR 17480, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of November 18, 1987.

Larry J. Parker,
Manager, Greensboro Office.
James W. Mills,
Acting Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 88–1387 Filed 1–22–88; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. D–88–870]

Seattle Regional Office, Region X, Washington; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Regional Administrator—Regional Housing

Commissioner of Region X (Seattle is designating officials who may serve as Acting Regional Administrator—Regional Housing Commissioner, Region X (Seattle), during the absence, disability, or vacancy in the position of Regional Administrator—Regional Housing Commissioner.

EFFECTIVE DATE: December 28, 1987.

FOR FURTHER INFORMATION CONTACT: Waller Taylor, III, Regional Counsel, Seattle Regional Office, Department of Housing and Urban Development, 1321 Second Avenue, Seattle, Washington 98101 (206) 442–4970. (This is not a toll-free number.)

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator—Regional Housing Commissioner, Region X (Seattle) during the absence, disability, or vacancy in the position of the Regional Administrator—Regional Housing Commissioner with all the powers, functions, and duties redelegated or assigned to the Regional Administrator—Regional Housing Commissioner: provided that no official is authorized to serve as Acting Regional Administrator—Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position.

1. Deputy Regional Administrator.
2. Director, Office of Administration.
3. Regional Counsel.
4. Director, Operational Support.
5. Director, Office of Community Planning and Development.

Authority: Delegation of Authority, 27, FR 4319 (1962): Section 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 815 (1966).

Dated: December 23, 1987.

William Y. Nishimura,

Regional Adminstrator—Regional Housing Commissioner, Seattle Regional Office.

[FR Doc. 88–1388 Filed 1–22–88; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Withdrawal of public notice.

SUMMARY: The Bureau of Indian Affairs is withdrawing a public notice published in the Wednesday, September 9, 1987, issue of the **Federal Register** (52 FR 33994).

The public notice did not receive the proper administrative clearance required by Executive Order 12291 and the Bureau of Indian Affairs headquarters guidelines. The public notice announced a significant revision in policy and practice requirements of program management. The announcement involved bureau-wide policy considerations requiring the review and approval of the Assistant Secretary—Indian Affairs.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mort S. Dreamer, Irrigation and Power Engineer, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, DC 20245. Telephone Number (202) 343–5696.

Dated: January 14, 1988.

Joe C. Christie,

Acting Deputy to the Assistant Secretary: Indian Affairs (Trust and Economic Development.

[FR Doc. 88–1413 Filed 1–22–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

(ID–060–08–4410–08)

Coeur d'Alene District, ID; Planning Activity

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of planning activity; Amendment to the Emerald Empire Management Framework Plan and Chief Joseph Management Framework Plan.

SUMMARY: The Coeur d'Alene District, Bureau of Land Management proposes to amend the Emerald Empire and Chief Joseph Management Framework Plans to establish Research Natural Areas (RNAs) and/or Areas of Critical Environmental Concern (ACECs). The areas under consideration are:

Name	Acreage	Proposed designation	County
1. Hideaway Islands.	170	RNA/ACEC	Boundary.
2. Lund Creek.	2,905	RNA/ACEC	Shoshone.
3. Wapshilla Ridge.	320	RNA/ACEC	Nez Perce.
4. Lower and Middle Cottonwood Islands.	14	RNA/ACEC	Nez Perce.
5. Captain John Creek.	1,520	RNA/ACEC	Nez Perce.
6. Long Gulch.	45	RNA/ACEC	Idaho.
7. Lucile Caves.	438	RNA/ACEC	Idaho.
8. Skookumchuck.	28	RNA/ACEC	Idaho.
9. Craig Mountain.	3,500	ACEC	Nez Perce.
10. Elk City Dump/Arsenic Lake.	15	ACEC	Idaho.
11. Lower Lolo Creek.	3,200	ACEC	Idaho, Clearwater.
12. Lower Salmon River Canyon (Hammer Ck. to confluence).	13,000	ACEC	Idaho, Lewis, Nez Perce.

The main issues identified in this planning activity to date are: (1) Whether the study areas exhibit unique or special qualities to warrant special management consideration as an RNA and/or ACEC, and (2) what limitations or restrictions are appropriate.

An interdisciplinary team including wildlife, hydrology, soils, recreation, minerals, forestry, range and archeology specialists will prepare the amendment and environmental analysis.

SUPPLEMENTARY INFORMATION: Affected publics are invited to provide pertinent comments to the planning team. Comments will be accepted for 60 days following publication of this notice.

ADDRESS: Comments or requests for information should be addressed to: Ted Graf, Planning Team Leader, Bureau of Land Management, Coeur d'Alene District Office, 1808 North 3d Street, Coeur d'Alene, Idaho 83814.

Date: January 15, 1988.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 88–1367 Filed 1–22–88; 8:45 am]

BILLING CODE 4310–GG–M

[UT–020–08–4322–02]

Salt Lake District, UT; Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of advisory board meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on March 8, 1988.

The Board will meet at 10:00 a.m. at the Salt Lake District, Bureau of Land Management Office, at 2370 South 2300 West, Salt Lake City, Utah. The purpose of the meeting will be to obtain input from the Board on the following:

1. FY–1988 Range Improvement Projects.
2. Change in Kind of Livestock Policy.
3. Big Creek and New Canyon Allotment Adjustment Agreements.
4. Proposed Elimination of the Box Elder County Sheep Trail.
5. Policy of Use of 8100 and 7121 Funds.
6. Possible Adjustments from Proposed Land Exchanges.
7. Salt Lake District Sub-Leasing Policy.

The meeting is open to the public and interested persons may make oral statements to the Board between 10:00 a.m. and 10:30 a.m., or file a written statement for the Board's consideration. Persons wishing to make statements to the Board are requested to contact Glade Anderson at (801) 524–5348 prior to March 1, so that adequate time can be included on the agenda.

FOR FURTHER INFORMATION CONTACT: Glade W. Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 300 West, Salt Lake City, Utah 84119, (801) 524–5348.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 88–1340 Filed 1–22–88; 8:45am]

BILLING CODE 4310-DQ-M

[NV–930–08–4212–13; N–33989]

Opening of Public Lands in Nevada

AGENCY: Bureau of Land Management.

ACTION: Order providing for opening of public lands.

SUMMARY: This notice opens 10,063.12 acres to the operation of the public land laws.

EFFECTIVE DATE: (February 24, 1988).

SUPPLEMENTARY INFORMATION: The following described non-Federal lands were acquired by the United States in an exchange transaction and title was accepted on January 24, 1985.

Mount Diablo Meridian, Nevada.

T. 36 N., R. 56 E.,
Sec. 5, All.
T. 37 N., R. 56 E.,
Sec. 2, lot 1, SW¼NE¼;
Sec. 3, All;
Sec. 5, lots 1 and 2, S½NE¼;
Sec. 9, NE¼;
Sec. 15, NE¼;
Sec. 29, All;
Sec. 33, All;
Sec. 35, W½, SE¼.
T. 38 N., R. 56 E.,
Sec. 11, S½;
Sec. 13, S½;
Sec. 14, SW¼NE¼;
Sec. 15, All;
Sec. 21, All;
Sec. 23, All;
Sec. 24, SW¼SE¼, SE¼SW¼;
Sec. 25, All;
Sec. 27, All;
Sec. 31, NE¼;
Sec. 33, All;
Sec. 34, S½SW¼, SW¼SE¼;
Sec. 35, All;
Sec. 36, W½SW¼, SE¼SW¼.
T. 38 N., R. 57 E.,
Sec. 6, lot 7;
Sec. 8, N½SW¼, S½SE¼;
Sec. 31, All

comprising 10,063.12 acres in Elko County, Nevada.

The lands contain demonstrated wildlife values and recreation potential.

At 10 a.m. on February 24, 1988, the above described lands will be opened to the 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 recieved at or prior to 10 a.m. on February 24, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The mineral estates in the subject lands are in private ownership.

Date: January 13, 1988.

Marla B. Bohl,

Acting Deputy State Director, Operations.

[FR Doc. 88–1368 Filed 1–22–88; 8:45 am]

BILLING CODE 4310-HC-M

[UT–020–08–4352–10]

Salt Lake District; Intent To Amend the Box Elder Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Salt Lake District, proposes to amend two decisions within the Box Elder Resource Management of April 1985.

The first is Decision 3 of the Minerals Program which would be amended to include an additional 3,807 acres of public land, located in Township 10 North, Range 5 West, Sections 22 through 26 and Township 10 North, Range 5 West, Section 18, in Category 3 (no surface occupancy) for fluid mineral leasing. The amendment would increase the total acres within Category 3 from 3,861 acres to 7,668 acres and decrease the total acres within Category 1 (open) from 800,732 acres to 796,925 acres.

The second is Decision 1 of the Recreation Program which would be amended to designate 3,807 acres of public land located in Township 10 North, Range 5 West, Sections 22 through 26 and Township 10 North, Range 5 West, Section 18, as closed to off-road vehicle (ORV) use. This would increase the number of acres of land closed to ORV use to 3,807 acres and decrease the number of acres of land open to ORV use from 999,634 acres to 995,872 acres.

The BLM also proposes to add an additional decision to the Recreation Program, Decision 2, of the Box Elder Resource Management Plan which would close the above described lands to public use during the months of March through June of each year.

The above described amendments are proposed to better facilitate management of these lands as a waterfowl management area and to also use this area for reintroduction of the peregrine falcon.

An environmental assessment will be prepared by the BLM to address any impacts of the proposed amendments. Public participation is requested to identify issues or concerns on the proposed amendments. Oral and/or written comments should be made by February 29, 1988, to Mr. Leon Berggren, Bear River Resource Area Manager, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119, phone (801) 524–5348.

January 15, 1988.

C. Kemp Conn,

Acting State Director.

[FR Doc. 88–1341 Filed 1–22–88; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, 79 Stat. 969; 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Akers Ferry Canoe Rental, Inc., authorizing it to continue to provide canoe rental and shuttle service, merchandising sales, ferry boat service, and firewood sales for the public at Ozark National Scenic Riverways, Missouri, for a period of five (5) years from January 1, 1988, through December 31, 1992.

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 extension of its contract of January 7, 1980, which will expire on December 31, 1987, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals 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, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, MO 63965, for information as to the requirements of the proposed contract.

Edward D. Carlin,

Acting Regional Director, Midwest Region.

November 2, 1987.

[FR Doc. 88-1420 Filed 1-22-88; 8:45 am]

BILLING CODE 4310-70-M

Acadia National Park Advisory Commission; Two Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold meetings on Tuesday, February 16, 1988 and Monday, April 4, 1988.

The Commission was established pursuant to Pub. L. 99-420, sec. 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The two scheduled Acadia National Park Advisory Commission meetings will convene at the Mount Desert Town Office Building, Sea Street, Northeast Harbor, Maine.

The meeting on February 16 will begin at 10:00 a.m. and consider the following agenda:

1. Review of Loop Road Proposal.
2. Old business.
3. New business.
4. Public comments.
5. Proposed agenda for next Commission Meeting.

The Monday, April 4, 1988, meeting will begin at 1 p.m. and consider the following agenda:

1. Review of Land Protection Plan issues.
2. Old business.
3. New business.
4. Public comments.
5. Proposed agenda and date of next Commission meeting.

The Acadia National Park Advisory Commission meetings are open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning these meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609 tel: (207) 288-3338.

Steven H. Lewis,

Acting Regional Director.

Date: January 14, 1988.

[FR Doc. 88-1421 Filed 1-22-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 274 (Sub-18); Docket No. AB-19 (Sub-110B)]

Buffalo, Rochester & Pittsburgh Railway Co. and the Baltimore & Ohio Railroad Co.; Abandonment and Discontinuance of Service in Indiana County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Institution of policymaking proceeding and request for comments.

SUMMARY: The Commission is seeking public comment on: (1) Whether the possibility that a shipper could purchase of subsidize a rail line should be considered in our analysis of an application for abandonment under 49 U.S.C. 10903; and (2) if so, how the issue should be factored into the decision on whether to grant or deny an abandonment.

DATES: Comments are due February 24, 1988.

ADDRESSES: Send pleadings referring to Ex Parte No. 274 (Sub-No. 18) to: Office of The Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: In Docket No. AB-19 (Sub-No. 110B), we denied the application under 49 U.S.C. 10903 for Buffalo, Rochester and Pittsburgh Railway Company to abandon and for The Baltimore and Ohio Railroad Company to discontinue service over a 7.19-mile line of railroad between milepost 34.26 near Indiana and milepost 44.45 near Coral in Indiana County, PA.

In *Baltimore and Ohio Railroad Company* v. *ICC*, 826 F.2d 1125 (D.C. Cir. 1987) the court vacated our decision and remanded the proceeding for further consideration. The court found that our refusal to consider as part of our abandonment balancing analysis the possibility that the shippers could purchase or subsidize the line "as an offset to the shippers' alleged prospective economic harm" could not be justified on grounds of a statutory prohibition. The proceeding was remanded for us to decide, as a policy matter (absent statutory constraints), whether the possible purchase or subsidy should be considered in our abandonment analysis of the merits of an abandonment application under 49 U.S.C. 10903.

The line involved in Docket No. AB-19 (Sub-No. 110B) is among the lines that are proposed for acquisition as indicated in a Notice of Exemption published and served October 26, 1987, in Finance Docket No. 31116, *Buffalo & Pittsburgh Railroad, Inc.—Exemption of Acquisition and Operation of Rail Lines—CSX Transportation, Inc. and Buffalo, Rochester and Pittsburgh Railway Company*, 52 FR 40000. Sale of the line will render the abandonment application moot. However, the court remand involves broader policy considerations.

Accordingly, we are opening a new proceeding in Ex Parte No. 274 (Sub-No. 18) and consolidating it with the remanded abandonment to decide whether the possible purchase or subsidy should be considered and, if so, how. Since the issue remanded by the Court could affect the handling of other abandonments under 49 U.S.C. 10903, we are inviting public comment from all potentially affected interests. Comments may be submitted as scheduled above.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: January 19, 1988.

by the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1370 Filed 1-22-88; 8:45 am]

BILLING CODE 7035-01-M

STATE DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-92]

Irving Davis, M.D.; Denial of Application

On October 16, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Irving Davis, M.D., 3505 20th Street, San Francisco, California 94110 (Respondent). The Order to Show Cause sought to deny Respondent's application for a DEA Certificate of Registration executed on June 6, 1986, because Respondent's registration would be inconsistent with the public interest as evidenced by his conviction on December 10, 1976, in the United States District Court for the Northern District of California of 20 counts of illegal distribution of controlled substances, felonies relating to controlled substances. Respondent requested a hearing by letter dated October 23, 1986. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing filings, a hearing was held in San Francisco, California on July 7, 1987. Judge Young issued his opinion and recommended decision on November 2, 1987.

The Administrative Law Judge found that on June 30, 1976, Respondent was indicted by a grant jury in the United States District Court for the Northern District of California of 20 counts of knowingly and intentionally and unlawfully prescribing, and causing to be distributed, quantities of controlled substances. On December 10, 1976, Respondent was convicted, following a jury trial, of all 20 counts. During the investigation of Respondent by the California Board of Medical Quality Assurance three undercover operatives went to Respondent's office and obtained various prescriptions from him for no legitimate medical purpose.

On June 7, 1976, the California Board of Medical Quality Assurance filed a complaint against the Respondent alleging that he had written prescriptions for 16 or 17 individuals for controlled substances without prior good faith examination and medical indication. One of these individuals, Sharyn Dalton, received five prescriptions for the Schedule II controlled substances Ritalin and Seconal from the Respondent during February and March, 1976.

Following a hearing in June 1977, the then-Administrator of the Drug Enforcement Administration revoked Respondent's DEA Certificate of Registration. Effective May 12, 1978, the California Board of Medical Quality Assurance, after finding that Respondent issued prescriptions for Ritalin, Seconal and Tuinal without good faith examination and medical indication, revoked Respondent's license to practice medicine in California. Respondent's medical license was restored in May 1981 with the provision that Respondent be on probation with the board for five years. Included in the terms of probation was that Respondent be prohibited from prescribing, administering, dispensing, ordering or possessing controlled substances. The period of probation terminated on May 25, 1986.

Respondent currently spends many hours making rounds and taking part in professional education programs at a teaching hospital in San Francisco. He has no medical practice, but assists another physician by seeing patients in his office three afternoons a week.

Respondent's testimony at the hearing indicates that he does not appear to understand the wrongful nature of the conduct which gave rise to his conviction, nor does he comprehend the reason why certain substances are classified as controlled substances. During the hearing, Respondent testified that he had never prescribed Ritalin, when in fact he issued several Ritalin prescriptions to one of the undercover operatives during the 1976 investigation. Respondent further testified that his prescribing practices in 1976 were due to lack of awareness of the harmful nature of the drugs that he was prescribing, and that all physicians were prescribing as he was. This does not explain how Respondent's prescriptions for Schedule II controlled substances accounted for 19%, or almost 4,000 prescriptions, at selected San Francisco pharmacies during a three month period prior to 1977, while the remaining 81% of the prescriptions were prescribed by over 900 different physicians.

The Administrative Law Judge concluded that Respondent had been convicted of a felony relating to controlled substances, and that based upon that conviction his previous DEA Certificate of Registration was revoked. The Administrative Law Judge further stated that while that conviction was over ten years ago, Respondent does not seem to have, even now, an understanding of the wrongful nature of his previous conduct in prescribing controlled substances; nor does he have a clear perception of the inherent dangers of substances which are controlled. Based upon these conclusions, the Administrative Law Judge found that Respondent's registration with the Drug Enforcement Administration would be inconsistent with the public interest. The Administrative Law Judge recommended that the Administrator deny Respondent's application for a DEA Certificate of Registration.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that there is a lawful basis for the denial of Respondent's application for a DEA Certificate of Registration, and that such registration would be inconsistent with the public interest. Respondent's felony conviction relating to the prescribing of controlled substances, his failure to appreciate the severity of his prior conduct with respect to controlled substances, and his current lack of understanding regarding the proper handling of controlled substances demonstrate that Respondent's registration with DEA would be inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration submitted by Irving Davis, M.D., dated June 6, 1986, be, and it hereby is, denied. The Administrator further orders that any other outstanding applications for registration submitted by Respondent are also denied. This order is effective January 25, 1988.

John C. Lawn,

Administrator.

Dated: January 15, 1988.

[FR Doc. 88-1357 Filed 1-22-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program, Revision of Employment Security Manual, Part III, Sections 0800-0879, ETA-204, Experience Rating Report

The National Office recently has reviewed the ETA 204, Experience Rating Report, and made revisions reflective of current national and State needs and data uses. Changes include reconfiguration of data in Section B and the addition of data elements to Section C. Additional changes of a minor nature were made throughout the manual section. Accordingly, this manual

section is being reissued in its entirety and is published below.

