AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

2-2-88
Vol. 53 No. 21
Pages 2817-2994

federal register

Tuesday
February 2, 1988

Briefing on How To Use the Federal Register—
For information on briefings in Seattle, WA, San Francisco, CA, and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for six months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

SEATTLE, WA

WHEN: February 11; at 9:00 a.m.
WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.
RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Seattle	206–442–0570
Tacoma	206–383–5230
Portland	503–221–2222

SAN FRANCISCO, CA

WHEN: February 12; at 9:00 a.m.
WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.
RESERVATIONS: Call the San Francisco Federal Information Center, 415–556–6600

WASHINGTON, DC

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

Contents

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development Board, 2892
Mediterranean fruitfly eradication program in Guatemala, 2892

Agricultural Marketing Service
RULES
Olives grown in California, 2823
PROPOSED RULES
Grapes grown in California, 2851
Oranges (navel and Valencia) grown in Arizona and California, 2849
Pears, plums, and peaches grown in California, 2851

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Federal Grain Inspection Service; Food and Nutrition Service; Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Drug Abuse AIDS Research Review Committee, 2834

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
Middle Rio Grande Valley, NM, 2889

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Animals and birds; quarantine space reservation, 2824

Army Department
See also Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Kwajalein Atoll, Marshall Islands, 2865
Patent licenses, exclusive:
Roberts Pharmaceutical Corp., 2865

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Commerce Department
See also Minority Business Development Agency; National Bureau of Standards; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 2862

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Jamaica, 2864

Customs Service
NOTICES
Automated manifest system; new information dissemination product, proposed; republication, 2911

Defense Department
See Army Department; Engineers Corps

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Johnson Matthey, Inc., 2893

Education Department
PROPOSED RULES
Postsecondary education:
Language resource centers program, 2918
NOTICES
Meetings:
Educational Research and Improvement National Advisory Council, 2866

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
International energy program; emergency international oil sharing; second plan of action implementation, 2866
Meetings:
Innovative Control Technology Advisory Panel, 2885

Engineers Corps
RULES
Natural disaster procedures; Army and other resources emergency employment, 2841
NOTICES
Meetings:
Inland Waterways Users Board, 2866

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Total reduced sulfur emissions determination; alternative recovery gas certification procedure (Methods 16A and 16B)
Correction, 2914
Toxic substances:
Significant new uses—
1-Chloro-2-bromoethane, 2842
Technical amendments, 2845
PROPOSED RULES
Toxic substances:
Significant new uses—
Diphenyl-2,4,6-trimethylbenzoyl phosphine oxide, 2857
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Model 8830 CO Analyzer, 2887
Grants, State and local assistance:
Capitalization awards under Clean Water Act; State water pollution control revolving fund, initial guidance, 2887

Meetings:
Science Advisory Board, 2887
Toxic and hazardous substances control:
Premanufacture notices review period extensions, 2888

Farm Credit Administration
RULES
Farm credit system:
Borrower rights, 2825

Farmers Home Administration
PROPOSED RULES
Loan and grant programs:
Audits; OMB Circular A-73 implementation, 2852

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 2888

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Guam, 2888
Northern Mariana Islands, 2889

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act), etc.:
Purchased gas adjustment regulations, 2826
Natural Gas Policy Act:
Ceiling prices—
Compression allowances and protest procedures, 2826
NOTICES
Applications, hearings, determinations, etc.:
East Tennessee Natural Gas Co., 2886
Shell Oil Co. et al., 2886

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Alabama, 2861
Alaska, Arkansas, and Tennessee, 2861
North Dakota, 2862

Federal Highway Administration
RULES
Engineering and traffic operations:
Utilities accomodation; freeway (interstate) right-of-way; longitudinal utility use, 2829
NOTICES
Environmental statements; notice of intent:
Richmond, VA, 2901

Federal Maritime Commission
NOTICES
Agreements filed, etc., 2889

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 2910

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 2910

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Yukon Delta National Wildlife Refuge, AK, 2891

Food and Drug Administration
RULES
Code of Federal Regulations; authority citations, 2827

Food and Nutrition Service
RULES
Food stamp program:
Income and eligibility verification, 2817
PROPOSED RULES
Food distribution program:
Food donations processing provisions; State processing and National commodity processing program, 2846