Date: January 15, 1988.

Carolyn M. Golding,

Director, Unemployment Insurance Service.

Classification: UI
Correspondence Symbol: TEURA

Date: January 4, 1988.

Directive: Manual Transmittal Letter No. 1460

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator, for Regional Management

Subject: Employment Security Manual, Part III, Sections 0800–0879, ETA 204, Experience Rating Report

1. *Purpose.* To transmit revised reporting instructions for the ETA 204, Experience Rating Report.

2. *Background.* The National Office recently has reviewed the subject report and made revisions reflective of current national and State needs and data uses. changes include reconfiguration of data in Section B and the addition of date elements to Section C. Additional changes of a minor nature were made throughout the section. Accordingly, this manual section is being reissued in its entirety.

The new data elements required in Section C of the ETA 204 form provide the basis for determining an experience rating index (ERI); the index will allow for the evaluation of the extent to which benefits or benfit wages in States are effectively charged. Specifically, the ERI represents the percentage of benefits which are effectively charged to taxable employer accounts and is calculated as follows, using the revised ETA 204:

$$(1-((IEC+IAC+NNC)/BEN))*100$$

where,

IEC = Ineffective Charges: Section C, Column 8, Total All Subject Accounts

IAC = Inactive Charges: Section B, item 6(a)(2)

NNC = Noncharges: Section B, Item 6(b) plus item 7(b)

BEN = Benefits: Section B, item 5 minus item 7(a)

The ERI will be calculated by the National Office on an annual basis. The ERI will be published in the Handbook of Financial Data, an Unemployment Insurance Program Letter, the Quarterly Unemployment Insurance Compilation and Characteristics (QUICC), and any other publication deemed appropriate.

3. *Effective Date.* The changes are effective with the report for rate year 1988, due to the National Office the 30th day of the fifth month of such rate year.

4. *OMB Approval.* These reporting requirements have been approved by the Office of Management and Budget according to the Paperwork Reduction Act of 1980 under OMB No. 1205–0164, expiring September 30, 1990.

5. *Instructions for Manual Maintenance.*

Remove and Destroy:

0800–0850	R–11/82
0824–0830	R–03/83
0830–0860	R–11/82

Insert:

0800–0860	R–12/87
0861–0874	12/87

BILLING CODE 4510-30-M

EMPLOYMENT SECURITY MANUAL MTL 1460

Part III Reports and Analysis Contents
0800-0999 Experience Rating Report, ETA 204 R-12/87

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EMPLOYMENT SECURITY MANUAL MTL 1460

Part III Reports and Analysis 0800
0800-0999 Experience Rating Report, ETA 204 R-12/87

0800-0814 INTRODUCTION

0800 Form ETA 204, Experience Rating Report

A. Facsimile of page 1, Form ETA 204

Experience Rating Report

U.S. Department of Labor
Employment and Training Administration

State	Rate Year Ending Date	Computation Date	Type of Rating System	OMB No. 1205-0164 Expires 09/30/90

Section A. All Subject Accounts: Number and amounts of total and taxable payroll

	Number as of:	Amount of total payroll for 12 months ending:	Amount of taxable payroll for 12 months ending:
1. Taxable Accounts		$	$
a. Eligible			
b. Ineligible			
2. Reimbursable Accounts			
3. Subject Accounts with positive or zero balance (States using reserve ratio)			
a. Eligible			
b. Ineligible			
4. Subject Accounts with negative balance (States using reserve ratio)			
a. Eligible			
b. Ineligible			

Section B. Summary of Benefits Paid, Charged, and Noncharged

	Amount
5. Total Benefits (or Benefit Wages) Paid, during 12 months ending:	$
6. Taxable Employer Accounts	
a. Charged	
1. Active	
2. Inactive	
b. Noncharged	
7. Reimbursable Employer Accounts	
a. Charged	
b. Noncharged	

8. Comments

Signature Title Date

ETA 204
(Rev. 10/87)

EMPLOYMENT SECURITY MANUAL MTL 1460

Part III Reports and Analysis 0800(2)

0800-0999 Experience Rating Report, ETA 204 R-12/87

0800 Form ETA 204, Experience Rating Report--continued

B. Facsimile of page 2, Form ETA 204

State: _____ Rate Year Ending Date: _____ Schedule Used: _____
Taxable Wage Base, during 12 months ending on computation date (if changed during the period, so indicate): $_____
Taxable Wage Base, during rate year: $_____
Employee Contributions, 12 months ending with the computation date: $_____
If an add-on tax or surtax is included in the tax rate below, show the rate (_____) and indicate (by circling) if the tax is: Uniform / Variable / Credited to employer accounts / Non-credited to employer accounts. Comments: _____

SECTION C. ALL TAXABLE SUBJECT ACCOUNTS, SELECTED DATA BY EXPERIENCE FACTOR

EXPERIENCE FACTOR (1)	TAX RATE (2)	NO. OF ACCOUNTS (3)	TOTAL PAYROLL (000) (4)	TAXABLE PAYROLL (000) (5)	BENEFITS CHARGED (000) (6)	EST. CONTRIBUTIONS (000) (7)	INEFFECTIVE CHARGES (000) (8)
ELIGIBLE-REGULARLY RATED BY FACTOR							
(LIST RATES STARTING FROM LOWEST TO HIGHEST. USE AS MANY LINES AS NEEDED. SEE SECTIONS 0850-0859 FOR DETAILS.)							
SUBTOTAL							
ELIGIBLE-SPECIALLY TAXED BY FACTOR							
SUBTOTAL							
TOTAL ELIGIBLE							
TOTAL INELIGIBLE							
TOTAL ALL SUBJECT ACCOUNTS							

Experience Rating Report

U.S. Department of Labor
Employment and Training Administration

State | Rate Year Ending Date | Computation Date | Type of Rating System | OMB No. 1205-0164 Expires 09/30/90

Section A. All Subject Accounts: Number and amounts of total and taxable payroll

	Number as of:	Amount of total payroll for 12 months ending:	Amount of taxable payroll for 12 months ending:
1. Taxable Accounts		$	$
a. Eligible			
b. Ineligible			
2. Reimbursable Accounts			
3. Subject Accounts with positive or zero balance (States using reserve ratio)			
a. Eligible			
b. Ineligible			
4. Subject Accounts with positive or negative balance (States using reserve ratio)			
a. Eligible			
b. Ineligible			

Section B. Summary of Benefits Paid, Charged, and Noncharged

	Amount
5. Total Benefits (or Benefit Wages) Paid, during 12 months ending:	$
6. Taxable Employer Accounts	
a. Charged	
1. Active	
2. Inactive	
b. Noncharged	
7. Reimbursable Employer Accounts	
a. Charged	
b. Noncharged	

8. Comments

Signature | Title | Date

ETA 204
(Rev. 10/87)

0802 Purpose of the Report. The data submitted annually on the ETA 204 will enable the Employment and Training Administration (ETA) to project revenues for the Unemployment Insurance (UI) program on a State by State basis and to measure the variations in assigned contribution rates which result from different experience rating systems. When used in conjunction with data from the ES 202 report, "Employment, Wages, and Contributions", the ETA 204 data will assist in determining the effects of various factors (e.g., seasonality, stabilization, expansion, or contraction in employment and payroll, etc.) on the employment experience of various groups of employers.

Also to States and the National Office, the data will provide an early signal for potential solvency problems, be useful in analyzing factors which give rise to the potential problems, and permit an evaluation of the effectiveness of the various approaches available to correct the problems detected. Moreover, the data are required as a basis for estimating State average tax rates for the rate year. Finally, the data are the basis for determining an experience rating index; the index will allow for the evaluation of the extent to which benefits in States are effectively charged, noncharged, and ineffectively charged. Comparisons among States and in a single State over time will be possible.

Thus, the foregoing information is of value to ETA in analyzing statutory provisions regarding experience rating, in preparing recommendations or advising States on proposed legislation involving experience rating, and in responding to inquiries from State agencies, employer groups, unions and others. Further, the data are a vital part of a State's management information system and a tool for the administrator and legislators to assess the State experience rating system.

0804 Submittal of Data and Due Date

A. All States permitting rate variations based on experience rating (i.e., have experience rating systems in place) should submit a completed ETA 204 report. If experience rating is suspended for a given year, only page 1 of the report needs to be submitted (See section 0810).

0804 Submittal of Data and Due Date--continued

B. Computer printed output may be used in place of the supplied report form if the output is set up in the same format and data items are clearly labeled.

C. The ETA 204 report is due in the National Office of ETA on the 30th day of the fifth month of the rate year to which it relates.

D. The original of each report should be sent to the National Office of ETA, addressed to:

U.S. Department of Labor
Employment and Training Administration
Attn: TSVR, Room S-5306
200 Constitution Avenue, N.W.
Washington, D.C. 20210

A copy also should be sent to the appropriate Regional Office.

0806 Definitions. Following are definitions of terms as used for purposes of the ETA 204 report:

A. All subject accounts

1. The accounts referred to in the ETA 204 report should consist only of the accounts of those active employers (see H below) who were declared accountable or subject prior to either the beginning of the new rate year or the date designated by law as the computation date. Accounts of State or local governments, or their instrumentalities, or other units which make payments in lieu of contributions on a reimbursable basis should be included only in Sections A.2., B.5., and B.7. of the report. These reimbursable accounts should be excluded from all other entries. If selection of the accounts in terms of either of the above dates is not procedurally feasible, an alternate date may be chosen, as described in 2 below. Thus, all accounts for employers who were declared accountable or subject to the State law prior to the date chosen, and who were active in all

0806 Definitions--continued

or part of the 12-month period covered by the report and were charged or chargeable for benefits (or benefit wages) during that period, should be included. All subject accounts for active employers declared accountable or subject on or subsequent to the date chosen should be excluded.

2. If any date other than the effective date of the new rate year or the legal computation date is used as a basis for counting the active accounts for this report, or if the 12-month period used in counting benefit payments ends on a date other than the computation date, a notice to that effect should be forwarded to the ETA National Office (Attn: TSVR) for approval at least 30 days prior to the preparation of the report. A statement should be included as to why the effective date of the rate year or the legal computation date will not be used, and a justification should be given of the adequacy of the selected date.

B. Total payroll. Total payroll is the total amount of wages paid or payable (depending on the wording of the State law) to covered workers by employers subject to the provisions of the State unemployment insurance law for services performed during the 12 months ending with the computation date. Total wages includes both taxable wages, defined in C below, and the amount of wages which is in excess of the wages subject to the contribution provisions of the State law.

C. Taxable payroll. Taxable payroll is the part of total payroll defined in B above, which is subject to the contribution provisions of the State unemployment insurance law.

D. Eligible accounts. An account (see A above) is termed eligible if it has had a sufficient period of experience as of the computation date to qualify for an experience rating computation under State law. Accounts delinquent in paying contributions

0806 Definitions--continued

and accounts which have been suspended from coverage (but not inactivated) because of the temporary cessation of operations should be included in the "eligible" category. Examples would include accounts with sufficient experience which have been assigned a special rate, such as delinquent accounts to which the maximum rate has been assigned, or seasonal employers who qualify for special rates as well as accounts which qualify by reason of rates assigned as a result of formula computations under the regular experience rating provisions of a State law.

E. Ineligible accounts. An account (see A above) which does not meet the definition for eligible accounts in D above should be considered ineligible. Therefore, an ineligible account is one which has had an insufficient period of experience as of the computation date to qualify for an experience rating computation.

F. Benefits (or benefit wages) charged. The total amount of benefit payments (or benefit wages) charged to an employer account is termed "benefits (or benefit wages) charged".

G. Benefits (or benefit wages) not charged. The total amount of benefit payments (or benefit wages) not charged to the account of any employer is termed "benefits (or benefit wages) not charged".

H. Active employers. An active employer is an employing unit (single or multiple) which has been declared subject to the State unemployment insurance law and which has not been subsequently inactivated (see I below) or declared no longer subject as the result of a legal termination of coverage.

I. Inactive employers. An inactive employer is one for which contribution reports are no longer receivable because the employing unit has ceased business in the State. (Note that suspensions of coverage for seasonality are not inactivations.) If a State has no specific guideline as to when an

0806 Definitions--continued

employer is to be considered inactive, it may assume that suspension of operation for more than 12 months is sufficient to declare an employer inactive.

J. Amount of account balances. (Reserve ratio States only.) The balance shown on each employer's account, i.e., total contributions minus total benefit charges, is termed a positive balance if the figure is positive or zero and a negative balance if the figure is negative.

K. Tax rates. The rates under which the accounts are to be classified in section C should be the final assigned rates upon which contributions will be paid (including solvency and other rate adjustments, where applicable, but excluding employee contributions) after all adjustments, both individual and overall, have been made, and which (1) reflect the effect of employer voluntary contributions on such tax rates, and (2) are effective at the beginning of the rate year.

L. Regularly rated accounts. An eligible account is termed "regularly rated" in section C if the rate assigned to the account resulted from a formula computation (of an experience factor) under regular experience-rating provisions of the State law.

M. Specially taxed accounts. An eligible account is termed specially taxed in section C if the rate assigned to the account did not result directly from a formula computation under regular experience-rating provisions of the State law. Examples would be (1) an account which has shown a negative balance for a specified period of time and to which a special rate has been assigned, (2) an account of a seasonal employer which has been given a special rate provided by law or regulation, or (3) a State or local government entity taxed at a rate not resulting directly from experience. A brief citation of applicable law should appear on the face or the back of the table.

N. Computation Date. The date as of which employers' experience is measured for the purpose of

0806 Definitions--continued

determining tax rates.

O. Rate Year. The year for which the rates that were determined on the computation date apply. For example, a State that computes its experience rates as of June 30, 1987 (the computation date) to be applied beginning January 1, 1988, would show a 1988 rate year.

0810 Assignment of Standard Rate to All Employers. If a State agency does not, for any reason for any specific rate year, permit rate variations based on experience rating, a notice to that effect should be submitted to ETA. Page 1 of the ETA 204 report should be completed and submitted with the notice.

0814 General Reporting Instructions. At the top of page 1 of the report, enter the State name, rate year ending date, computation date, and type of experience rating system (reserve ratio, benefit ratio, benefit wage ratio, or payroll declines). At the top of page 2, enter the State name, rate year ending date, schedule used (if applicable), taxable wage base in effect during 12 months ending with the computation date (indicate if base changed during the 12 months), the taxable wage base in effect during the rate year, employee contributions (if any), and information on surtaxes.

The data required in sections A, B, and C should follow the format set forth in section 0800, but may be submitted on larger sheets if additional space is required. If more than one page for Section C is needed, each page should be identified as to State and rate year. The layout in section 0800 may be modified to meet the requirements of State ADP equipment. Any additional detail already programmed for State agency use may be included in these tabulations. If additional detail is already programmed for any of the items included in sections A and B, copies of tabulations containing this detail may also be submitted with the report on form ETA 204. Specific instructions are given in the following sections only to the extent necessary to supplement the titles of items, sections, and columns on the report.

0820-0824 SECTION A. ALL SUBJECT ACCOUNTS: NUMBER AND AMOUNTS OF TOTAL AND TAXABLE PAYROLL

0820 General Instructions. Entries in columns 1, 2, and 3 for items 1, 2, 3 and 4 and their subitems should be made in accordance with definitions in section 0806. Enter at the top of columns 1, 2, and 3, respectively, the date when subject accounts were counted for this report, the ending date of the 12-month period used in measuring total wages, and the ending date of the 12-month period used in measuring taxable wages. The latter two dates should be the same.

0821 Item 1. Taxable Accounts. Entries in item 1, columns 1-3, should relate to taxable subject accounts. (See section 0806 A 1.)

A. Item 1.a. Eligible accounts. Entries in this item should relate to those subject accounts included in item 1 which meet the definition of eligible accounts in section 0806 D.

B. Item 1.b. Ineligible accounts. Entries in this item should relate to those subject accounts included in item 1 which meet the definition of ineligible accounts in section 0806 E.

0822 Item 2. Reimbursable Accounts. Entries in item 2, columns 1-3 should relate to reimbursable subject accounts only as defined in section 0806 A 1.

0823 Item 3. Subject Accounts with Positive Balance. Entries in this item, applicable only to States using reserve ratio systems, should relate to accounts with positive (or zero) balance as defined in section 0806 J.

A. Item 3.a. Eligible accounts. Entries in this item should relate to those subject accounts included in item 3 which meet the definition of eligible accounts.

B. Item 3.b. Ineligible accounts. Entries in this item relate to those subject accounts included in item 3 which meet the definition of ineligible accounts.

0823 Item 3. Subject Accounts with Positive Balance --continued

The sum of the entries in items 3.a. and 3.b. should equal the entry in item 3.

0824 Item 4. Subject Accounts with Negative Balance. Entries in this item, applicable only to States using reserve ratio systems, should relate to accounts with negative balance as defined in section 0806 J.

A. Item 4.a. Eligible accounts. Entries in this item should relate to those subject accounts included in item 4 which meet the definition of eligible accounts.

B. Item 4.b. Ineligible accounts. Entries in this item should relate to those subject accounts included in item 4 which meet the definition of ineligible accounts.

The sum of the entries in items 4.a. and 4.b. should equal the entry in item 4.

The sum of the entries in items 3 and 4 should equal the entry in item 1, for States using reserve ratio system only.

0830-0832 SECTION B. SUMMARY OF BENEFITS (OR BENEFIT WAGES) PAID, CHARGED, AND NONCHARGED

0830 Item 5. Benefits (or Benefit Wages) Paid, During 12 Months Ending: on Computation Date. Enter the ending date (usually computation date) of the last 12-month period used in the formula to measure benefit charges, and the total amount paid (both charged and noncharged) during the period. Include any benefits paid which impact the State trust fund accounts, (e.g. benefits under regular State UI, the State portion of Extended Benefits, and the State's liability for combined wage claim (CWC) payments). Exclude benefits paid under any program other than the State unemployment insurance program (e.g., benefits paid to Puerto Rican sugar workers). Exclude CWC payments for which other States are liable. In States using the benefit wage ratio system of experience rating, total benefit wages should be entered instead of total benefits. This entry should include items 6 and 7.

0831 Item 6. Taxable Employer Accounts. Enter the amount of benefits (or benefit wages) included in item 5 which is attributable to taxable employer accounts.

A. Item 6.a. Charged. Enter the amount of benefits (or benefit wages) included in item 6 which were shown as a charge to any taxable employer's account. Exclude amounts which were charged during the 12-month period but removed before computing the experience rate.

1. Item 6.a.1. Active. Enter the amount of benefits (or benefit wages) included in item 6.a. which, as of the date shown in item 5, were charged to the account of an active employer. (See section 0806 H.)

2. Item 6.a.2. Inactive. Enter the amount of benefits (or benefit wages) included in item 6.a. which, as of the date shown in item 5, were charged to the account of an inactive employer (see section 0806 I); i.e., that part of item 6.a. which is not included in item 6.a.1.

B. Item 6.b. Noncharged. Enter the amount of benefits (or benefit wages) included in item 6 which is attributable to taxable employer accounts but is not charged to such accounts. Exclude CWC payments for which other States are liable.

0832 Item 7. Reimbursable Employer Accounts. Enter the amount of benefits (or benefit wages) included in item 5 which is attributable to reimbursable employer accounts.

A. Item 7.a. Charged. Enter the amount of benefits (or benefit wages) included in item 7 which, as of the date shown in item 5, is charged to reimbursable employer accounts. See section 0806 F.

B. Item 7.b. Noncharged. Enter the amount of benefits (or benefit wages) included in item 7 which, as of the date shown in item 5, is attributable to reimbursable employer accounts, but

0832 Item 7. Reimbursable Employer Accounts--continued

is noncharged, i.e., that part of item 7 which is not included in item 7.a. See section 0806 G.

0850 FACTORS AFFECTING DATA REPORTED

0850 Comments. Comments should be provided to explain any significant administrative, legal, or economic factors which may affect the data reported. If necessary, these comments may be continued on the reverse side of page 1 of the report or on a separate page.

A. Administrative factors affecting data reported on the tabulation. Describe any administrative factors such as rules and regulations which may affect the data reported in such a way that they will lack comparability with data submitted on prior reports or on current reports submitted by other State agencies. Also, note variations in the date of mailing contribution rate notices to employers. If a State agency has alternative rate schedules applicable under different conditions of the fund, it should describe the statutory provisions imposing the rate schedule in effect for the year covered by the report and indicate, if possible, how the effective rate schedule ranks in "favorableness" with alternative schedules provided by the law. If, for any specific rate year, no reduced rates are assigned, the reason for such action should be reported.

B. Legal factors affecting data reported on tabulations. Describe any legal factors such as new laws or amendments to the State unemployment insurance law which may affect the data reported in such a way that they will lack comparability with the data submitted on prior reports or on current reports submitted by other State agencies.

C. Economic factors affecting data reported on tabulations. Describe any economic factors, such as recession in key industries or major plant closings, which may affect the data reported.

0860-0867 SECTION C. ALL TAXABLE SUBJECT ACCOUNTS: SELECTED DATA

0860 Column 1. Experience Factor. Enter the experience factor or combination of experience factors (e.g., solvency factor or State experience factor, etc.) which determines the tax rate shown in column 2. List the experience factors such that the corresponding tax rates in column 2 start with the lowest rate first. If experience factor intervals and corresponding tax rates exceed 30 in number, two section C tabulations should be submitted. The first tabulation, to be labeled section C-1, should use the actual tax rate in column 2. The second tabulation, to be labeled section C-2, should use tax rate intervals of not less than 0.20 percent in column 2. Only the lower value of the range should be displayed. The upper value will be assumed from the lower value of the next range.

0861 Column 2. Tax Rate. Enter the employer tax rate (see section 0806 K) which corresponds with the experience factor shown in column 1, lowest rate first.

0862 Column 3. Number of Accounts. Self explanatory.

0863 Column 4. Total Payroll. See 0806 B.

0864 Column 5. Taxable Payroll. See 0806 C.

0865 Column 6. Benefits Charged (Adjusted Benefit Wages Charged). In reserve ratio and benefit ratio States, for each rate group including the ineligible accounts, enter actual benefits charged during the 12 months ending with the computation date. Since benefits charged by rate group are not available in benefit wage ratio States, a proxy for benefits charged should be developed as follows: for each rate group including ineligible accounts, the proxy for benefits charged should equal total benefit outlays attributable to active taxable employer accounts times the ratio of benefit wages charged for the group to total benefit wages charged. In States using payroll decline formulas, columns 6 through 8 should be blank.

0866 Column 7. Estimated Contributions. Estimated contributions due for each rate group, including ineligible accounts, should equal column 2 times column 5. This column and ineffective charges in column 8 will be adjusted by the National Office if the taxable wage base for the 12 months ending on the computation date differs from the taxable wage base for the 12 months ending for the rate year. Also, this column total and the ineffective charges total will be adjusted at a later date based on actual contributions due shown in the ES 202 report for the relevant period.

0867 Column 8. Ineffective Charges. For each rate group including ineligible accounts, ineffective charges should equal column 6 minus column 7. If the remainder is zero or less, enter zero.

0870-0874 CHECKING THE REPORT

0870 General Check

A. The State name, rate year ending date, and other required data should be entered in the appropriate spaces at the top of both pages of the report form.

B. The name and title of the State agency head or his/her designated representative should be typed in the appropriate spaces at the bottom of page 1 of the report, and the signature should be placed immediately above the typed name. Only the original need bear a handwritten signature.

0871 Section A

A. A date should be entered in the heading of each of columns 1, 2, and 3.

B. The entry in item 1 for each of columns 1, 2, and 3 should equal the sum of the entries in items 1.a. and 1.b.

C. Dashes should be entered in each of columns 1, 2, and 3 for items 3 and 4 and each of the subitems in reports from States which do not use a reserve ratio system. There should be numerical entries in

0871 Section A--continued

each of these items and subitems in reports from States using a reserve ratio system. The entry in item 3 in each column should equal the sum of the entries in items 3.a. and 3.b. The entry in item 4 in each column should equal the sum of the entries in items 4.a. and 4.b.

D. Entries in column 2 should be greater than or equal to entries for the corresponding items in column 3.

E. The sum of the entries in items 3 and 4 should equal the entry in item 1 (for States using reserve ratio systems only.)

0872 Section B

A. There should be a date as well as a dollar amount entered in item 5.

B. The sum of the entries in items 6 and 7 should equal the entry in item 5.

C. The sum of the entries in items 6.a. and 6.b. should equal the entry in item 6.

D. The sum of the entries in items 6.a.1. and 6.a.2. should equal the entry in item 6.a.

E. The sum of the entries in items 7.a. and 7.b. should equal the entry in item 7.

0873 Comments. If necessary, explanatory comments may be continued on the reverse side of page 1 of the report or on a separate page.

0874 Section C

A. Data for columns 4 through 8 should be shown in thousands.

B. Subtotals and totals are not required for columns 1, 2, 6, and 7.

[FR Doc. 88-1328 Filed 1-22-88; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on these information collections must be submitted by February 24, 1988.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection and the revision of a currently approved collection. Each entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Visual Artists Fellowships Application Guidelines FY 1989 & 1990.

Frequency of Collection: One-time.

Respondents: Individuals.

Use: Guideline instructions and applications elicit relevant information from individual artists that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 5,300.

Estimated Hours for Respondents to Provide Information: 5,300.

Title: Visual Arts Grants to Organizations Application Guidelines FY 1989.

Frequency of Collection: One-time.

Respondents: Individuals, state or local governments and non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 470.

Estimated Hours for Respondents to Provide Information: 13,600.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88–1399 Filed 1–22–88; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATIN; The purpose of the meetings is to advise the Chairman of the National Endowment for the Humanities on the condition of the humanities in American life. In each meeting a group of scholars, publishers, librarians, and television and museum administrators will assemble to discuss the condition of the humanities in American life. The meetings will be held February 26, March 22, and April 26, 1988 from 9:00 a.m. to 3:00 p.m. The February meeting will be in Room 526.

The March and April meetings will be in Room M–14.

These meetings will be open to the public.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88–1374 Filed 1–22–88; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Issuance of Permit Under the Antarctic Conservation Act of 1978

January 15, 1988.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On December 9, 1987, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to the following individual on January 12, 1988: Werner Zehnder.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88–1369 Filed 1–22–88; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Denver, Colorado; Aircraft Accident

In connection with its investigation of the accident involving Continental Airlines, Inc./McDonnell Douglas DC–9–14, N626TX, at the Stapleton International Airport, on November 15, 1987, the National Transportation Safety Board will convene a public hearing at 9:30 a.m. (local time), on March 8, 1988, in the Golden Ballroom (Salons E, F, G, & H) at the Denver Marriott West, 1717 Denver West Marriott Boulevard, Golden, Colorado. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW.,

Washington, DC 20594, telephone (202) 382–6605.

Bea Hardesty,

Federal Register Liaison Officer.

January 19, 1988.

[FR Doc. 88–1377 Filed 1–22–88; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on February 9, 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:

Tuesday, February 9, 1988—1:00 p.m. until the conclusion of business

The Subcommittee will discuss the near-final draft of the Staff's proposed Implementation Plan for the Safety Goal Policy Statement.

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 cancelled 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 the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 7:30 a.m. and 4:15 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 advised of any changes in schedule, etc., which may have occurred.

Date: January 20, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–1425 Filed 1–22–88; 8:45 am]

BILLING CODE 7590-01-M

Standard Review Plan Revision

The Nuclear Regulatory Commission (NRC) is revising section B.1.a.(1) of Branch Technical Position ASB 3–1 in Standard Review Plan (SRP) 3.6.1. The revision is effective immediately. This action is estimated as a negligible value-impact revision made only for regulatory efficiency and to introduce more realistic technical requirements. The text of section B.1.a.(1) which was deleted is as follows:

Even though portions of the main steam and feedwater lines meet the break exclusion requirements of item B.1.6. (sic) of BTP MEB 3–1, they should be separated from essential equipment. In order for essential equipment to be properly separated, the essential equipment must be protected from the jet impingement and environmental effects of an assumed longitudinal break of the main steam and feedwater lines. Each assumed longitudinal break should have a cross sectional area of at least one square foot and should be postulated to occur at a location that has the greatest effect on essential equipment.

The deleted text erroneously wrote B.1.6 instead of B.1.b.

The new text of section B.1.a.(1) which is now effective is indicated below:

Even though portions of the main steam and feedwater lines meet the break exclusion requirements of item B.1.b. of BTP MEB 3–1, they should be separate from essential equipment. Designers are cautioned to avoid concentrating essential equipment in the break exclusion zone. Essential equipment must be protected from the environmental effects of an assumed nonmechanistic longitudinal break of the main steam and feedwater lines. Each assumed nonmechanistic longitudinal break should have a cross sectional area of at least one square foot and should be postulated to occur at a location that has the greatest effect on essential equipment.

The essential difference is that jet impingement effects associated with the arbitrary one square foot break are no longer postulated in the break exclusion zone of main steam and feedwater piping outside the containment. Evironmental qualification effects and pressurization effects for structural design resulting from the arbitrary one square foot break are retained in the revision; however, other postulated pipe rupture requirements may control environmental qualification and structural evaluation. The NRC will continue to enforce separation and isolation of essential equipment in the break exclusion zone as the preferred method of providing protection without, however, postulating jet impingement effects in the break exclusion zone.

The regulatory analysis prepared by Lawrence Livermore National Laboratory for this action is available for inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW., Washington, DC.

For additional information concerning this revision to SRP 3.6.1 telephone: John A. O'Brien, Office of Nuclear Regulatory Research, (301) 492–3928.

Dated at Rockville, Maryland, this 19th day of January 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88–1417 Filed 1–22–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–412]

Duquesne Light Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–73, issued to Duquesne Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the licensee), for operation of the Beaver Valley Power Station, Unit 2, located in Shippingport, Pennsylvania.

The proposed amendment would incorporate a temporary change to Technical Specification 3.3.3.2 to relax the required number of incore detector thimbles from 75% to 50% for the remainder of Cycle 1. In addition, for compensatory measures the peaking factor surveillance requirements would be revised to increase the uncertainty factors applied to the peaking factors when a flux map is performed with less

than 75% of the thimbles. These changes are similar to those approved for Beaver Valley Power Station Unit 1 (January 19, 1983), and a number of other plants.

The incore detection system is used for core power distribution measurements. These measurements are used to determine the peak linear heat generation rate, which helps establish operating limits such that safety analysis assumptions are satisfied. Sufficient coverage of detectors is needed such that the core power distribution is properly monitored. A factor is applied to the measurement to account for uncertainty. With the proposed changes, the core would still have sufficient coverage, and a larger (more stringent) uncertainty factor would be applied.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment 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.

This change is requested in order to provide flexibility in plant operation with significant data gathering capability to ensure operation within licensed limits. As such, this proposed change would not:

(1) Involve a significant increase in the probability of consequences of an accident previously evaluated—This change merely increases the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles. Therefore, the change cannot increase the probability or consequences of an accident, as the core will continue to be adequately monitored by existing fixed incore monitors.

(2) Create the possibility of a new or different kind of accident from any previously analyzed—This modification only increases the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles. Therefore, it does not create the possibility of a new or different kind of accident since it does not modify plant operation or components.

(3) Involve a significant reduction in a margin of safety—This modification of increasing the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles will add sufficient additional margin to the power distribution measurements such that this change does not impact the safety margins which currently exist. Thus, this change does not involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

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 24, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license 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 "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is 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 which 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 a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. 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 consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-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 amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

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 John F. Stolz: 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 Gerald Charnoff, Esq. of Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC, attorney for the licensee.

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 Atomic Safety and licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be 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 amendment dated January 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 20th day of January 1988.

For the Nuclear Regulatory Commission

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-1418 Filed 1-22-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Exemption

I.

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating Licenses No. DPR-77 and DPR-79 which authorize operation of the Sequoyah Nuclear Plant, Units 1 and 2, respectively. These licenses provide that, among other things, the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The Sequoyah facility consists of two pressurized water reactors located at the licensee's site in Hamilton County, Tennessee.

II.

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR Part 50 Appendix J. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment, and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for such tests. Specifically, Type C tests are intended to measure containment isolation valve leakage rates.

A. Residual Heat Removal System

Containment isolation for the Sequoyah Residual Heat Removal (RHR) System injection lines into the reactor coolant system (RCS) consists of primary and secondary check valves on the three primary branch lines inside containment, a remote manual motor-operated valve outside containment on each of the two cold leg discharge lines (valves 63-93 and 63-94), and a remote manual motor-operated valve inside containment on the hot leg discharge line (valve 63-172). During the cold leg injection and recirculation phases, valves 63-93 and 63-94 are normally open to provide cooling flow to the core. Valve 63-172 is normally open during the hot leg recirculation phase. Both the primary and secondary check valves inside containment are leak tested with water as pressure isolation valves to a requirement of less than or equal to 1 gpm at a nominal RCS pressure of 2235 psig. The piping outside containment meets the requirements for a closed system outside containment as presented in section 6.2.4 of the Sequoyah Final Safety Analysis Report. Testing to verify integrity of this piping includes annual inspections in accordance with NUREG-0737 position III.D.1.1, in-service pressure testing in accordance with ASME Section XI, and quarterly ASME Section XI pump tests.

Remote manual motor-operated valves 63-93, 63-94, and 63-172 in the RHR System cannot be Type C tested according to the requirements set forth in 10 CFR Part 50, Appendix J, in their present configuration. The RHR injection lines must be available to provide water to the core post-accident to prevent fuel damage. The addition of in-line block valves to permit leak rate testing in accordance with 10 CFR Part 50, Appendix J, would reduce the reliability of these lines to perform their primary safety function following a LOCA. The staff concludes that the combination of leak tested primary and secondary check valves inside containment, a safety grade closed system into which leakage, if any, would flow, and inspection and testing to verify system integrity, provide an adequate basis to assure that the isolation valves in the RHR line will not be a source of leakage of containment atmosphere in the event of an accident, even though the valves are not tested in accordance with 10 CFR 50 Appendix J.

B. Upper Head Injection System

The Upper Head Injection (UHI) System at Sequoyah is normally filled with water from the accumulator up to the primary check valves going into the reactor head. Remote manual valves 87-21, 87-22, 87-23, and 87-24 are open during normal operation. When the RCS pressure falls below approximately 1200 psig, the UHI System begins to discharge

into the reactor. When the accumulator reaches low level, valves 87–21, 87–22, 87–23, and 87–24 close. The remaining water level in the UHI water accumulator and the pressure acting upon this water head from the UHI gas accumulator act to provide a water seal on the outboard side of these valves. Any leakage of containment atmosphere through valves 87–21, 87–22, 87–23, or 87–24 into the UHI System volume would be contained by the closed, seismically qualified UHI system outside containment.

Valves 87–21, 87–22, 87–23, and 87–24 cannot be Type C tested according to the requirements set forth in 10 CFR Part 50, Appendix J, with the UHI System as currently configured. The licensee has requested an exemption from Appendix J Type C testing requirements. The staff concludes that the combination of a water seal resulting from the accumulator head and accumulator gas pressure, a safety grade closed system into which leakage, if any, would flow, and inspection and testing to verify system integrity, provide an adequate basis to assure that the isolation valves in the accumulator line will not be a source of leakage of containment atmosphere in the event of an accident, even though the valves are not tested in accordance with 10 CFR Part 50 Appendix J.

The licensee has also requested an exemption from the Type C testing requirements of Appendix J for the UHI line to the floor drain collector tank (containment isolation valves 87–10 and 87–11). TVA proposes to perform a Type C leak rate test of these two valves with the pressure applied in the opposite direction of the containment pressure that would be experienced as a result of a postulated event that would actuate the UHI System. The licensee stated that an exemption was warranted on the basis that its proposed test was equivalent to the Type C test and that further modification of the design was not cost effective.

The staff has reviewed the Appendix J exemption request for the floor drain collector tank line and concludes it is justified on the grounds that the potential leakage across the valves is greater in the reverse direction than in the accident pressure direction, and thus this provides an acceptable test for the valves. Therefore, the staff concludes that the exemption should be granted.

C. Pressure Relief Piping

Pressure relief is provided for the Safety Injection (SI) System, Chemical and Volume Control System (CVCS), and the Containment Spray System by means of vent lines running to a common line outside containment. The common line then passes through containment penetration X–24 and exhausts into the pressurizer relief tank inside containment. Containment isolation is accomplished by a single check valve in the common line inside containment, and by the pressure relief value in each individual vent line. A water seal is provided on the check valve in the common line inside containment. Any throughline leakage that may occur through the pressure relief valves would be contained within a closed, seismically qualified system outside containment. In addition, the containment pressure would tend to further ensure that the check valve and pressure relief valves set tightly. The licensee has requested an exemption from the requirement to perform Type C leak rate testing on the common check valve and all nine relief valves associated with penetration X–24.

Type C leak rate testing presently cannot be performed for the valves in the line associated with penetration X–24 because there are no manual or remote-manual block valves in the line that would allow such testing of those relief valves. Furthermore, ASME section III, Class 2, NC–2677.3, states that there shall be no intervening stop valves between pressure relief valves and their relief points to ensure those lines cannot be inadvertently isolated.