Forest Service
RULES
Range management:
National Forests in 16 Western States; grazing fees, 2978

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Public Health Service

Health Resources and Services Administration
See Public Health Service

Immigration and Naturalization Service
RULES
Immigration:
Beneficiary; automatic conversion of classification Correction, 2824
NOTICES
Aliens:
Asylum adjudications procedure change, 2893

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Commission
NOTICES
Meetings; Sunshine Act, 2910

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Chicago, Missouri, & Western Railway Co., 2893

Justice Department
See Drug Enforcement Administration; Immigration and Naturalization Service

Land Management Bureau
RULES
Grazing administration:
Livestock grazing on public lands, 2984
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 2891

Withdrawal and reservation of lands:
Colorado, 2890

Maritime Administration
NOTICES
War risk insurance; ship value determinations, 2901

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Alaska OCS—
Lease sale, 2891
Pacific OCS—
Lease sale, 2892

Minority Business Development Agency
NOTICES
Business development center program applications:
Arkansas, 2863
Oklahoma, 2863

National Bureau of Standards
NOTICES
Information processing standards, Federal:
Data encryption standard; correction, 2911

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Dance Advisory Panel, 2894

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 2864

National Science Foundation
NOTICES
Meetings; Sunshine Act, 2910

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 2910

Nuclear Regulatory Commission
PROPOSED RULES
Byproduct material; medical use:
GENE-TRAK Systems salmonella and listeria pathogen testing in food products; phosphorus-32 (100 microcuries) exemption, 2853
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 2894
(2 documents)
Applications, hearings, determinations, etc.:
Connecticut Yankee Atomic Power Co., 2895
Duquesne Light Co. et al., 2896
Finlay Testing Laboratories, Inc., 2895

Public Health Service
See also Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration
RULES
Grants:
Family planning services; abortion, prohibition on use of appropriated funds, 2922
NOTICES
Organization, functions, and authority delegations:
Food and Drug Administration, 2889

Securities and Exchange Commission
PROPOSED RULES
Securities:
Government Securities Act; implementation—
Form BD revision, etc., 2854
NOTICES
Self-regulatory organizations; proposed rule changes:
Midwest Stock Exchange, 2897
Applications, hearings, determinations, etc.:
Drexel Burnham Fund et al., 2897

Small Business Administration
NOTICES
Disaster loan areas:
Guam, 2898
Northern Mariana Islands, 2899

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
North Dakota, 2837

Tennessee Valley Authority
RULES
Archaeological resources protection; uniform regulations, 2826

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Federal Highway Administration; Maritime Administration; Urban Mass Transportation Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Galaxy Airlines, Inc., 2899
Privacy Act; systems of records, 2899

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Customs Service

Urban Mass Transportation Administration
NOTICES
Grants; UMTA sections 3 and 9 obligations:
Formula grant apportionments; 1988 FY, 2948

Veterans Administration
PROPOSED RULES
Vocational rehabilitation and education:
Employment services for eligible veterans, 2855

Separate Parts In This Issue

Part II
Environmental Protection Agency, 2914

Part III
Department of Education, 2918

Part IV
Department of Health and Human Services, Public Health Service, 2922

Part V
Department of Transportation, Urban Mass Transportation Administration, 2948

Part VI
Department of Agriculture, Forest Service, 2978

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
272..... 2817
932..... 2823
Proposed Rules:
250..... 2846
907..... 2849
908..... 2849
917..... 2851
925..... 2851
1823..... 2852
1930..... 2852
1933..... 2852
1942..... 2852
1944..... 2852
1948..... 2852
1980..... 2852

8 CFR
204..... 2824

9 CFR
92..... 2853

10 CFR
Proposed Rules:
31..... 2853

12 CFR
614..... 2825

17 CFR
Proposed Rules:
249..... 2854

18 CFR
154..... 2826
270..... 2826
271..... 2826
273..... 2826
375..... 2826
381..... 2826
1310..... 2826

21 CFR
1..... 2827

23 CFR
645..... 2829

27 CFR
9..... 2834

30 CFR
934..... 2837

33 CFR
203..... 2841

34 CFR
Proposed Rules:
669..... 2918

36 CFR
222..... 2978

38 CFR
Proposed Rules:
21..... 2855

40 CFR
60..... 2914
721 (2 documents)..... 2842, 2845
Proposed Rules:
721..... 2857

42 CFR
59..... 2922

43 CFR
4100..... 2984

Rules and Regulations

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[Amdt. No. 301]