The licensee has requested an exemption from the Appendix J Type C testing requirements for the common check valve and the nine relief valves associated with containment penetration X–24 on the basis that installation of block valves in the line that would allow such testing conflicts with the requirements of ASME Section III, Class 2, NC–3677.3. The staff has reviewed the licensee's request and concludes that an exemption from the Appendix J Type C testing requirements for the pressure relief lines in the SI, CVCS, and Containment Spray Systems is justified on the basis that the isolation capability of the pressure relief line closed system with a water seal is a superior means of isolation and that modifications to permit testing may adversely affect system reliability.

III.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission has determined that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are presently justifiying the exemption from Appendix J Type C testing for the RHR and UHI Systems—namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule which is to assure the valves and other penetrations of containment would not be a source of leakage of containment atmosphere into the environment in the event of an accident. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(i) are present justifying the exemption from Appendix J Type C testing requirements for the pressure relief piping in the SI, CVCS, and Containment Spray Systems—namely, that application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission. Specifically, application of the Appendix J Type C testing requirements conflicts with the requirements of ASME Code Section III, Class 2, NC–3677.3.

The Commission hereby grants an exemption from the requirements of 10 CFR Part 50 Appendix J to the licensee for operation of the Sequoyah Nuclear Plant, Units 1 and 2, in that the RHR, UHI, and the pressure relief piping for the SI, CVCS and Containment Spray Systems can be acceptably isolated using the present configuration, as described in Section II above, in the event of a Design Basis Accident.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will be no significant impact on the environment (52 FR 9224, March 23, 1987).

For further details with respect to this action, see the request for exemption dated December 31, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H. Street NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland, this 15th day of January 1988.

For the Nuclear Regulatory Commission.

Stewart D. Ebneter,

Director, Office of Special Projects

[FR Doc. 88.1419 Filed 1–22–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16224; File No. 812-6867]

Boettcher Venture Capital Partners II, L.P., et al.; Application

January 13, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("1940 Act" or the "Act").

Applicants: Boettcher Venture Capital Partners II, L.P. ("Partnership"), Boettcher Venture Management, L.P. ("Managing General Partner") and Boettcher & Company, Inc. ("Management Company").

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners of the Partnership are not "interested persons" of the Partnership, the Managing General Partner or the Management Company solely by reason of their status as general partners of the Partnership or independent general partners of Boettcher Venture Capital Partners I, L.P. ("BVCP I"); (ii) service as an Independent General Partner of the Partnership will not cause an independent general partner of BVCP I to be an "interested person" of BVCP I; and (iii) persons who become limited partners (the "Limited Partners") of the Partnership who own less than 5% of the units of limited partnership interest (the "Units") will not be "affiliated persons" of the Partnership or its other partners solely by reason of their status as Limited Partners.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 2(a)(19) and 2(a)(3)(D).

Filing Date: The application was filed on September 10, 1987, and amended on December 4, 1987, and December 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the reqauest, and the issues you 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, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, 828 Seventeenth Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Regina N. Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Special Counsel, (202 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a recently formed business development company organized as a Delaware limited partnership on September 9, 1987, pursuant to a Certificate of Limited Partnership dated September 8, 1987; the Partnership has elected to be a business development company and therefore will be subject to sections 55 through 65 of the Act and to those sections of the Act made applicable to business development companies by section 59 thereof. The investment objective of the Partnership is to seek capital appreciation by making venture capital investments. The Partnership is to terminate in ten years (unless extended for up to four additional one-year terms in order to permit an orderly liquidation) and thus will be an investment vehicle of limited duration which will have definite stages of development.

2. The Partnership filed a registration statement under the Securities Act of 1933 on Form N-2 (File No. 33-16889) with respect to a public offering of up to 20,000 Units at a price of $1,000 per unit. The registration statement includes a copy of the proposed Agreement of Limited Partnership ("Partnership Agreement"). Over a period of several years Applicants anticipate making 15 to 25 venture capital investments ("Portfolio Securities") with the proceeds of the offering, each of which investment will be liquidated once it reaches a state of maturity, which typically will be four to eight years from the date of investment. Proceeds from the sale of Portfolio Securities generally will not be reinvested except in limited circumstances, but will be distributed to the partners.

3. The Managing General Partner, a Delaware limited partnership, will be responsible for the venture capital investments which are made by the Partnership, but its actions will be subject to the supervision of the Individual General Partners. Pursuant to a management agreement with the Partnership, the Management Company, a Delaware corporation which is the general partner of the Managing General Partner, will perform the management and administrative services necessary for the operation of the Partnership in accordance with the terms of the Partnership Agreement. Both the Managing General Partner and the Management Company will be registered as investment advisers under the Investment Advisers Act of 1940. The Management Company is also a registered broker-dealer and will serve as the dealer manager for the offering under a "best efforts" selling agreement.

4. The General Partners of the Partnership will consist of from four to nine Individual General Partners and the Managing General Partner. Only natural persons may serve as Individual General Partners. Of the four persons who will become Individual General Partners prior to the public offering of the Units, three will be Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of the Act), and one Individual General Partner will be an individual who is affiliated with the Managing General Partner and the Management Company. The Partnership Agreement provides that if at any time the number of Independent General Partners is reduced to less than a majority of the General Partners, the remaining Individual General Partners, within 90 days, shall designate one or more successor Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners.

5. The Partnership Agreement provides that the General Partners are elected at the annual meeting of the Limited Partners and serve for annual terms. It also provides that an Individual General Partner may be removed (i) for cause by the action of two-thirds of the remaining Individual General Partners; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of Limited Partners holding a majority of the Units then outstanding. The Managing General Partner may be removed (i) for cause by a majority of the Independent General Partners, which removal shall be confirmed within 60 days thereafter by Limited Partners holding a majority of the Units outstanding; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of Limited Partners holding a majority of the Units outstanding.

6. The Managing General Partner may withdraw from the Partnership only upon 60 days prior notice, which notice must name a successor Managing General Partner. The successor Managing General Partner must certify that (i) it has sufficient experience in the performance of such activities; (ii) it has sufficient net worth such that the Partnership will not fail to be classified as a partnership for federal income tax purposes; and (iii) it is willing to serve as Managing General Partner on the terms provided in the Partnership Agreement. Finally, Limited Partners holding a majority of the outstanding Units must have consented to the appointment of the successor Managing General Partner.

7. The Partnership will be managed solely by the Individual General Partners, except that the Managing General Partner, subject to the guidance and supervision of the Individual General Partners, is responsible for the management of the Partnership's venture capital investments and the admission of additional, assignee or substitute Limited Partners to the Partnership. The General Partners will otherwise act by majority vote of the Individual General Partners. The Individual General Partners will perform the same functions as directors of a corporation and the Independent General Partners will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on the non-interested directors of a "business development company."

8. The Limited Partners have no right to control the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and the giving of consents and approvals as provided by the Partnership Agreement and as required by the Act. It is the opinion of counsel for the Partnership, which is relying upon an opinion of Delaware counsel, that the existence or exercise of these voting rights does not subject the Limited Partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act. In addition, the Partnership Agreement obligates the General Partners to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. The Partnership does not presently have an errors and omissions insurance policy; however, the General Partners intend to periodically review the question of the appropriations of obtaining an errors and omissions insurance policy for the Partnership.

Applicants' Legal Conclusion

1. By virtue of their status as partners of the Partnership, the Independent General Partners could be deemed to be "affiliated persons" of the Partnership within the meaning of section 2(a)(3) of the Act and, consequently, "interested persons" of the Partnership. The Independent General Partners could also be construed to be "interested persons" of an investment adviser and principal underwriter to the Partnership by virtue of their status as "co-partners" (and, consequently, "affiliated persons") with the Managing General Partner in the Partnership. The Managing General Partner could be construed to be an investment adviser of the Partnership. Furthermore, the Managing General Partner is under "common control" with the Management Company, an investment adviser to the Partnership and the principal underwriter with respect to the sale of the Partnership's Units, which makes the Managing General Partner an "affiliated person" of the Management Company. Each person who becomes a Limited Partner will be a partner of the Partnership and of each other Limited Partner, as well as of each Individual General Partner and the Managing General Partner. Therefore, each Limited Partner could be deemed to be an "affiliated person" of the Partnership as well as of each other Limited and General Partner merely by having purchased a Unit and become a Limited Partner.

2. Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of the Partnership, the Managing General Partner or the Management Company solely because such Independent General Partners are general partners of the Partnership and "co-partners" with the Managing General Partner in the Partnership. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Section 2(a)(19) of the Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company.

3. Certain of the Independent General Partners may be deemed to be "interested persons" of the Partnership by virtue of their service as independent general partners of BVCP I, insofar as BVCP I might be considered to be under common control with the Partnership and thus, be deemed an "affiliated person" of the Partnership. BVCP I is a business development company organized in 1984. Its managing general partner is the Management Company (which is also the general partner of the Managing General Partner of the Partnership). *See In The Matter of Boettcher Venture Capital Partners, L.P., et al.*, Investment Company Act Release No. 13774 (February 15, 1984) (order determining that such individual general partners are not "interested persons" of BVCP I). Applicants believe that service as an independent general partner of both the Partnership and BVCP I, a relationship similar to one in which an individual serves as a director of multiple investment companies in same complex, will be beneficial to the Partnership. Thus, applicants further request that the Independent General Partners be exempted from the provisions of section 2(a)(19) to the extent that they would otherwise be deemed to be "interested persons" of the Partnership solely by virtue of their service as independent general partners of BVCP I. Moreover, since BVCP I might be considered an "affiliated person" of the Partnership, applicants also request that an independent general partner of BVCP I not be deemed an "interested person" of BVCP I solely by virtue of serving as an Independent General Partner of the Partnership.

4. Applicants request further that under section 2(a)(3)(D) of the Act any Limited Partner owning less than 5% of the Units not be deemed as "affiliated person" of the Partnership, any other Limited Partner, any of the Individual General Partners, the Managing General Partner or the Management Company solely because such Limited Partner is a partner of the Partnership or a partner with any of such other persons in the Partnership. Since such Limited Partners have no exclusion under the Act comparable to that provided under section 2(a)(3) to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

5. Applicants submit that it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from the provisions of sections 2(a)(19) and 2(a)(3)(D).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1406 Filed 1-22-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0349]

Camden Investments, Inc.; License Surrender

Notice is hereby given that Camden Investments, Inc., 9560 Wilshire Blvd., Los Angeles, California 90212, has surrendered its license to operate as a small business investment company under section 301(c) the Small Business Investment Act of 1958, as amended (the Act). Camden Investments, Inc. was licensed by the Small Business Administration on November 8, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 23, 1987, and accordingly, all rights, privileges, and franchises derived 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 19, 1988.

[FR Doc. 88-1424 Filed 1-22-88; 8:45 am]

BILLING CODE 8025-01-M

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Monday, March 7, 1988, from 8:30 a.m. to 11:30 a.m. in the Administrator's Conference Room on the tenth floor, at the Small Business Administration, 1441 L Street, NW., Washington, DC 20416. From 1:00 p.m. to 5:00 p.m., the meeting will be held in the Terrace Ballroom of the Park Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005. On March 8th, from 8:30 a.m. to 5:00 p.m., the meeting will move back to the Administrator's Conference Room.

The purpose of the meetings is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 20, 1988.

[FR Doc. 88-1423 Filed 1-22-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 15, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45390

Date Filed: January 12, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 9, 1988.

Description: Application of Alaska Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity, to operate scheduled service between Nome, Alaska and Provideniya, Siberia, U.S.S.R.

Docket No. 45391

Date Filed: January 12, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 9, 1988.

Description: Application of Sun Country Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity for permanent authority to engage in foreign charter air transportation of persons, property and mail on a permissive basis: Between a point or points in the United States and a point or points in Central America and South America.

Docket No. 45292

Date Filed: January 14, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 11, 1988.

Description: Amendment to the Application of Zambia Airways Corporation, Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations for foreign air carrier permit to substitute Banjul, The Gambia, for Abidjan, Ivory Coast, as an intermediate point.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88-1372 Files 1-22-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[FRA General Docket No. H-86-1]

Wheel Test Program

In accordance with 49 CFR 211.51, notice is hereby given that the Federal Railroad Administration (FRA) proposes to conduct a limited in-service wheel test program, which would require a temporary waiver of compliance with certain provisions of the Freight Car Safety Standards (49 CFR Part 215). The regulatory provision involved is the portion of the defective wheel rule, § 215.103(h), which prohibits a freight car from being placed in service or continued in service if a wheel on the car shows signs of being overheated as evidenced by discoloration on the wheel rim faces extending more than 4 inches into the plate region.

The current discoloration provision does not differentiate between wheels of curved plate and straight plate design. Curved plate wheel designs have been developed and introduced over the past several years in an effort to reduce the maximum wheel stress levels associated with thermal and mechanical loads below those identified with older straight plate wheel designs. In the recent past, the Association of American Railroads (AAR), along with individual railroads, has sought elimination of the discoloration criterion with respect to curved plate wheels or, alternatively, a waiver of the criterion to permit field testing of wheels with curved plates. The specifics of these earlier requests were described in the **Federal Register** (49 FR 25645, 48952 and 50 FR 9146, 9753, 13381, 19838) and were the subject of both written comments and public hearings.

Results from a recently completed FRA/AAR Wheel Safety Research Program indicate that certain curved

plate wheel designs, namely those which have been rim heat treated, have better fatigue and crack resistant characteristics than do untreated designs or straight plate designs with either heat treated or untreated rims. Both saw cutting and drag braking research results strongly suggest that heat treated curved plate wheels are the most resistant to thermal and mechanical damage and, therefore, more resistant to failure. To better quantify the relative performance of heat treated curved plate wheel designs and assess the effectiveness of the current discoloration rule under actual revenue conditions, FRA proposes to sanction a carefully controlled in-service test program, which incorporates the measures and controls needed to produce scientifically valid results, while ensuring safe operations during the testing period. The purpose of the field testing is to determine the correlation, if any, between wheel discoloration and thermal damage in heat treated curved plate wheels. This will be accomplished by determining whether the rate of thermal crack development is greater for discolored wheels than non-discolored wheels.

A summary of test plans proposed by the AAR is set forth as Appendix 1 to this notice. FRA is prepared to approve the AAR proposal, but will impose as a condition to the granting of the temporary waiver a requirement that each participating railroad adhere to the guidelines and conditions contained in Appendix 2 to this notice. Failure to adhere to this provision would serve as the basis for termination of the test program on any particular railroad.

FRA is seeking the comments of all interested parties on the test program and waiver request prior to taking final action. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling any additional hearings for oral comment.

All written communications concerning this petition should reference "FRA General Docket No. H86–1" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by March 3, 1988, will be considered before final action is taken in this proceeding. All comments received will be available for examination during regular working hours in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC, on January 19, 1988.

John H. Riley,

Administrator.

Appendix 1—Summary of Test Plans Proposed by the AAR

- The ARR has proposed that qualified freight cars fully equipped with heat treated curved plate wheels be allowed to continue to operate in the interchange service after one or more wheels have discolored beyond the 4-inch rule limit.
- A staggered start up has been proposed beginning with an initial sample of approximately 30,000 cars fully equipped with heat treated curved plate wheels. A portion of the initial car sample shall be used as a pilot to test the validity of the wheel inspection and data collection procedures. The overall start-up period is estimated to be about 6 months. Additional candidate test cars will be added continually after the completion of this period.
- A test program is being planned for up to 5 years with in-depth reviews after each 12-month period.
- A minimum test sample of 60,000 curved plate heat treated wheels, discolored 4 inches or more, is planned. Each member road of the AAR and Trailer Train Corporation (to allow the inclusion of high mileage TOFC/COFC flatcars) will be offered participation in the test in proportion to their ownership of the fleet. All roads choosing to participate must agree to abide by all the rules and requirements of the test.
- Each participating road will be required to designate at least one location where test cars passing through will receive attention to detect thermal cracks in wheels.
- All railroads will be alerted to ensure intensified efforts to find thermal cracks on any wheel.
- Each candidate test car will be clearly stenciled on both sides as follows:

"AAR TESTS"

"HEAT TREATED CURVED PLATE WHEELS ONLY"

- No cars will be stenciled that are tank cars, that have any straight plate wheels or untreated curved plate wheels, or that would create serious anomalies in sample representativeness of the national fleet.
- For the duration of the waiver, the replacement of a heat treated curved plate wheel with any other type wheel will not be permitted. This change will be included in the AAR Interchange Rules, making this an improper repair and thus not billable.
- A suitable "trigger mechanism" based on the percent difference of proportions of thermally cracked wheels removed which are discolored and non-discolored will be monitored continually. If at any time during the test the percentage difference in the proportion of wheels removed due to thermal cracks exceeds established bounds, a careful examination is required to determine if there is a basis for the test to be safely continued.
- The participating roads will be required to submit the car/wheel set inventory initially to the AAR on magnetic tape. Subsequent wheel set removal reports will be submitted to the AAR within 5 days of removal. AAR shall submit a summary of this data to FRA on a monthly basis. Raw data received by AAR shall be kept available for review by FRA at all times.

Appendix 2—Wheel Test Program, FRA Imposed Guidelines and Conditions

- The test sample size shall include a minimum of 60,000 discolored curved plate heat treated wheels. The population car mix should be in reasonable proportion to the type and capacity of the total car population in the U.S. rail industry. The following information for all candidate test cars to be included in the program shall be furnished to the FRA prior to entering the test:

—Car number
—Type of car
—Capacity of car
—Type of brake shoe—composition or hi-phos cast iron
—Type of air valve—AB, ABD, ABDW
—Type of wheel—cast steel or wrought steel
—Size of wheel—36", 33", 30", 28" diameter
—MFG of wheel—ID number
—Wear—multi or two or single
—Installation of wheels-date and facility
—Class of wheel—A, B or C

- All test cars must fully equipped with heat treated curved plate wheels and shall operate throughout the test period with necessary tracking, control, and monitoring procedures.
- Test cars must be operated in representative service requiring moderate to heavy braking conditions in reasonable proportion to that experienced by the total fleet. In judging representative service, consideration should also include:

—Train consist—unit/designated, general
—Terrain
—Speed

—Annual mileage
—Climate—temperature, percipitation, etc.

• Adequate safety measures, inspections and controls, including an effective "trigger index for removal from service," must be established and maintained throughout the test period.

• Test cars must not be used to haul any commodity requiring placarding as a hazardous material.

• The test program shall be planned for up to a 5-year period of operation with progress evaluations every 12 months. FRA reserves the right to suspend the program at any time.

• Failure of any of the participating railroads to meet these general conditions throughout the test period shall be sufficient grounds for immediate termination of this waiver in whole or in part.

• Test cars shall be routed to avoid operation on NEC between Washington and New York to the extent possible or shall be operated during the hours of 11 p.m. to 6 a.m.

• The participating roads will be required to submit the car/wheel set inventory initially to the AAR on magnetic tape. Subsequent wheel set removal reports will be submitted to the AAR within 5 days of removal. AAR shall submit a summary fo this data to FRA on a monthly basis. Raw data received by AAR shall be kept available for review by FRA at all times.

[FR Doc. 88-1378 Filed 1-22-88; 8:45 am]
BILLING CODE 4910-06-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on Alternative Transit Improvements In the Austin, TX, Region

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This Notice announces that the Urban Mass Transportation Administration (UMTA) and the Capital Metropolitan Transportation Authority are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements in the Northwest/North Central corridor of the Austin, Texas metropolitan area. The EIS is being prepared in conformance with 40 CFR Parts 1500-1508, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969, as amended; and 49 CFR Part 622, as amended, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Herrera, Regional Engineer, UMTA Region VI, 819 Taylor Street, Suite 9A32, Fort Worth, Texas 76102; telephone (817) 334-3787.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Public scoping meetings will be held on February 9, 1988, at 12:00 noon in the Capital Metro Board Room, 1005 Congress Avenue, on the 10th floor, and February 10, 1988, at 7:00 p.m. at Burnet Junior High School cafeteria, 8401 Hathaway. The meetings will be held to help establish the purpose, scope, framework, and approach for the analysis. At the scoping meeting, a presentation will be made which will provide a description of the proposed scope of the study using maps and visual aids, as well as a plan for citizen involvement, a projected work schedule, and an estimated budget. Members of the public and interested Federal, State and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and the evaluation approach to be used to arrive at a decision. Comments may be made either orally at the meetings or in writing, to Celia Goldstucker, P.O. Box 1943, Austin, TX 78767, (512) 476-7400. Written Comments must be postmarked no later than February 26, 1988.

The Northwest/North Central Corridor is a major travel corridor which includes the Central Business District, the State Capitol Complex and the University of Texas (UT) campus as well as several major activity/employment centers. Major transportation facilities in the corridor include U.S. 183, portion of IH-35, MoPac Expressway, the Austin and Northwestern Railroad (AU&NW) right-of-way, Lamar Boulevard and Gaudalupe Street. The corridor boundaries are approximately Barton Springs Road on the south; MoPac and U.S. 183 on the west; RM 620/AU&NW on the north/northeast; and North Lamar Boulevard/IH-35/AU&NW on the east.

Alternatives

Transportation alternative proposed for consideration in the corridor are the following:

1. *The Null-Expanded All-Bus Alternative*—involves an expansion of the existing bus route network.

2. *The Null plus TSM Alternative*—includes all the improvements in the null alternative plus dedicated bus lanes on North Lamar and South Congress and transit improvements in CBD.

3. *Light Rail Transit (LRT)/Core-Braker*—construction and operation of light rail transit along Braker Lane, portions of the Austin & Northwestern Railroad right-of-way (AU&NW), North Lamar Boulevard to Guadalupe Street and Guadalupe to 28th Street. From Guadalupe and 28th Street, several alternative sub-alignments through the core area of Austin are suggested.

4. *Light Rail Transit/Core—RM 620*—construction and operation of the extension of the LRT/Core-Braker, north along U.S. 183 to RM 620 with the same UT and CBD sub-alignments.

5. *LRT/AU&NW Exclusive—Wells Branch*—LRT along the AU&NW from Wells Branch Parkway to Brazos/3rd Street; circling through the CBD, using Brazos Street to 10th Street to Colorado Street to 3rd Street.

6. *Busway/IH-35 Frontage—RM 620*—A busway that would follow U.S. 183 from RM 620 to the AU&NW right-of-way south to the IH-35 frontage road; it continues south along with IH-35 frontage to 11th street.

7. *Busway/North Lamar—RM 620*—a busway that would follow U.S. 183 from RM 620 to the AU&NW to North Lamar continuing south to Guadalupe. The busway would be along Guadalupe through the core area.

8. *Automated Guideway Transit (AGT)/Core-Braker*—AGT following the same alignment as Alternative 3, Light Rail Transit (LRT)/Core-Braker.

Comments on the alternative should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis are potential changes in the natural environment (air quality, noise, water quality, aesthetics), changes in the social environment (land use, development patterns, neighborhoods), impacts on parklands and historic sites, changes in transit service and patronage, associated changes in highway congestion, capital costs, operating and maintenance costs, and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) environmental laws and current CEQ and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comments on the probable effects should focus on the completeness of the proposed sets of impacts and the evaluation approach. Other impacts or criteria judged relevant to local decision-making should be identified.

Wilbur E. Hare,

Regional Administrator.

[FR Doc. 88-1414 Filed 1-22-88; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 19, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.

Form Number: ATF F 5630.5 Supplemental 1, ATF F 5630.5 Supplemental 2, ATF F 5630.5 Supplemental 3.

Type of Review: New Collection.

Title: Supplemental Special Tax Return and Registration.

Description: The Revenue Act of 1987, Pub. L. 100-203, amended 26 USC Chapters 51, 52 and 53 increasing tax rates for special occupational tax and requiring the collection of special tax from tobacco, distilled spirits, alcohol fuel plants, tax-free and experimental alcohol businesses that had been previously exempt from the tax. Supplemental 1 will be used to collect from delinquent taxpayers, Supplement 2 will bill current taxpayers for higher rates, Supplemental 3 is for new taxpayers.

Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small Businesses or organizations.

Estimated Burden: 302,500 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-1356 Filed 1-22-88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Survey of Disabled Veterans Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department sponsoring the survey, (2) survey title, (3) the agency form number, (4) a description of the need and its use, (5) frequency of survey, (6) who will be required or asked to respond, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to complete the survey, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the survey and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 18, 1988.

By direction of the Administrator:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

New Collection

1. Office of Information Management and Statistics.
2. Survey of VA Medial System Users.
3. VA Form SMSU-1.
4. This survey will assist VA in policy and planning decisions for VA medical facilities, programs, and services.
5. One time.
6. Individuals or households.
7. 3,000 responses.
8. 3,500 hours.
9. Not applicable.

[FR Doc. 88-1398 Filed 1-22-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 15
Monday, January 25, 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

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, January 19, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director C.C. Hope, Jr. (Appointive), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding reserves for losses.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: January 20, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-1452 Filed 1-21-88; 10:14 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, January 19, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters.

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Report of the Director, Office of Corporate Audits and Internal Investigations:
Trend Analysis Report Re:
Analysis of Regional/Consolidated Office Audit Results (Memo dated January 8, 1988)

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter 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 by authority of subsections (c)(2), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), and (c)(9)(A)(ii)).

Dated: January 20, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-1453 Filed 1-21-88; 10:14 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 25, 1988:

Open meetings will be held on Wednesday, January 27, 1988, at 2:00 p.m. and on Thursday, January 28, 1988, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Wednesday, January 27, 1988, at 2:00 p.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss various issues of securities regulation. The agenda will include topics such as revisions to the rules under section 16 of the Securities Exchange Act of 1934, revisions to Form S-8, tender offers, and one share-one vote. The participants will include representatives from the Society and its 2,100 member companies. For further information, please contact Brian J. Lane at (202) 272-2589.

The subject matter of the open meeting scheduled for Thursday, January 28, 1988, at 10:00 a.m., will be:

1. Consideration of whether to publish two releases relating to Regulation D, the limiting offering exemptions from the registration requirements of the Securities Act of 1933. The first release would in effect: (1) Revise the definition of "accredited investor"; (2) raise the dollar ceiling for offerings pursuant to Rule 504; (3) expand the availability of general solicitation in connection with Rule 504 offerings; and (4) make general technical amendments to the regulation as generally proposed by the Commission in January, 1987.

The second release would request public comment on additional proposals to Regulation D. The new proposals would: (1) Add "accredited investors" to the regulation; (2) delete certain conditions to the exemptions; and (3) institute a disqualifying provision for persons found to have violated the notification requirements of the regulation. For further information, please contact Karen O'Brien at (202) 272-2644.

2. Consideration of whether to issue a Memorandum Opinion and Order with regard to Sierra Pacific Resources ("Resources"), an exempt intrastate holding company under the Public Utility Holding Company Act of 1935, authorizing Resources to acquire a 14.5% common stock interest in a new company that will construct an electric generating unit to sell electric energy at wholesale. For further information, please contact Robert F. McCulloch at (202) 272-7699.

3. Consideration of whether to adopt new rules and amendments to rules and forms relating to advertising by investment companies. For further information please contact Robert E. Plaze at (202) 272-2107.

4. Consideration of whether to adopt amendments to Form N-1A, the registration form for open-end management investment companies, under the Investment Company Act of 1940 and the Securities Act of 1933 and publish related revisions to the staff guidelines for form N-1A. The amendments would (1) require mutual funds to consolidate all expense-related information in a table located near the front of the prospectus, and (2) expand the narrative disclosure requirements regarding Rule 12b-1 plans. For further information, please contact John McGuire at (202) 272-2107.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272-3085.

Jonathan G. Katz,

Secretary.

January 19, 1988.

[FR Doc. 88-1496 Filed 1-21-88; 1:26 pm]

BILLING CODE 8010-01-M

federal register

Monday
January 25, 1988

Part II

The President

Proclamation 5762—American Heart Month, 1988

Federal Register
Vol. 53, No. 15
Monday, January 25, 1988

Presidential Documents

Title 3—

The President

Proclamation 5762 of January 21, 1988

American Heart Month, 1988

By the President of the United States of America

A Proclamation

For more than half of this century, diseases of the heart and blood vessels, collectively called cardiovascular diseases, have been our Nation's most serious health problem. Last year, these diseases claimed 973,000 lives, and they caused serious and sometimes permanent illness or disability in still more Americans. Within this family of diseases, the leading killers remained coronary heart disease, which accounted for 524,000 deaths, and strokes, which accounted for 148,000 deaths.

Grim though these statistics may be, other statistics indicate that a corner may have been turned in 1965. Since then, mortality rates for all cardiovascular diseases, and especially for the two leading killers—coronary heart disease and stroke—have been moving steadily downward. For example, since 1972, mortality rates for all cardiovascular diseases combined have fallen by 34 percent, and those for coronary heart disease and stroke have declined by 35 percent and 50 percent respectively.

One major reason for the decline in cardiovascular mortality rates is that more and more Americans are modifying their habits in the direction of better cardiovascular health. Research has identified factors that increase vulnerability to premature coronary heart disease or stroke, and millions of Americans are acting on that knowledge to eliminate or ameliorate the risk factors that can be modified. These include high blood pressure, diabetes, obesity, and sedentary living. The National Heart, Lung, and Blood Institute, encouraged by the success of its National High Blood Pressure Education Program, has now launched similar programs against two other major risk factors: cigarette smoking and elevated blood cholesterol.

Today, the person stricken with a heart attack has a much better chance of surviving the acute episode, thanks to continued improvement in diagnosis and treatment. More and more of the stricken are reaching the hospital alive, thanks to better recognition of ominous symptoms, widespread teaching of cardiopulmonary resuscitation by the American Red Cross and the American Heart Association, and better-equipped emergency vehicles with better-trained crews.

Many individuals and organizations have contributed to the past four decades of progress against cardiovascular diseases. However, two organizations—the federally funded National Heart, Lung, and Blood Institute and the privately supported American Heart Association—have been in the forefront of this national effort. Since 1948, the two have worked in close cooperation to foster and support increased basic and clinical research in the cardiovascular field, to train new research scientists and clinicians, and to participate in a wide variety of community service and public and professional information activities. Through their efforts, Americans have become more aware of what they can do to live healthier lives.

Much has already been accomplished, but much more remains to be done. Recognizing the need for all Americans to take part in the continuing battle against heart disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested the President to issue annually a proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of February 1988 as American Heart Month. I invite all appropriate government officials and the American people to join with me in reaffirming our commitment to finding new or improved ways to prevent, detect, and control cardiovascular diseases.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-1559
Filed 1-22-88; 10:16 am]
Billing code 3195-01-M

Federal Register

Monday
January 25, 1988

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 442

Medicaid Program; Correction and Reduction Plans for Intermediate Care Facilities for the Mentally Retarded; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[HSQ-127-F]

Medicaid Program; Correction and Reduction Plans for Intermediate Care Facilities for the Mentally Retarded

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final regulations provide States options under which an intermediate care facility for the mentally retarded (ICF/MR) found to have substantial deficiencies only in physical plant and staffing (or physical plant, staffing, and other minor deficiencies) that do not pose an immediate threat to the clients' health and safety may remedy those deficiencies. The regulations provide the State Medicaid agency with options to submit written plans either to correct the necessary staff and physical plant deficiencies, and all other minor deficiencies, within 6 months of the approval date of the plan, or to reduce permanently the number of beds in certified units within 36 months of the approval date of the plan.

These regulations implement section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and section 4217 of the Omnibus Budget Reconciliation Act of 1987. The purpose of the correction plan provision is to promote correction of deficiencies without having to exclude ICFs/MR from the Medicaid program. The reduction plan provision is intended to move Medicaid clients out of deficient ICFs/MR into licensed or certified (as applicable) community settings while maintaining the clients' quality of life and retaining their Medicaid eligibility.

EFFECTIVE DATES: These final regulations are effective as of April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Pratt, (301) 594-0005.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1905(d) of the Social Security Act (the Act) permits Medicaid coverage for services provided by intermediate care facilities for the mentally retarded (ICFs/MR). The primary purpose of an ICF/MR is to provide health or rehabilitative services for mentally retarded individuals.

ICFs/MR participate in the Medicaid program under provider agreements with State Medicaid agencies. In order to enter into a provider agreement, an ICF/MR must first be certified by a State survey agency as complying with standards set forth in 42 CFR Part 442, Subpart G. Facilities are surveyed at least annually by State survey agencies to ascertain their continued compliance with these requirements. Section 1910(c) of the Act authorizes the Secretary to conduct validation (direct Federal) surveys to determine the correctness of Medicaid certification actions taken by the designated State survey agency. In addition, if the Secretary finds that an ICF/MR substantially fails to meet the requirements of participation in the Medicaid program, the Secretary may terminate the ICF/MR's participation in the Medicaid program.

Section 1910(c)(2) of the Act sets forth the appeals procedures available when we terminate a facility's participation in the program. Under that provision, ICFs/MR have a right to a full evidentiary hearing before the effective date of termination of the provider agreement unless the Secretary makes a written determination that the facility's deficiencies pose an immediate and serious threat to the recipients.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99-272, was enacted on April 7, 1986. Section 9516 of Pub. L. 99-272 amended title XIX of the Act by adding section 1919. Section 1919 of the Act provides States options under which ICFs/MR that are found by the Secretary to have substantial deficiencies only in physical plant and staffing that do not pose an immediate threat to clients' health and safety may remedy those deficiencies. The statute provides the State Medicaid agency with options to submit written plans to the Secretary either to make all necessary staff and physical plant corrections and correct all other minor deficiencies as well, within 6 months of the approval date of the plan, or to reduce permanently the number of beds in certified units within 36 months of the approval date of the plan.

If, at the conclusion of a 6-month plan of correction, the Secretary determines that the State has substantially failed to correct the cited deficiencies, the Secretary may terminate the cited ICF/MR's provider agreement in accordance with section 1910(c) of the Act. In the case of a reduction plan, if the Secretary determines, at the conclusion of the initial 6-month period or any 6-month interval thereafter, that the State has substantially failed to meet the requirements of the reduction plan, the Secretary may terminate the ICF/MR's provider agreement in accordance with section 1910(c) of the Act, or if the State has failed to meet the reduction plan requirements despite good faith efforts, disallow Federal financial participation (FFP) equal to five percent of the cost of care for all eligible individuals in the ICF/MR for each month for which the State fails to meet the reduction plan requirements.

In accordance with the provisions of section 1919 of the Act, we published a proposed rule on July 25, 1986 (51 FR 26718). Section III of the preamble to the proposed rule (51 FR 26719) provides a detailed explanation of the provisions of section 1919 of the Act.

On December 22, 1987, Congress enacted the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Section 4217(b) of Pub. L. 100-203 specifies that the regulations promulgated under section 1919 of Pub. L. 99-272 shall be effective as if promulgated on the date of enactment of Pub. L. 99-272 (that is, April 7, 1986).

II. Current Alternatives to Termination From Medicaid

As we stated in the proposed rule, current Medicaid regulations permit State survey agencies to provide an alternative to termination for ICFs/MR found to have deficiencies that do not pose immediate jeopardy to clients' health and safety. Sections 442.105 through 442.111 specify the conditions under which a facility found by a State survey agency to have deficiencies that do not jeopardize clients' health and safety may continue to be certified under Medicaid for a period of up to 12 months while the facility corrects the deficiencies.

In addition, we published a final rule on July 3, 1986 (51 FR 24484) that permits a Medicaid agency to deny payment for new admissions to an ICF/MR that no longer meets the standards for ICFs and ICFs/MR specified under 42 CFR Part 442, Subparts D through G, if the ICF/MR's deficiencies do not pose immediate jeopardy to clients' health and safety (§ 442.118(a)(1)). The Medicaid agency may deny payment for 11 months after the month the denial was imposed.

III. Provisions of the Proposed Regulations

In order to implement section 1919 of the Act, we proposed to amend the Medicaid regulations in 42 CFR Part 442. A complete discussion of the proposed changes is provided below:

A. Basis and Purpose (§ 442.1)

We proposed to add to § 442.1 the statutory authority for permitting State

Medicaid agencies to submit to us correction and reduction plans for deficient ICFs/MR. Although the statute refers generally to the State, we believe it is necessary to specify the agency that would be accountable for compliance with the statute and these regulations.

B. Terms (§ 442.2)

We proposed to add to the definition of "immediate jeopardy" in § 442.2, the term "immediate threat". We believe Congress did not intend any substantive differences between the two terms. We believe that we should apply the same meaning to both terms, so that we may avoid needless confusion in attempting to discern the qualitative difference between the two terms.

C. Correction and Reduction Plans: General Provisions (§ 442.114)

We proposed to add a new § 442.114 that would provide States additional options under which ICFs/MR that we find have substantial deficiencies only in physical plant and staffing that do not pose an immediate threat to clients' health and safety may remedy those deficiencies. Generally, such findings would result from validation surveys under section 1910(c) of the Act, but these findings could also result from direct Federal investigation of a complaint or other circumstances. We would provide the State Medicaid agency with options to submit to us, within specified time frames, written plans to either correct all necessary staff and physical plant deficiencies, and all other minor deficiencies, within 6 months of the approval date of the plan in accordance with new § 442.115, or reduce permanently the number of beds in certified untis within 36 months of the approval date of the plan in accordance with new § 442.116. While the statute and legislative history clearly provide these options for ICFs/MR with substantial deficiencies only in physical plant and staffing, we recognize that ICFs/MR with these deficiencies will likely have other deficiencies as well. As long as these other deficiencies are minor, the ICF/MR may still be eligible for a correction or reduction plan. We expect that if a correction plan is chosen, *all* physical plant and staffing as well as other remaining minor deficiencies will be corrected within 6 months. Similarly, if an ICF/MR chooses a reduction plan, all other minor deficiencies must be addressed as well.