Food Stamp Program; Targeting for Income and Eligibility Verification Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: Section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) amends section 1137(a)(4)(c) of the Social Security Act. The amendment prohibits State agencies from being required to use information obtained through their income and eligibility verification systems (IEVS) to determine the eligibility of all recipients. This rule implements section 9101 by allowing State agencies to identify (target) which information items obtained through IEVS they will use to determine if actions adverse to household eligibility are warranted. The rule also specifies the elements which State agencies must include in their Plans of Operation concerning targeting action on IEVS information, it sets timeliness standards for such action, and specifies an annual reporting requirement.

DATES: Effective March 18, 1988, except for paragraphs 272.8(i) (3) and (4) and 272.8(j)(1) which will be effective upon publication in the **Federal Register** of the approval of the information collection requirements by the Office of Management and Budget (OMB), as discussed further in the paragraph concerning the Paperwork Reduction Act in this preamble. Comments on this rule must be received by April 4, 1988, to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas J. O'Connor, Chief, Administration and Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 716, Alexandria, Virginia 22302. All written comments will be open to public inspection at this same address during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. O'Connor at the above address, telephone (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Justification for Interim Rule

Anna Kondratas, Administrator of the Food and Nutrition Service (FNS) has determined pursuant to 5 U.S.C. 533, that for the reasons discussed below prior public comment on this rulemaking is unnecessary and contrary to the public interest.

This rule primarily affects State agencies. In general correspondence, in conferences, and in justifications for waiver requests, State agencies have indicated a desire to be allowed to target information items for follow up and to be given more than 30 days to complete follow-up action. In particular, State agencies have expressed concern that the requirement that they act on all information items causes them to devote staff and other resources to activities which frequently do not help determine the correctness of eligibility and benefits. Consequently, prompt implementation of this rule will enhance the efficiency of program administration by eliminating the requirement that all information items be followed up on. Also, according to State agencies, following up on all information items within 30 days adversely affects the quality and timeliness of application processing and ongoing case action. Consequently, prompt implementation of this rule will also enhance the effectiveness of the program with respect to the delivery of benefits. Since both program efficiency and effectiveness are important to the public interest in the Food Stamp Program (FSP), delay of this rule for prior public comment is contrary to that public interest.

As discussed in section C of this preamble, State agencies have broad discretion in the design of targeting methods and will be required to review and modify those methods periodically as their experience and capability develop. State agencies are required to provide FNS certain information about targeting methods so that FNS can determine if State agencies are conforming to the legislative requirement that IEVS information be used to the extent useful in determining eligibility and benefits. State agencies should have most of this information available or should be able to develop it within the 90-day timeframe provided for implementation. Consequently, given the flexibility that State agencies have in the design of actual procedures and the minimum requirements for information, delay in the implementation of this rule for prior public comment is unnecessary.

Notwithstanding these factors, public comment may enable the Department to improve the rule after it is published and implemented on an interim basis. Therefore, we are soliciting comments for 60 days. We will analyze the comments we timely receive, make any appropriate change in this rule and publish a final rule.

Executive Order 12291

This action has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected to the extent that they administer the Food Stamp Program.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3507) requires that OMB approve information collection requirements before they become effective. Paragraphs 272.8(i) (3) and (4) and 272.8(j) of this rule contain those requirements. The information collection burden associated with the current IEVS rule has been approved under OMB No. 0584–0350. Comments on the new provisions should be sent to Mr. O'Connor at the above address and to Ms. Pamela Barr, Office of Management and Budget, Room 3228, NEOB, 726 Jackson Place NW., Washington, DC 20503. The Department plans to publish a final rule in the **Federal Register** when OMB approves the information collection burden.