On the other hand, facilities having substantial deficiencies in areas other than physical plant and staffing (for example, active treatment), will not be eligible for correction or reduction plans regardless of whether they also have physical plant and staffing deficiencies. We reach this conclusion because we believe that Congress made it clear that the focus of section 1919 of the Act is the correction of major physical plant or staffing deficiencies or, failing that, the elimination of those beds that are in the noncomplying part of the facility. As such, correction plans and reduction plans are designed to provide alternative solutions to those facilities that have only major physical plant and staffing deficiencies. Since the scope of reduction plans is unambiguously limited to physical plant and staffing deficiencies, we believe that correction plans are similarly limited.

Although the statute refers to States as having the option to elect correction and reduction plans offered by section 1919 of the Act, nothing in the statute prohibits ICFs/MR from requesting Medicaid agencies to make application on their behalf. A Medicaid agency may permit an ICF/MR to do so, but the agency retains the right to concur with the ICF/MR's preference or not, and to convey its election to us in accordance with § 442.114.

While section 1919 of the Act does not specify requirements to be followed if a Medicaid agency failed to submit either a correction or reduction plan, we believe that the statute does not implicitly repeal other remedies available to us. Section 1919 provides remedies that are in addition to, and do not supersede, existing authorities. Should the Medicaid agency elect not to submit either of these plans, we may cancel approval of the deficient ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act. Similarly, the Medicaid agency may prefer to terminate the facility's provider agreement on its own. Likewise, if we find, as a result of a follow-up visit, complaint investigation, or other activity, that conditions at an ICF/MR have deteriorated while operating under an approved plan, we may terminate the ICF/MR's participation in accordance with section 1910(c) of the Act. Also, if we find that conditions exist that pose an immediate threat to the clients' health and safety, we must terminate the ICF/MR's participation in accordance with section 1910(c) of the Act.

The provisions of new §§ 442.114 through 442.116 would apply only to correction and reduction plans that we approve within 3 years after the effective date of final regulations. Medicaid agencies would be able to continue implementation of permanent reduction plans approved during this 3-year period beyond the expiration date of our authority to approve such plans, provided that the agencies continue to comply with the terms and conditions of the approved plans. Our responsibility to monitor and enforce compliance by the agencies with the terms of the approved plans would not lapse with the expiration of our authority to approved new plan applications.

D. Correction Plans: Specific Requirements (§ 442.115)

1. Medicaid agency requirements (§ 442.115(a))

We proposed to require that if a Medicaid agency chooses to submit a plan of correction based on findings of substantial deficiencies only in physical plant and staffing, the plan must include—

- An explanation of the extent to which the ICF/MR currently complies with the standards for ICFs/MR in 42 CFR Part 442, Subpart G, including all other minor deficiencies identified during the direct Federal survey, and
- A timetable for completing the necessary steps to correct all staff and physical plant deficiencies, and all other minor deficiencies, within 6 months of the approval date of the plan. The statute provides no indication that a time period of greater than 6 months to correct deficiencies, other than staff and physical plant deficiencies, is intended. Thus, if a Medicaid agency would choose to submit a correction plan, we believe it would be reasonable to expect the deficient ICF/MR to correct all deficiencies within 6 months of the approval date of the plan.

2. HCFA Policies (§ 442.115(b))

Upon receipt of a correction plan, we would review the correction plan to ensure that the plan is feasible and would remedy all deficiencies timely. If we would question any aspect of the plan and the Medicaid agency's ability to fulfill the requirements of the plan, we would communicate with the agency to try to resolve our concerns. We would forward in writing to the agency our approval or disapproval of the plan within 30 days of receipt of the proposed plan.

3. Termination of ICF/MR (§ 442.115(c))

If the Medicaid agency submitted a correction plan that we found to be unacceptable, and after we unsuccessfully attempted to resolve our concerns with the agency, we would notify the agency of our disapproval and terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

If, at the conclusion of the 6-month period specified in an approved plan of correction, we determine that the agency has substantially failed to correct the deficiencies identified, we would terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act. We note that the Conference Report (H.R. Rep. No. 453, 99th Cong., 1st Sess. 554 (1985)) indicates that Congress expects the Secretary to act promptly to terminate an ICF/MR if the Medicaid agency fails to make the necessary corrections within the 6-month period.

E. Reduction Plans: Specific Requirements (§ 442.116)

1. Conditions of Approval: State Requirements (§ 442.116(a))

Before submitting a reduction plan based on findings of substantial deficiencies in physical plant and staffing, we would require a Medicaid agency to—

- Outline the reduction plan and the process for submitting the plan and receiving public comments in a public hearing held at the affected ICF/MR at least 35 days before submitting the reduction plan;
- Provide written notice of the hearing to staff, clients and their parents or guardians at least 10 days prior to the hearing date;
- Announce to advocacy and other interested groups and agencies, and the general community, through local media notices at least 10 days prior to the hearing date—
- The exact date, time and location of the hearing; and
- The locations (that is, the affected ICF/MR, the State mental retardation administration, State survey agency, State Development Disabilities Council, local protection and advocacy agencies and any other agencies that serve potentially interested parties (for example, State and local associations for retarded citizens)) where the proposed plan is displayed.
- Demonstrate that it has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for Medicaid; and
- Provide us with assurances that the reduction plan would be completed by fulfilling the content requirement of the reduction plan.

We interpret the statutory language of "reasonable notice" of the hearing as meaning written notice of the hearing to staff, clients and their parents or guardians; and local media notices (for example, local newspaper announcements) to advocacy and other interested groups and agencies, and the general community.

If, after the public hearing, an agency decides a reduction plan would not be appropriate, the agency could follow the requirements for submitting a correction plan provided the plan is submitted within 30 days of receipt of the list of deficiencies.

2. Submittal Date of Plan (§ 442.116(c))

On the day that the Medicaid agency submits a reduction plan, the agency would be required to announce through local media notices—

- That the plan has been submitted;
- That the plan is on display at the affected ICF/MR, the State mental retardation administration, State survey agency, State Development Disabilities Council, the local protection and advocacy agency and other agencies that serve potentially interested parties (for example, State and local associations for retarded citizens); and
- The address of the appropriate HCFA office for forwarding comments on the reduction plan and the closing date for receipt of those comments.

We proposed to require the agency to meet these public notice provisions because ICF/MR clients typically come from wide geographical areas, making broad notification necessary to ensure that all representatives of the clients are informed of the proposed impending changes. In addition, special interest groups and protection and advocacy agencies are not routinely informed of circumstances at an ICF/MR, yet have an important role in determining, as well as implementing, residential services and policies within the State.

3. Contents (§ 442.116(d))

We proposed to require a Medicaid agency to submit a reduction plan within 65 days of receipt of the list of deficiencies that meets the following content requirements.

- Use of an interdisciplinary team approach to identify the number of clients and their service needs on a client-by-client basis for home or community services, and establish a timetable for providing these services, in 6-month intervals, within the 36-month period beginning on the date that we approve the reduction plan.
- Describe the methods used to—
- Select clients for home or community services, and
- Develop alternative home and community services to effectively meet the clients' needs.
- Describe the safeguards that will be applied to protect the clients' health and welfare while receiving home or community services, including—
- Adequate standards for participation by clients, clients' families and providers; and
- Assurances that the community residences in which the affected clients are placed meet all applicable State and Federal licensure and certification requirements.
- Provide that clients who are eligible for Medicaid while in the ICF/MR, at their (or their legal guardians') option, are placed in another setting (or another part of the affected ICF/MR) that is in full compliance with Federal Medicaid requirements and allows them to retain their eligibility. If a client would have remained eligible for Medicaid regardless of what action the Medicaid agency took concerning the deficient ICF/MR, then the agency may not, at any time, place the client involuntarily in a setting where he or she loses entitlement to Medicaid. The client would be able to elect to be placed in a setting where he or she does not retain entitlement to Medicaid. If the client, or the client's guardian, voluntarily would choose to move to a setting (for example, back home with his or her family) that causes the client's countable income or resources to exceed the Medicaid agency's eligibility standards, then the client's Medicaid eligibility would be subject to termination under the same terms and procedures that apply to all Medicaid recipients.
- Specify the actions to protect the health and safety of the clients remaining in the ICF/MR while the reduction plan is in effect. An agency would be prohibited from using the reduction plan option to delay making needed facility improvements for an additional 3 years.
- Provide that the staff-to-client ratio at the ICF/MR will be the higher of—
- The ratio described in the standards for ICFs and ICF/MR (§ 442.445); or
- The ratio which was in effect at the time the direct Federal survey was conducted.
- Provide for the protection of the staff affected by the reduction plan, including—
- Arrangements to preserve staff rights and benefits;
- Training and retraining of staff where necessary;
- Redeploying staff to community settings under the reduction plan; and
- Making maximum efforts to secure employment (without necessarily guaranteeing the employment of any staff).

In the proposed rule, we stated that we would review carefully the experience of the mentally retarded and developmentally disabled under the State's overall community services program, including the Medicaid agency's relevant home and community based services waivers, if any. The alternative home and community based services need not be funded under a Medicaid home and community based services waiver program. However, should a Medicaid agency wish to utilize the waiver program to fund these services, all provisions of the statute and regulations applicable to that program must be met and we must approve the proposal prior to granting Medicaid waiver funding.

4. HCFA Policies (§ 442.116(e))

We proposed to consider reduction plans submitted on a first come, first served basis. Medicaid agencies would submit reduction plans within 65 days of receipt of the list of deficiencies that would be identified through a direct Federal survey. We would provide the public at least 30 days after the Medicaid agency submits a reduction plan to comment on the proposed plan. We would review the proposed plan to assure that the plan is well conceived; that it has had the benefit of client and family, staff and public input; and that the quality of life for both the clients remaining in the ICF/MR and those receiving community placements is adequately protected. If we would question any aspect of the plan and the agency's ability to fulfill the requirements of the plan, we would communicate with the agency to try to resolve our concerns. After we have carefully considered all public comments received by the close of the comment period, we would respond in writing to the agency within 60 days of receipt of the plan. We would also take care to assure that approved reduction plans do not lead to the "dumping" of affected clients into substandard settings.

While the statute allows a Medicaid agency a maximum of 36 months to reduce the number of beds in certified units, we believe that there could be situations in which it would be appropriate to limit the amount of time to implement a reduction plan. For example, a facility with 200 beds seeking to eliminate 50 beds would probably not need a full 36 months to implement its reduction plan. Under our authority to approve a plan, we believe we may limit the time provisions proposed in a plan, as a condition of approval, to avoid situations in which Medicaid agencies attempt to use the maximum allowable time period to delay making the necessary improvements in a timely manner. We would negotiate timeframes on a case-by-case basis.

In accordance with section 1919(d)(2) of the Act, if we would approve more than 15 reduction plans in any fiscal year, any reduction plans approved after the first 15 approved plans, could be only for an ICF/MR (or distinct part thereof) for which the costs of correcting the substantial deficiencies are $2 million or greater (as would be demonstrated by the agency to our satisfaction). After we have approved 15 reduction plans in any fiscal year, we would indicate in our transmittal to all subsequent Medicaid agencies found to have ICFs/MR with substantial deficiencies that they must demonstrate that the costs of correcting the substantial deficiencies would equal $2 million or more. Medicaid agencies could demonstrate costs of $2 million or more by providing evidence of contractor estimates of renovations, cost allocation reports for increasing staff, and any other evidence that supports the costs of correcting the cited deficiencies. There would be no limit on the number of qualified plans that we could approve where the costs of correction are equal to or greater than $2 million.

5. Termination of an ICF/MR (§ 442.116(f))

If the Medicaid agency submits a reduction plan that we found to be unacceptable, and after we have unsuccessfully attempted to resolve our concerns with the agency, we would notify the agency of our disapproval. We would consider terminating the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

If, at the conclusion of the initial 6-month period or any 6-month interval thereafter of an approved reduction plan, we determined that the Medicaid agency substantially failed to meet the requirements of the reduction plan, we would—

- Terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act, or
- Disallow FFP equal to 5 percent of the cost of care for all eligible clients for each month for which the agency failed to meet the requirements despite good faith efforts it might have made.

D. Technical Amendments

To allow for placement in 42 CFR Part 442 of the regulation provisions proposed by these regulations, we proposed to redesignate §§ 442.110 through 442.115 as §§ 442.109 through 442.113, respectively.

IV. Analysis Of and Responses To Public Comments

In developing this final regulation, we considered the 19 items of correspondence that were received within the prescribed comment period from State Medicaid agencies, professional organizations, Medicaid providers, and interested individuals. The major comments and our responses to those comments are discussed below.

General Provisions

Comment: Two commenters believe that Congress intended that regulations implementing the provisions of section 1919 of the Act be effective as of April 7, 1986 (the date of enactment of (COBRA)). The commenters believe that had Congress wished to delay implementation of section 1919 of the Act pending the release of final rules, they would have established an effective date later than the date of enactment (April 7, 1986).

Response: Since the publication of the proposed rule, Congress enacted the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Section 4217(b) of Pub. L. 100–203 specifies that the regulations promulgated under section 1919 of Pub. L. 99–272 shall be effective as if promulgated on the date of enactment of Pub. L. 99–272 (that is, April 7, 1986). Therefore, these final regulations are effective as of April 7, 1986.

Comment: One commenter understood that the options of deficient facilities to submit correction or reduction plans were available only to facilities found deficient as a result of an *initial* look-behind survey.

Response: These options are not limited to initial look-behind surveys. The option to submit a reduction plan will also be extended by the State to a facility that fails to meet standards on a resurvey.

Comment: Several commenters requested changes that would require legislative changes. The commenters requested that—

- HCFA permit a State Medicaid agency to submit a correction plan that has an implementation period of longer than 6 months when the improvements are subject to special legislative authorization (for example, increased staffing authorization) or capital construction.
- HCFA initiate punitive action for failure to meet correction and reduction plans only after an ICF/MR fails to act

within a timeframe that is longer than a 6-month interval.

• HCFA allow an additional 6 months (a total of 12 months) for remedying major physical plant deficiencies that are specified in an approved plan of correction.

• The process relating to State requirements for approval of reduction plans is rather cumbersome. This may act as a deterrent to prevent some States from choosing to submit a reduction plan instead of a correction plan for the affected ICF/MR.

Response: The recommendations made by these comments extend beyond the provisions of the statute, and we cannot implement changes that exceed our statutory authority.

Comment: One commenter stated that throughout the proposed rule there appeared to be an underlying attempt to reduce the size of large ICFs/MR and a stated *expectancy* that "generally, [HCFA] would find an ICF/MR to have substantial deficiencies as a result of a validation survey." The commenter requested that we explain the basis for this expectancy.

Response: As stated in the regulatory flexibility analysis for the proposed regulation, it is clear that the reduction plan option may not be appropriate for smaller facilities found to have substantial deficiencies in physical plant and staffing. States would be more likely to elect the reduction plan for large ICFs/MR with substantial deficiencies. The statement that we would find an ICF/MR to have substantial deficiencies as a result of a validation survey is based on the fact that when we initiate most Federal adverse actions against ICFs/MR, we base them on onsite Federal surveys, though only about 15 percent of all validation surveys result in the threat of an adverse action.

Terms (§ 442.2)

Comment: Several commenters stated that we should define "substantially failed to meet requirements" and asked why good-faith efforts are not considered substantial compliance if the facility is unable to correct all of the deficiencies in the required time period.

Response: We have not defined the phrase "substantially failed to meet requirements" because we recognize that, with the wide diversity of facilities and clients served, it is not possible to define in a fair and accurate way criteria for making this determination. Rather, we will rely on the Federal surveyors' findings and recommendations to our regional office officials, who have the delegated authority to make determinations, as an effective way of both enforcing Federal rules and providing facilities with the benefit of a flexible enforcement system. Providing for a flexible enforcement system will enable us, if at all possible, to respond to local circumstances without resorting to adverse actions. If detailed criteria were established, regional offices would not be able to consider any extenuating circumstances in a determination decision except the failure of the facility to meet the pre-set criteria for "substantial failure to meet requirements."

We also recognize that any adverse action we do not take must withstand the scrutiny of the appeals process. Thus, we will not take adverse actions based on substantial non-compliance unless we are convinced that the ICF/MR is functioning so poorly on behalf of its clients that it should not receive Federal payments.

"Good faith efforts" will not be considered under the correction plan option because the result of such efforts may still result in non-compliance with Federal requirements. Either the State substantially meets its approved correction plan for an ICF/MR or we will initiate termination actions. In the case of reduction plans that are not being met, the Secretary has the option to terminate the ICF/MR's provider agreement or to disallow statutorily-prescribed amounts of FFP.

Correction and Reduction Plans: General Provisions (§ 442.114)

Comment: One commenter argues that ICFs/MR do not need to be validated by another set of standards or regulations. The commenter interpreted the regulations as suggesting that validation surveys would only be directed at large ICFs/MR and that we would impose reduction plans.

Response: The statute does not require ICFs/MR to be surveyed under a new set of standards. The existing standards set forth in 42 CFR Part 442, Subpart G, are used for validation (direct Federal) surveys. A reduction plan will not be imposed on a facility. Both the correction and reduction plans are two additional *options* available to a State when an ICF/MR has substantial deficiencies only in physical plant and staffing and other remaining minor deficiencies that do not pose an immediate threat to clients' health and safety are found during a direct Federal survey.

Comment: Commenters requested that we clarify how the proposed regulations would affect the current regulations, especially in relation to § 442.113(b), which allows 12 months for correction of cited deficiencies. Some commenters believe that the proposed rules are not sufficiently explicit regarding the applicability of the additional options to ICFs/MR.

Response: Current regulations (§§ 442.105 through 442.111 and 442.113) are not related to the implementation of section 1919 of the Act, because they regulate only the actions of the State survey agencies and not those of the Secretary that are discretely authorized by section 1919. If a facility is notified of substantial deficiencies in physical plant and staffing and the State fails to choose either option provided by the statute, we will exercise our authority under section 1910(c) of the Act by notifying the facility that its participation in the Medicaid program may be terminated.

Comment: One commenter requested that we require that "substantial deficiencies" be submitted for review and approval by a panel of experts who have no interest in, or relationship with either HCFA, the State Medicaid agency, or the ICF/MR under review.

Response: Section 1910(c) of the Act grants us the authority to make a determination that a facility failed to meet the requirements for participation in the Medicaid program. Section 1919 of the Act provides no authority for the type of review suggested by the commenter.

Comment: One commenter requested clarification of the option to "reduce permanently the number of beds in certified units" within 36 months of the approval date of the plan, to determine if it pertains to all certified beds Statewide, or exclusively to a developmental center, or only to a single facility.

Response: The regulation refers only to the number of beds in the specific ICF/MR that will be operating under a reduction plan and does not pertain to all certified beds Statewide.

Comment: One commenter requested that, in addition to the right of an ICF/MR whose participation has been terminated from the Medicaid program to appeal the action under 1910(c)(2) of the Act, we allow clients, their parents and guardians, or interested organizations to initiate evidentiary hearings and legal proceedings to the same extent as provided in section 1910(c)(2) of the Act.

Response: Section 1910(c)(2) of the Act is very specific about the rights of a facility to appeal a determination to terminate the facility from Medicaid participation. The statute does not permit other parties to initiate evidentiary hearings and other proceedings under section 1910(c)(2) of

the Act, and we have no other authority to do so.

Comment: Several commenters requested that the time frames for submitting correction plans and reduction plans be extended to allow more time for the preparation of such plans that is, approvals and resource commitments. It was also noted that there is virtually no time if, after the hearing, the State decides the reduction plan would not be appropriate and opts to submit a correction plan, given the 30-day deadline for submitting correction plans.

Response: We believe the time frames are adequate with the exception noted below. The provisions of the statute and this regulation are available to a facility operating with deficiencies in physical plant and staffing of such a substantial nature that the facility faces potential termination from the Medicaid program. Under conditions that pose potential harm to program beneficiaries, we believe it would be most unwise to delay corrective action by extending the time frames. Moreover, the statute links the time frame for submission of a reduction plan *directly* to the time frame for correction plans, and we believe that 30 days is the most time we should allow a facility with serious deficiencies to submit a correction plan. The provisions of the statute dictate that a reduction plan be submitted within 65 days of a notice of deficiencies because of the additional 35 days that must be added to the correction plan time frame set by the Secretary. Thus, we have no statutory flexibility to alter the reduction plan time frames independent of the correction plan time frames. In our experience, when a facility is facing the loss of Federal funds as a result of termination actions, facilities have been able to locate needed resources to avoid termination.

After considering the comment that under the proposed rule (51 FR 26721) little, if any, time, is available if, as a result of the public hearing, a State decides that a reduction plan is not appropriate and chooses to submit a correction plan, we have revised § 442.115(c) to permit a State to submit a proposed correction plan to us within 20 days from the date of the public hearing. We will apply this additional time frame only when a State decides to submit a correction plan after it has conducted a public hearing to announce a reduction plan and the State decides the reduction plan is not appropriate. Otherwise, the time frames remain unchanged.

Comment: One commenter suggested the public comment period be extended to 90 days instead of the proposed 30 days.

Response: We believe that 30 days is adequate time for the public to formally submit comments to us. The public will have had an opportunity to review the proposed plan (before the formal 30-day comment period begins) at the time of the public hearing. We believe that extending the public comment period beyond 30 days would unnecessarily delay action to correct the serious deficiencies at the affected facility.

Correction Plans: Specific Requirements (§ 442.115) Termination of an ICF/MR (§ 442.115(c))

Comment: Several commenters stated that the proposed rule does not address any timetable for determining how long the process can last if HCFA does not accept an agency's plan of correction.

Response: In order to make our original intent clear that we will not delay the process of making a final determination on submitted correction plans beyond the specified 30-day review period, we have revised § 442.115(c)(1). Section 442.115(c)(1) of the proposed rule could be interpreted to mean that we could delay approval or disapproval of a correction plan until after we attempt to resolve our concerns with the agency. It is not our intention to delay our response to the agency beyond the specified 30-day period from the date the agency submits a correction plan. Because of the serious nature of the deficiencies that these regulations address, we must avoid delaying action to correct the deficiencies. However, we will do everything possible to assist States in the preparation of a plan prior to the submission of the plan. As we stated in the preamble to the proposed rule (51 FR 26721), if we question any aspect of a submitted plan or the Medicaid agency's ability to fulfill the requirements of the plan, we will try to resolve our concerns with the agency. However, we will not delay our determination to approve or disapprove a correction plan. We will forward our written approval or disapproval of the plan to the agency within 30 days of receipt of a proposed plan. If we do not accept an agency's plan of correction, we will exercise our authority under section 1910(c) of the Act to terminate the deficient ICF/MR's participation in the Medicaid program at the same time we notify the State that the plan of correction is not accepted.

Comment: One commenter was concerned that there does not appear to be any appeals process open to the States in cases of dispute.

Response: The statute does not provide for an appeals process if the plan of correction is not approved. However, if the facility's participation in Medicaid is terminated, the usual appeals procedures are available to the ICF/MR. If we terminate an ICF/MR's participation under section 1910(c) of the Act, the ICF/MR may file an appeal with the Office of Hearings and Appeals through the HCFA regional office. At the time that we notify an ICF/MR of our decision to terminate, we provide the ICF/MR with instructions for filing an appeal.

Reduction Plans: Specific Requirements (§ 442.116)

Conditions of Approval: State Requirements (§ 442.116(a))

Comment: While one Medicaid agency strongly supported the holding of a public hearing, the agency requested that the final regulations reflect a simple hearings process and related activities that are easily accomplished given the brief time frame allowed for completion.

Response: We believe that we have outlined a hearings process that is uncomplicated and can easily be accomplished in the allowable time frame. The commenter did not suggest any specific recommendations for us to consider.

Comment: One commenter suggested that we require States to develop approved guidelines for evaluation of all Medicaid eligible providers; establish limitations of their ability to discharge or transfer clients; and develop on behalf of the Medicaid recipients an independent due process procedure in problematic cases.

Response: In accordance with 42 CFR Part 442, Subpart G, we prescribe standards for ICF services in ICFs/MR, including standards for the release and transfer of clients at the ICF/MR (§§ 442.424 and 442.425). There is no prohibition to the establishment of an independent due process procedure in problematic cases if the State Medicaid agency wishes to do so, but we do not believe it is necessary to impose such a procedure on the States by regulation.

Comment: In order to ensure that a State does not simply create another institution "with just a new name" when it elects to implement a reduction plan, one commenter believes that group homes or other facilities should house between six to ten individuals with direct supervision or house eight individuals with minimal supervision.

Response: We have no authority to specify the maximum number of clients living in an ICF/MR defined as "small," especially if the facility is not certified.

Comment: One commenter requested written notice of the State Medicaid agency's reduction plan to include the nearest family members of the retarded person since many parents of mentally

retarded adults are sometimes deceased or too infirm to respond.

Response: We have accepted this recommendation and have revised § 442.116(a)(2) to request the participation of the party or family member nearest to, or most interested or involved with the client.

Comment: One commenter believes that the written notice should be mailed "Return Receipt Requested" in order to ensure that the agency gives sufficient notification time to interested parties.

Response: We do not believe it is necessary to interpret the statutory language of "reasonable notice" of the hearing to mean more than written notice of the hearing. We accept written notice and local media notices as sufficient notification under other requirements of the Medicaid program and we have not experienced any problems in these other areas. However, States could choose to mail notices of hearings "Return Receipt Requested".

Comment: One commenter suggested that "written notice" of a public hearing on a proposed reduction plan should not be interpreted as requiring individual notice to staff and clients of the affected ICF/MR.

Response: We believe that clients or their parents, legal guardians and/or interested parties require individual written notice. An ICF/MR may choose not to give individual written notice to facility staff if the ICF/MR provides written notice through established channels of communication within the ICF/MR. That is, the ICF/MR may notify facility staff through routine written memoranda to all facility staff, posted notices in areas frequented by all staff, or through other methods commonly used at the ICF/MR. We will further delineate the requirements of written notice in our instructions to the States.

Comment: One commenter thought that advocacy and volunteer organizations directly associated with the ICF/MR and the relevant courts should be added to the list of community organizations and institutions to be notified of the reduction plan.

Response: Section 442.116(a)(3) specifies that advocacy groups and other interested groups and agencies be notified and we believe that volunteer organizations are adequately represented as part of these groups. However, we will add to § 442.116(a)(3) "the courts with which the ICF/MR is involved in litigation (if any) arising out of its Medicaid participation" as part of the groups to be notified of the hearing.

Comment: Several commenters suggested that we increase the time period for providing written notice of the hearing to assure involvement of all interested parties.

Response: We believe that the requirement for an agency to forward written notice of the hearing at least ten days prior to the hearing provides adequate notice. Again, we do not want to unnecessarily delay taking actions against a facility that is found to have substantial deficiencies.

Comment: One commenter requested that we provide for review of the proposed reduction plan by qualified consumer representatives and a selected team of disinterested experts.

Response: We agree, and the regulations (§ 442.116(a)(3)) allow all interested parties, including consumer representatives and disinterested experts, the opportunity to review the plan. The regulations require public notice of the locations where the plan is displayed for review. Moreover, § 442.116(e)(1) provides interested parties the opportunity to comment on the plan.

Comment: One commenter suggested that the requirement for proposed reduction plans be placed on display at "any other agencies that serve potentially interested parties" is overly broad and vague and therefore unduly burdensome on States.

Response: We have accepted this comment because we recognize that the word "any" could mean "all". We have revised §§ 442.116 (a)(3)(ii) and (c)(2) to require that proposed reduction plans be displayed at other agencies, which in the State's judgment, serve potentially interested parties.

Comment: One commenter requested that we provide for sufficient copies of the plan to be reproduced and made available on request to all members of the public who have a reasonable interest in these proceedings.

Response: We believe that display of the plan at various locations provides an acceptable method of meeting the intent of the law. However, the option to provide copies of the plan is available to the agencies displaying the plan.

Contents (§ 442.116(d))

Comment: Several commenters expressed confusion over the intent of proposed § 442.116(d)(4), as required by section 1919(c)(4) of the Act, and stated that our translation of the law is beyond the intent of the statute, though the commenters did not state how. One commenter recommended that the preamble language about involuntary transfers be substituted for the language currently in proposed § 442.116(d)(4). Another commenter requested that we revise § 442.116(d)(4) to require that the provision of home and community services be "comparable" to the services proposed instead of services being "similar" to the services proposed.

Response: We believe the preamble language describes accurately the provisions of the statute in section 1919(c)(4) of the Act and the regulation corresponds to the intent of the law. However, in order to ensure that there is no confusion, we have revised § 442.116(d)(4) to reflect exactly the language of section 1919(c)(4).

Comment: One commenter stated that is appears that taking a developmentally disabled person back into the family home would penalize the family by the loss of benefits. The commenter believes that making a distinction between voluntary and involuntary placement in the home is subject to manipulation by the State. The commenter stated that the alternatives offered the client may be inhumane or otherwise unacceptable. The commenter suggested that we encourage the development of extended family ties rather than discourage them.

Response: The law states that a reduction plan must not impair the Medicaid eligibility of affected clients without their consent. If the client would have remained eligible for Medicaid regardless of what action the Medicaid agency took concerning the deficient ICF/MR, then the agency may not, at any time, involuntarily place the client where he or she loses entitlement to Medicaid. The client, however, may elect to be placed in a setting where he or she does not retain entitlement to Medicaid. For example, the client may choose to move back home with his or her family, thus causing the client's countable income or resources to exceed the Medicaid agency's eligibility standards, so the client's Medicaid eligibility would be subject to termination under the same terms and procedures that apply to all Medicaid recipients.

The reduction plan imposes a number of requirements on States to assure that any plan to reduce is well conceived; that it has had the benefit of client, family, staff, and public input; and that the quality of life for both the clients remaining in the facility and those receiving community placements is adequately protected. The intention of these requirements is to assure that approved reduction plans do not lead to the "dumping" of affected clients into substandard settings.

HCFA Policies (§ 442.116(e))

Comment: Commenters would like clarification of the 30-day public comment period provided by HCFA when there has been an opportunity for public comment at the State level. One

commenter suggested extending the 30-day public comment period to 90 days. Commenters requested that we explain our process for handling public comments that we receive and the impact of the comments on our approval of reduction plans.

Response: We will allow a comment period providing interested clients, family, staff, and members of the public the opportunity to comment directly to us on a State's proposal. We believe the 30-day time frame for receiving public comments allows adequate time for individuals and organizations to respond to the proposed plan. We will give careful consideration to these comments in connection with our decision to approve or disapprove the proposed plan.

Comment: One commenter stated that the example used in the preamble to illustrate situations in which it would be appropriate to limit the amount of time to implement a reduction plan was "dubious".

Response: We acknowledge that many factors influence the decision to grant an amount of time for the implementation of the reduction plan. We used a simple example for illustrative purposes only.

Comment: Several commenters argued that HCFA has no monitoring authority outside of the ICF/MR program. If clients choose to be placed in a non-ICF/MR setting as part of the reduction plan, HCFA will be unable to monitor that placement and, therefore, compliance with this standard.

Response: We have no authority to monitor non-certified facilities and other non-participating settings into which clients may be placed.

Comment: One commenter believes that the usefulness of a reduction plan for an ICF/MR that has staff deficiencies is unclear. Proposed § 442.116(d)(6) requires staffing consistent with current ICF/MR standards (§ 442.445). The commenter questioned whether the facility must meet all ICF/MR staff requirements, or whether compliance with resident living staff, and staffing for other functions, (for example, habilitation, nutrition, nursing, medical) is sufficient to guarantee resident health and safety.

Response: Clients must still receive active treatment, which means the facility must provide adequate staff to provide needed care and services in safe and healthful environments.

Comment: Several commenters requested clarification concerning when termination would occur if we disapprove a State's reduction plan. Commenters questioned whether or not negotiations could occur before terminating a facility.

Response: If we do not accept a State's reduction plan, we will exercise our authority under section 1910(c) of the Act to terminate the deficient ICF/MR's participation in the Medicaid program at the same time we notify the State that the reduction plan is not accepted. In order to make our original intent clear that we will not delay the process of making a final determination on submitted reduction plans beyond the specified 60-day period (that allows for the statutorily mandated 30-day public comment period) from receipt of a plan, we have revised § 442.116(f)(1). Section 442.116(f)(1) of the proposed rule could be interpreted to mean that we could delay approval or disapproval of a reduction plan until after we attempt to resolve our concerns with the agency. It is not our intention to delay our response to the agency beyond the specified 60-day period from the date the agency submits a reduction plan. Because of the serious nature of the deficiencies that these regulations address, we must avoid delaying action to remedy the deficiencies. However, we will do everything possible to assist States in the preparation of a plan prior to the submission of the plan. As we stated in the preamble to the proposed rule (51 FR 26722), if we question any aspect of a submitted plan or the Medicaid agency's ability to fulfill the requirements of the plan, we will try to resolve our concerns with the agency. However, we will not delay our determination to approve or disapprove a reduction plan. We will forward in writing to the agency within 60 days of receipt of a proposed plan our approval or disapproval of the plan.

Comment: One commenter contends it is unclear what conditions would trigger either termination of the ICF/MR or disallowance of FFP, if any six-month interval time frame for reduction is not met.

Response: If, after any six-month period, we determine that a State failed to meet the reduction plan provisions of § 442.116, and we determine the State has not made a good faith effort to meet those requirements, we will initiate termination procedures. If we determine failure to comply with the requirements resulted despite the State's best efforts, we will apply a five-percent FFP disallowance penalty.

If substantial noncompliance with the reduction plan requirements continues to be found, or if conditions worsen irrespective of "good faith efforts", the statute gives us the *option* of terminating the facility's participation. It is our policy to terminate the facility's participation in such cases. (Good faith efforts apply only to the reduction plan. In the case of the correction plan, we will make a substantial compliance or noncompliance determination based on actual conditions in the facility and not based on the "good faith efforts" of the provider.)

Comment: Several commenters emphasized the importance of ensuring that a reduction plan meet all the health care service delivery needs and active treatment requirements of the clients selected for community placement.

Response: The provisions of the statute are explicit about the specific requirements of a reduction plan and we have included those requirements in § 442.116.

Comment: One commenter believes that aside from his or her family, guardian and friends, a retarded person's best safeguard for ensuring the delivery of services is access to legal services. The commenter suggested that we provide money through the Legal Services Corporation for legal representation (including consultant fees) for retarded people and their families and guardians who advocate on their behalf.

Response: We have no statutory authority to provide for the financing of legal services for clients or their families and guardians. Protection and advocacy agencies funded under the Developmental Disabilities Act have the authority to provide legal assistance in matters of this type.

Comment: One commenter stated that many mentally retarded clients leaving long term care facilities will need assistance from numerous health, educational, and human service agencies in the public and private sectors. The commenter stated that many will have multiple handicaps and suggested that a task force be established to coordinate the various services needed by these individuals upon re-entry into the community.

Response: There is no statutory authority for us to establish such a task force. States, however, may choose to form such task forces.

IV. Summary of Changes in the Final Regulations

As stated in our discussion of the comments and responses, we have made some changes to the approach we had proposed in the regulations published on July 25, 1986. With the exception of the changes identified below, the final regulations reflect the proposals made in the July 25, 1986 proposed rule.

Medicaid Agency Options (§ 442.114 (a) and (b))

We have clarified that correction and reduction plans will be available to States that have ICFs/MR found to have substantial deficiencies *only* in physical plant and staffing (or physical plant, staffing, and other *minor* deficiencies) that do not pose an immediate threat to the clients' health and safety.

Effective Date (§ 442.114(d))

Since the publication of the proposed rule, Congress enacted the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Section 4217(b) of Pub. L. 100–203 specifies that the regulations promulgated under section 1919 of Pub. L. 99–272 shall be effective as if promulgated on the date of enactment of Pub. L. 99–272 (that is, April 7, 1986). Therefore, these final regulations are effective for any Federal survey of an ICF/MR initiated on or after April 7, 1986 in which substantial deficiencies in physical plant and staffing that did not pose an immediate threat to the clients' health and safety were found.

Correction Plans for ICFs/MR: Specific Requirements (§ 442.115)

We have revised § 442.115 by adding an exception to our policy for receiving proposed correction plans (§ 442.115(c)). If a State chooses to submit a reduction plan and after conducting a public hearing decides that a reduction plan is not appropriate, the State may submit to us a correction plan within 20 days from the date of the public hearing. Under these circumstances, we must receive the correction plan within 20 days from the date of the public hearing. We will advise States that if they choose to submit a reduction plan, they may wish to consider preparing a preliminary correction plan at the same time so that if, as a result of the public hearing, they decide to submit a correction plan, they will have already begun preparing it.

In order to make our original intent clear that we will not delay the process of making a final determination on submitted correction plans beyond our 30-day review period, we have revised § 442.115(d)(1). Section 442.115(d)(1) of the proposed rule could be interpreted to mean that we could delay approval or disapproval of a correction plan until after we attempt to resolve our concerns with the agency. We have revised § 442.115(d)(1) to clarify that we will not delay our response to an agency beyond the specified 30-day period from the date the agency submits a correction plan.