Background—Discussion of Regulatory Provisions

A. Current IEVS Legislation and Regulation

Section 2651 of the Deficit Reduction Act (DEFRA) of 1984 (Pub. L. 98–369) established requirements for the income and eligibility verification system (IEVS) by adding section 1137 to the Social Security Act (42 U.S.C. 1320 b–7). The legislation affected several Federal public assistance programs, all of which simultaneously published in the **Federal Register** proposed rules on March 14, 1985 (50 FR 10450) and final rules on February 28, 1986 (51 FR 7178). With certain exceptions, the final rules required State agency implementation by May 29, 1986. A thorough review of those regulations is essential to a complete understanding of the action taken in this rulemaking. Accordingly, the reader is refered to 51 FR 7178.

B. Language of the Amending Statute

1. Data Sources Involved

Section 1137(a)(2) of the Social Security Act requires matching between public assistance programs and such data sources as the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Section 1137(a)(4), among other things, discusses the exchange of information among the public assistance programs and between them and the unemployment compensation (UC) program. The amending language of section 9101 of Pub. L. 99–509 is inserted into the latter provision only. Nonetheless, since the October 21, 1986 amendment does not prohibit a general application of the targeting allowance and because a general application would significantly benefit State agencies, this rule allows State agencies to target follow-up action on results from all data sources.

2. Recipients/Applicants

Current rules treat follow-up action on applicants and recipients differently. At 7 CFR 272.8(e)(1), current rules provide that IEVS-obtained information regarding applicants received within the 30-day application period shall be used to determine household eligibility and benefits if the information is received timely enough for these determinations. At 7 CFR 272.8(g) the rules discuss the several components of follow-up action on recipients and the timeframe for those actions. The October 21, 1986 amendment applies its limitation to recipients, and this rule applies targeting to recipient households only. Targeting is not usefully applied to applicants for several reasons. First, in cases where IEVS information is received timely enough to be used for eligibility determinations, State agencies should be able to resolve any discrepancies as part of those determinations and the cost of the action should therefore be extremely small. Secondly, current rules provide that information requested on applicants and received after such households are recipients will be used according to the guidelines for recipients. The targeting provisions of this rule apply to such information.

C. Targeting and Timeframes

1. General

Current IEVS rules at 7 CFR 272.8(g)(1) specify three actions which State agencies must take on all information items received by means of IEVS. The three actions are: (1) Review of the information and comparison of it with the case record; (2) contact with the household and/or collateral contacts to resolve discrepancies with new or previously unverified information; and (3) issuance of adverse action when warranted. The rule requires that these actions be initiated and pursued so that the actions will be completed within 30 days of receipt of the information items. Action on a maximum of 20 percent of the information items may be completed after the 30-day period if two conditions are present. One condition is that action could not be completed only because requested verification from a collateral contact was not received. The second condition is that action is completed according to established timeliness standards for State agency action on reported changes or with the next case action, whichever is earlier.

Except for a technical revision, this rule makes no change in the follow-up actions which State agencies must take on information items. The second sentence of 7 CFR 272.8(g)(1)(iii) serves to remind State agencies that the treatment of adverse actions for periodic reporting households and for households under retrospective budgeting differs. This reminder is unnecessary, and so the sentence is deleted. The rule changes the timeframe for completing follow-up actions from 30 to 45 days and adds a requirement that for particular data sources State agencies develop methods for targeting, depending on State agency cost-benefit analyses. State agencies are required to describe these targeting methods in attachments to Plans of Operations.

2. Targeting In General

A mentioned at the beginning of this preamble, the amending legislation prohibits State agencies from being required to use information obtained through IEVS to determine the eligibility of all recipients. As also mentioned there, this rule implements that legislation by allowing State agencies to target the information items which they follow up on. Targeting is used to implement the legislation because, while the legislation sets no minimum level for follow-up action, the Department believes that State agencies should follow up on as many information items as possible. As discussed in the following parts of this preamble, targeting in the seletion of as many information items for follow up as a State agency's cost-benefit analysis indicates should be followed up on.

a. Targeting by data source. This rule requires at 7 CFR 272.8(i)(3) that in their attachments to their Plans of Operation, State agencies separately describe for each data source the targeting methods which they will use for follow-up action. This is required so that FNS can review and approve the methods and ensure that IEVS information is used to the maximum extent useful in verifying recipient eligibility and benefits.

This rule requires that State agencies develop targeting methods separately for each data base because the differences in the data warrant such

consideration in planning overall follow-up strategy. For example, data from the annual IRS match covers a calendar year and is available approximately nine to twelve months after that year; verification of the data is always required with the household and/or a financial institution before any decision about an adverse action is made; and there are a relatively large number of matches to process. Consequently, State agencies may want to target only the relatively larger dollar value matches. In some situations, a different approach may be desirable. For example, State agencies may want to target all Unemployment Insurance Benefit (UIB) matches for follow up. UIB data is relatively current when received, it covers discrete and limited time periods (weeks), and it has such a high degree of reliability that under IEVS rules it is considered verified upon receipt.

b. Recipients participating in other IEVS programs. Current rules at 7 CFR 272.8(f) require that State agencies request information on all members of recipient households. At 7 CFR 272.8(g)(1) the rules require that State agencies initiate and pursue action on information about recipient households which is received from IEVS sources. If four conditions are met, this rule allows State agencies either to exclude from their matching requests members of households who are participating in one of the other IEVS programs, or to exclude from follow-up action information items about such household members. These other IEVS programs are listed at 7 CFR 272.8(a)(2). For the most part, food stamp recipients would be excluded from matching or follow-up action because of participation in the Aid to Families with Dependent Children (AFDC) program. As explained just below in the discussion of the conditions for these exclusions, appropriate action would be taken on the excluded information items by the AFDC program and appropriate information communicated to the FSP-State agency. Consequently, this charge will avoid duplicate efforts and the related waste of administrative resources. The Department is providing State agencies the option of either excluding household members from matching or excluding information items in order to accommodate different administrative structures and data processing situations. The four conditions are the same for either option.

The first condition is that the agency administering the other program must be requesting and acting on information on food stamp recipients who are participating in that program as required by IEVS and any other pertinent rules for that program, including any provisons for selecting (targeting) information items for follow-up action. This will assure that information about food stamp household members participating in the other program is being appropriately requested and acted on. The second condition requires that the agency administering the other program agree to inform the FSP-State agency of the information obtained from its follow-up action on information items when that action discovers a discrepancy between actual circumstances of food stamp recipients and circumstances known by the other program agency. This communication is necessary so that the FSP-State agency can take action with respect to food stamp eligibility and benefits. The requirement should impose no burden on the State agencies since current rules at 7 CFR 273.12 provide that the results of AFDC-State agency follow up, insofar as it affects food stamp housholds, must be communicated to the FSP-State agency. The third condition is that the other program agency agrees to make available, upon the request of the FSP-State agency, any information items on food stamp recipients which the other program agency did not follow up on. This will enable the FSP-State agency to provide such information items to its QC reviewers. For further discussion of this matter, see section D of this preamble. The fourth condition is that the State agency must assure itself and FNS that the action taken by the other program agency is at least as beneficial as similar action by the ESP-State agency. This matter is discussed in detail in section 5 of this preamble.

This rule also makes an editorial revision to the name of paragraph 272.8(f). The reference to using information is deleted since using information is the subject of paragraph 272.8(g).

3. Targeting Methods

This rule at 7 CFR 272.8(i)(3)(i) requires that State agencies describe the targeting method which will be used for each data source, including such details as: what selective criteria (thresholds) are used, including (when feasible) assurances that the most cost-beneficial data are targeted in instances of redundancy across data sources; what program standards and information about households are used, if any; whether the criteria are applied on the basis of individual information items, or groups of information items about either individual household members or households; and whether the criteria are applied before any follow-up action is initiated or are applied as part of the comparison of match results to casefile information. The Department needs this kind of detailed description so it can understand what the targeting criteria are and how they are used.

One example of a selective criterion or threshold is, for quarterly wage data, to follow up on information items of $750 or more. The State agency would need to state whether the criterion would be applied to individual or to groups of information items and for individual household members or for entire households. As stated here, the criterion would be applied before any follow-up action. In this example, all this information would constitute the description of the targeting method. Another example of a targeting method would be comparing wage reports to income standards for particular households and acting on wage reports at or above the income standards. This method would use program standards, which would be the income levels for various sizes of households. It would also use information about particular households, that is, the number of household members. Finally, because the method would use information about particular households, it would involve some comparison of match results to casefile information.