Reduction Plans for ICFs/MR: Specific Requirements (§ 442.116)

- We have revised § 442.116(a)(2) to require that the "nearest, most interested, or involved family member or party" receive written notice of a State Medicaid agency's reduction plan.
- We have revised § 442.116(a)(3) to include "the courts with which the ICF/MR is involved in litigation (if any) arising out of its Medicaid participation" as one of the groups to be notified of the public hearing.
- We have revised § 442.116 (a)(3)(ii) and (c)(2) to require that proposed reduction plans be displayed at other agencies, which in the State's judgment, serve potentially interested parties.
- We have removed from §§ 442.116 (a)(3)(ii) and (c)(2) the word "any" so that the regulations cannot be interpreted to mean that a proposed reduction plan must be displayed at *all* advocacy agencies and other agencies that serve potentially interested parties.
- To clarify § 442.116(d)(4), we have revised that section to reflect the statutory language concerning retaining clients' Medicaid eligibility.
- We have added to the regulations the provision that we may approve reduction plans for a shorter period than 36 months, where appropriate (§ 442.116(e)(3)).
- We have added a requirement to the regulations that clarifies that HCFA approval of a reduction plan does not constitute approval of any request for a home and community-based waiver (§ 442.116(e)(4)). Home and community based waiver requests are subject to a separate HCFA review and approval process under 42 CFR 441.300. Disapproval of a request for a home and community-based waiver constitutes disapproval of a request for a reduction plan that is dependent upon approval of the request for a home and community-based waiver. ICFs/MR that submit reduction plans that are dependent upon receipt of HCFA approval of home and community-based waiver requests may choose to develop contingency plans to avoid disruptions in the event that HCFA denies a waiver request.
- In order to make our original intent clear that we will not delay the process of making a final determination on submitted reduction plans beyond the 60-day period from receipt of a plan, we have revised § 442.116(f)(1). Section 442.116(f)(1) of the proposed rule could be interpreted to mean that we could delay approval or disapproval of a reduction plan until after we attempt to resolve our concerns with the agency. We have revised § 442.116(f)(1) to clarify that we will not delay our response to an agency beyond the specified 60-day period from the date the agency submits a reduction plan.

Corrections

We have made some minor changes to the final regulations to correct typographical errors that appeared in the proposed rule.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any final regulations that are likely to meet criteria for a "major rule". A major rule is one that would 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 any 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.

The economic impact of this regulation will not exceed $100 million or meet the other thresholds specified in the Executive Order. Therefore, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepared and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all ICFs/MR to be small entities. Since these regulations potentially could have a signficiant impact on a substantial number of ICFs/MR, we prepared an initial regulatory flexibility analysis for the proposed rule published July 25, 1986. The following discussion constitutes our final regulatory flexibility analysis.

There are 3,340 Medicaid-participating ICFs/MR nationwide. We cannot determine exactly how many ICFs/MR might be affected by the provisions of these regulations.

Generally, we make our own determination of ICF/MR compliance with pertinent Federal requirements as a result of a validation survey. For FY 1987, we plan to perform 459 validation surveys of ICFs/MR. A direct Federal survey might also be performed as the result of a complaint or other

circumstances, but such surveys are conducted in response to immediate problems, rather than as part of a planned process.

The requirements for correction and reduction plans will apply to all ICFs/MR, large and small, State or other government operated, private, nonprofit, or for-profit. However, it is clear that the reduction plan option may not always be appropriate for smaller facilities. States will be more likely to elect the reduction plan for large ICFs/MR with substantial deficiencies.

Many large facilities are State-owned. Whether large or small, a State-owned ICF/MR that came under these requirements could have difficulties, within the constraints of a State's budget and appropriations process, in complying with the 6-month time limit of the correction plan option.

Because we are unable to predict the decisions States will make when given the options provided by this regulation, we are unable to quantify the potential effect it will have. Section 9516(c) of Pub. L. 99-272 requires that the Secretary report to Congress on the implementation and results of the correction and reduction plans approved by the Secretary. We expect to assess the effects on terminations, deficiences, and clients through the monitoring activities necessary for the completion of that report.

VII. Waiver of 30-Day Delay of Effective Date

We usually publish our rules not less than 30 days before their effective dates unless we find good cause and publish that rationale with the rule. Since section 4217(b) of Pub. L. 100-203 specifies that the regulations promulgated under section 1919 of Pub. L. 99-272 shall be effective as if promulgated on the date of enactment of Pub. L. 99-272 (that is, April 7, 1986), we find good cause to waive the 30-day delay of the effective date for these final regulations.

VIII. Paperwork Reduction Act of 1980

(Pub. L. 96-511)

Sections 442.114(a), 442.115(a), and 442.116 (a) and (d) of this final rule contain information collection requirements that are subject to review by the Executive Office of Management and Budget under the Paperwork Reduction Act of 1980. A notice will appear in the **Federal Register** when approval is obtained.

List of Subjects in 42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, 42 CFR Part 442 is amended as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by revising the title of Subpart C, redesignating §§ 442.110 through 442.113 as §§ 442.109 through 442.112, respectively, and § 442.115 as § 442.113; revising the titles of newly redesignated §§ 442.111 through 442.113; and adding new §§ 442.114 through 442.116, to read as follows:

Subpart C—Certification of SNFs, ICFs, and ICFs/MR

* * * * *

Sec.

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3. Section 442.1 is amended by revising the introductory text of paragraph (a) and the paragraph citing Section 1910, adding the word "and" at the end of the paragraph citing Section 1913 and adding a new paragraph citing Section 1919 at the end to read as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements, facility certification, and facility standards relating to the provision of services furnished by skilled nursing facilities and intermediate care facilities, including intermediate care facilities for the mentally retarded, to Medicaid recipients. The requirements apply to State Medicaid agencies and survey agencies and to the facilities. This part is based on the following sections of the Act:

* * * * *

Section 1910, certification and approval of SNFs and of RHCs;

* * * * *

Section 1919, correction and reduction plans for intermediate care facilities for the mentally retarded.

* * * * *

4. In § 442.2, the introductory text is republished, and the section is amended by revising the definition of "Immediate jeopardy" to read as follows:

§ 442.2 Terms.

In this part—

* * * * *

"Immediate jeopardy" or "immediate threat" for Medicaid certified facilities means a situation in which a facility's noncompliance with one or more conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) poses a serious threat to patients' or clients' health or safety such that immediate corrective action is necessary. There is no substantive difference between "immediate jeopardy" and "immediate threat".

* * * * *

§ 442.105 [Amended]

5. Section 442.105(e) is amended by removing the phrase "§ 442.112 or § 442.113" and inserting in its place the phrase "§ 442.111 or § 442.112".

6. The heading of Subpart C is revised, sections 442.110 through 442.113 are redesignated as §§ 442.109 through 442.112, respectively and § 442.115 as § 442.113; and the titles of newly redesignated §§ 442.111 through 442.113 are revised to read as follows:

Subpart C—Certification of SNFs, ICFs, and ICFs/MR

§ 442.111 Extended period for correcting deficiencies: ICFs other than ICFs/MR; environment, sanitation and Life Safety Code deficiencies.

§ 442.112 Extended period for correcting deficiencies: ICFs/MR; Life Safety Code and living/dining/therapy area deficiencies.

§ 442.113 Correction plans for ICFs/MR: Life Safety Code and living/dining/therapy area deficiencies.

§ 442.110 [Amended]

7. Newly redesignated § 442.110(a) is amended by removing the phrase "§§ 442.112 and 442.113" and inserting in its place the phrase "§§ 442.111 and 442.112".

§ 442.112 [Amended]

8. Newly redesignated § 442.112(c)(5) is amended by removing the references to "§ 442.115" and inserting in their places the reference "§ 442.113".

§ 442.113 [Amended]

9. Newly redesignated § 442.113(a) introductory text is amended by removing the reference "§ 442.113" and inserting in is place the reference "§ 442.112".

10. New §§ 442.114 through 442.116 are added to read as follows:

§ 442.114 Correction and reduction plans for ICFs/MR: General provisions.

(a) *Options of Medicaid agency.* If HCFA finds substantial deficiencies only in physical plant and staffing that do not pose an immediate threat to the clients' health and safety in an ICF/MR, HCFA will forward the list of deficiencies to the Medicaid agency and the agency may elect to—

(1) Submit to HCFA within 30 days of receipt of the list of deficiencies a written plan of correction in accordance with § 442.115, as permitted by § 442.105; or

(2) Submit to HCFA within 65 days of receipt of the list of deficiencies a written plan to reduce permanently the number of beds in certified units in accordance with § 442.116. The purpose of the reduction plan is to vacate any noncomplying buildings (or distinct parts thereof) and correct any staff deficiencies within 36 months of the approval of the plan.

(b) *Option limitation for Medicaid agency.* An ICF/MR found to have substantial deficiencies in physical plant and staffing, and substantial deficiencies in other areas of care is not eligible for either a correction or reduction plan under this section.

(c) *HCFA options.* (1) If the Medicaid agency does not comply with paragraph (a) of this section, HCFA may cancel approval of the deficient ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) HCFA will respond in writing to the agency within 30 days from receipt of a proposed correction plan submitted under paragraph (a)(1) of this section.

(d) *Duration.* The provisions of this section and §§ 442.115 and 442.116 apply only to correction and reduction plans approved by HCFA within 3 years after Federal surveys initiated in ICF/MRs on or after April 7, 1986.

§ 442.115 Correction plans for ICFs/MR: Specific requirements.

(a) *Contents.* A correction plan under § 442.114(a)(1) must include—

(1) An explanation of the extent to which the ICF/MR currently complies with the standards for ICFs/MR in Subpart G including all deficiencies identified during a direct Federal survey, and

(2) A timetable for completing the necessary steps to correct staff and physical plant deficiencies on which the request for a correction plan is based, and all other minor deficiencies, within 6 months of the approval date of the plan.

(b) *HCFA policies.* HCFA considers a correction plan only if HCFA received it within 30 days of receipt by the Medicaid agency of the list of deficiencies referred to in § 442.114(a). After consideration of the plan, HCFA will forward in writing its approval or disapproval within 30 days of receipt of the proposed correction plan.

(c) *Exception.* If, as a result of a public hearing, the Medicaid agency decides that a reduction plan is not appropriate, and instead decides to submit a correction plan, the correction plan must be received by HCFA within 20 days from the date of the public hearing.

(d) *Termination of an ICF/MR.* (1) If the Medicaid agency submits a correction plan that HCFA finds to be unacceptable, HCFA will notify the agency of its disapproval and will terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) If, as the conclusion of the 6-month period specified in the plan of correction described in paragraph (a) of this section, HCFA determines that the agency has substantially failed to correct the deficiencies identified, HCFA may terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act.

§ 442.116 Reduction plans for ICFs/MR: Specific requirements.

(a) *Conditions of approval: Agency requirements.* Before submitting a reduction plan under § 442.114(a)(2) to HCFA, the Medicaid agency must—

(1) Conduct a public hearing at the affected ICF/MR at least 35 days before submitting the reduction plan to HCFA that outlines the—

(i) Contents of the reduction plan,

(ii) Process for submitting the plan to HCFA, and

(iii) Process for submitting public comments to HCFA within 30 days of receipt of the reduction plan by HCFA.

(2) Provide written notice of the hearing to staff, clients and their parents or guardians, and the nearest, most interested, or involved family member or party, as appropriate, at least 10 days prior to the hearing date.

(3) Announce to advocacy and other interested groups and, agencies; the courts with which the ICF/MR is involved in litigation (if any) arising out of its Medicaid participation; and the general community; through local media notices, at least 10 days prior to the hearing date—

(i) The exact date, time and location of the hearing; and

(ii) The locations (that is, the affected ICF/MR, the State mental retardation administration, State survey agency, State Developmental Disabilities Council, State and local protection and advocacy agencies and other agencies, which in the State's judgment, serve potentially interested parties (for example, State and local associations for retarded citizens)) where the proposed plan is displayed.

(4) Demonstrate that it has successfully provided home and community services similar to those services proposed to be provided under the reduction plan for similar individuals eligible for Medicaid by including—

(i) Documentation of existing programs and level of funding, and

(ii) Projections for growth and how the growth will be funded to accommodate the clients being displaced by the reduction plan.

(5) Provide assurances to HCFA that the reduction plan will be completed by fulfilling the content requirements of the reduction plan contained in paragraph (d) of this section.

(b) *Withdrawal by a Medicaid agency of a proposed reduction plan.* If, after the public hearing, a Medicaid agency decides a reduction plan would not be appropriate, the agency may choose to proceed with a plan of correction in accordance with the requirements contained in §§ 442.115 (a) and (c).

(c) *Submittal date of plan.* On the day that the Medicaid agency submits a reduction plan, the agency must announce through local media notices—

(1) That the plan has been submitted to HCFA;

(2) That the plan is on display at the affected ICF/MR, the State mental retardation administration, State survey agency, State Developmental Disabilities Council, State and local protection and advocacy agencies, and other agencies, which in the State's judgment, serve potentially interested parties (for example, State and local associations for retarded citizens); and

(3) The address of the appropriate HCFA office for forwarding comments

on the reduction plan and the closing date for receipt of those comments.

(d) *Contents.* A reduction plan must—

(1) Identify the number of clients and their service needs on a client-by-client basis for home or community services, and a timetable for providing such services, in 6-month intervals, within the 36-month period beginning on the date that the reduction plan is approved by HCFA;

(2) Describe the methods used to—

(i) Select clients for home or community services, and

(ii) Develop alternative home and community services to effectively meet the clients' needs;

(3) Describe the safeguards that will be applied to protect the clients' health and welfare while receiving home or community services, including—

(i) Adequate standards for participation by clients, clients' families and providers; and

(ii) Assurances that the community residences in which the affected clients are placed meet all applicable State and Federal licensure and certification requirements;

(4) Provide that clients who are eligible for medical assistance while in the ICF/MR will, at their option, be placed in another setting (or another part of the ICF/MR) so as to retain their eligibility for medical assistance.

(5) Specify the actions to protect the health and safety of the clients remaining in the ICF/MR while the reduction plan is in effect;

(6) Provide that the staff-to-client ratio at the ICF/MR will be the higher of—

(i) The ratio described in the standards for ICFs and ICFs/MR (§ 442.445); or

(ii) The ratio which was in effect at the time the direct Federal survey was conducted; and

(7) Provide for the protection of the staff affected by the reduction plan, including—

(i) Arrangements to preserve staff rights and benefits;

(ii) Training and retraining of staff where necessary;

(iii) Redeploying staff to community settings under the reduction plan; and

(iv) Making maximum efforts to secure employment (without necessarily guaranteeing the employment of any staff).

(e) *HCFA policies.* (1) HCFA will consider approval of reduction plans on a first come, first served basis. HCFA will provide the public at least 30 days after the Medicaid agency submits a reduction plan to comment on the proposed plan. After the close of the public comment period, HCFA will forward in writing its approval or disapproval of the reduction plan to the agency within 30 days.

(2) If HCFA approves more than 15 reduction plans in any fiscal year, any reduction plans approved in addition to the first 15 approved plans, will be for an ICF/MR (or distinct part thereof) for which the costs of correcting the substantial deficiencies are $2 million or greater (as demonstrated by the Medicaid agency to the satisfaction of HCFA).

(3) HCFA may approve reduction plans for a shorter period than 36 months, where applicable.

(4) HCFA approval of a reduction plan does not constitute approval of any request for a home and community-based waiver. Home and community-based waivers are subject to HCFA review and approval under § 441.300 of this chapter. Disapproval of a request for a home and community-based waiver constitutes disapproval of a request for a reduction plan that is dependent upon approval of the request for a home and community-based waiver.

(f) *Termination of an ICF/MR.* (1) If the Medicaid agency submits a reduction plan that HCFA finds to be unacceptable, HCFA will notify the agency of its disapproval and terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) If, at the conclusion of the initial 6-month period or any 6-month interval thereafter of the reduction plan, HCFA determines that the Medicaid agency has substantially failed to meet the requirements of paragraph (a) of this section, HCFA will—

(i) Terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act, or

(ii) Disallow FFP equal to 5 percent of the cost of care for all eligible clients for each month for which the agency failed to meet the requirements despite good faith efforts it may have made.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: July 30, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 23, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88-1555 Filed 1-22-88; 12:07 pm]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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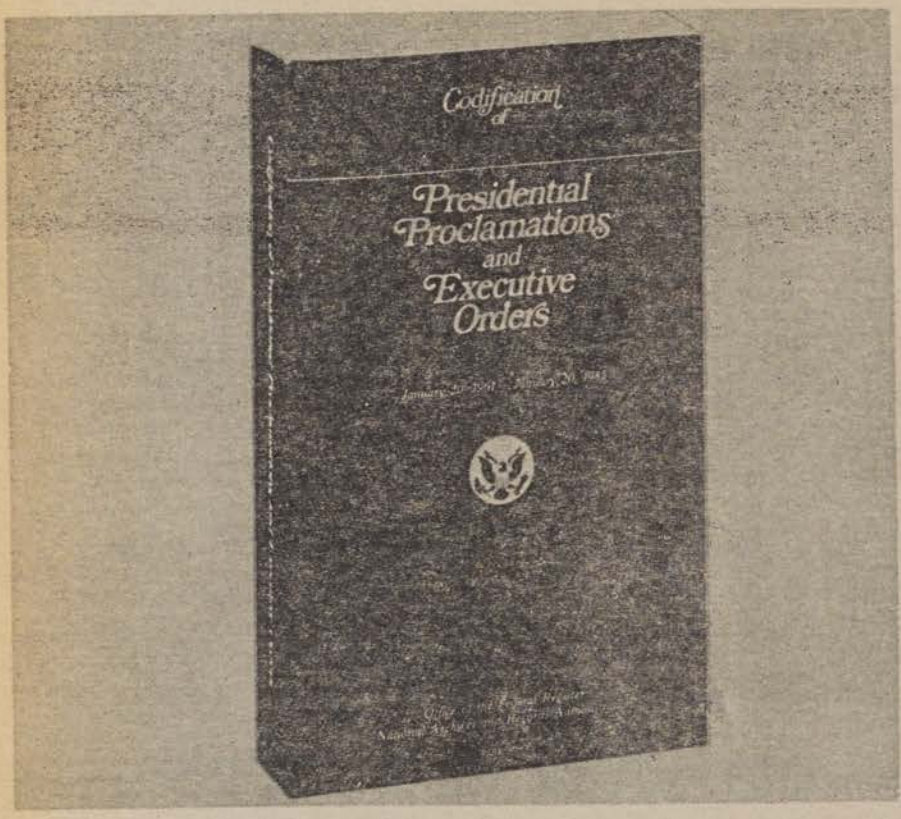

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