Another targeting method would incorporate patterns of problems with respect to household reporting of the type of information obtained from the data source. For example, larger households with several wage earners might warrant closer attention with respect to quarterly wage data than a flat dollar discrepancy might indicate is appropriate. Finally, State agencies might flag particular households with a history of reporting problems or claims in order to give them special attention.

In developing targeting methods, State agencies are encouraged to be imaginative in their use of computer technology and other resources. For example, a computer system could identify wage data obtained from SSA which is already know from SWICA matching. State agencies could then follow up on such SSA information as wages from out-of-state employers and pensions. If a State agency uses such a procedure, this rule requires that a description of it be included as part of the description of the pertinent targeting method.

With respect to such procedures, however, the Department would reiterate and expand a point made in the preamble to the final IEVS rule (51 FR 7182, February 28, 1986). Current rules at

7 CFR 273.18(a) require State agencies to establish claims against households which receive overissuances. This rule does not modify that requirement. State agencies are required to pursue claims and related actions such as administrative disqualification hearings which IEVS-obtained information may indicate is appropriate with respect to overissuances to both participating and nonparticipating households.

4. Number of Matches Targeted for Follow Up

The Department is providing State agencies the maximum amount of flexibility in developing targeting methods so that they can make use of present capabilities and follow up on as many match results as possible. As discussed in the next section of this preamble, the sole requirement that targeting methods must meet is to be cost beneficial. This rule does require, at 7 CFR 272.8(i)(3)(ii), that State agencies estimate for each data source the number of information items which will be followed up on after targeting and to estimate the percentage that that number is of the number of information items received. These numbers should be produced as part of the development of targeting methods and of cost/benefit analyses.

5. Cost-Benefit Justification

The rule requires that State agencies include in their attachments to their Plans of Operation separate cost-benefit analyses to justify the targeting methods for each data source. Separate justifications are required because benefits and perhaps some cost elements will vary by data source as will targeting methods. With respect to the justifications in general, the rule requires that the analyses be sufficiently comprehensive and detailed to justify the targeting methods. While the Department does not want to restrict State agencies to any particular method of cost-benefit analysis, it does want analyses to be well developed and well presented so that the reasons for targeting methods can be understood and evaluated.

There are two general provisions related to cost-benefit justifications. First, if all information items received from matches from a particular data source will be followed up on, the State agency must certify that it has performed an analysis which showed that this 100 percent targeting is cost-beneficial. Second, if the targeting method will select matches for follow up, the cost-benefit justification must show that follow-up action on more matches than the targeting method selects would not be cost beneficial. Such statements are required because, as already mentioned, the Department wants State agencies to follow up on as many match results as possible considering the cost and the benefit of doing so. For targeting methods which select less than 100 percent of information items, the Department recognizes that State agencies would have difficulty in identifying a precise break point in the spectrum of information items at which following up on one more item would make the overall activity more costly than the expected benefits. The Department expects that State agencies will be able to determine when adding another group of items would have that result. For example, a State agency might show that following up on a quarterly wage data of $750 or more is cost-beneficial and that adding follow up on the $700–$749 group makes follow up no longer cost-beneficial for that data source. The Department encourages State agencies to define this group as narrowly as possible.

While State agencies have wide flexibility in developing cost-benefit justifications, the rule requires that the justifications demonstrate that the targeting method is cost-beneficial overall. To this end the rule does specifies certain factors which the justifications must and must not include. With respect to costs, the rule requires that the total costs include the total of State and Federal administrative costs. The total of Federal and of State costs must be included to reflect the actual total costs involved. The rule limits the elements of costs to the costs of targeting and follow-up. The rule sets these limits because the legislation requires that matches be used to the extent useful for eligibility determinations. So, for example, cost considerations of accessing data sources are not a factor. The rule also requires that the justification include the State agency's estimated cost per follow-up action for each particular data source. The Department believes that this figure will be a factor in any cost-benefit calculation. Providing the figure should impose no workload on the State agency, and the figure will be useful in updating to Congress and for other purposes discussed in section E of this preamble.

The rule specifies two types of costs which cannot be included in cost-benefit justifications. The first such type is developmental, start-up and other one-time costs. These cannot be included since they would be one-time costs and not factors in the day-to-day expenses. The second type is indirect costs. Cost factors of targeting and follow up cannot include elements attributed to them because of indirect costs because such elements tend to be difficult to document and in this situation should be marginal and insignificant.

With respect to the benefit part of the cost-benefit justification, the rule requires that total benefits include certain factors. One factor which must be included is the amount of claims established because of IEVS-obtained information. Two other factors are: Overissuances avoided and the total of Federal and State administrative costs avoided because of terminated cases. State agencies may include other factors if they can be quantified. In calculating overissuances and administrative costs avoided, State agencies should use the benefit levels and the number of months remaining in the certification periods of actual households whenever possible. Some components of the benefit part of the justification, for example a monthly administrative cost per case, may already be known to State agencies. The Department certainly encourages the use of such already established measures of benefits. However, such measures should not be used without adjustment when there is some likelihood that they would be misleading. For example, an established average claim collection figure might misstate claims in cases of data from IRS since that data source is relatively new.

As discussed in section 2(b) above, this rule allows the exclusion of household members from matching or the exclusion of information items about them from follow-up action if the household members or information items are dealt with by other agencies. Three of the four conditions which must be met for such exclusions to be allowed are discussed in section 2(b). The fourth condition is that such exclusions must result in follow-up action which is at least as beneficial as action the State agency would conduct. Section 2(b) explains that the general purpose for allowing State agencies to exclude household members and information items about them is to avoid duplicate effort and waste of resources. The fourth condition is to assure the overall effectiveness of matching and follow-up action with respect to food stamp household members. The condition has several parts which require that State agencies review certain materials and provide certain information to FNS. The actual work required is minimal relative to the relief that the exclusions provide State agencies.

First, the rule requires that if the State agency wants to exclude household members or information items about them it must identify in its cost-benefit justification the other program which is matching and following up on information items and otherwise meeting the first three conditions. This information is required so that it is understood what program is being discussed and so that FNS is assured that the first three conditions are met.

The second part of the condition requires that the State agency summarize the methods for targeting, or for otherwise selecting information items for follow-up action, used by the other program agency. In that summary the State agency must explain why those methods are at least as beneficial as the action which the State agency would take. That explanation is required so that the Department will be sure that IEVS-obtained information is being used effectively for food stamp households.

The Department expects that such explanation will be relatively simple. For example, the AFDC program generally provides greater benefits than does the FSP. Assuming equal costs for each program, it would be cost-beneficial for the AFDC program to follow up on more discrepant information items relating to food stamp recipients receiving AFDC than the FSP State agency. An explanation covering these points would generally be a sufficient demonstration that this part of the fourth condition is being met. The condition is stated in terms of benefits without reference to costs because it is assumed that it would cost the FSP State agency the same to follow up on a food stamp only recipient as one also receiving benefits from the other program. So, if the gross benefits by themselves are at least what they would be if the FSP State agency itself conducted the follow up, subtracting out an equal amount for costs from both gross benefit figures would not change their relative values. Consequently, costs do not have to be considered.

The rule further specifies that the summary and explanation must be based on the State agency's review of the description of the targeting or other selection methods as provided by the other program agency. A review of such materials is sufficient for the purposes of this rule since the other program agency would have attested that it is complying with its pertinent program rules. This approach also avoids involving the FSP State agency in inappropriate and costly operational reviews of the other program.

Finally with respect to the attachment to the Plan of Operation, the rule requires that State agency submit revisions to their attachments as warranted by information in their annual reports. This is being required so that the attachments accurately reflect State agency operations.

6. Timeframe for Action on Match Results

Current rules provide for a 30-day follow-up period on match results. This rule specifies a 45 day follow-up period. As already discussed, Congress supports this timeframe as more reasonable than 30 days, and the Department agrees. This is a maximum time period and does not preclude a State agency from setting shorter timeframes for action on match results from a particular data base or for prioritizing action on match results. For example, matches showing unreported UIB may warrant a relatively high priority. The 20 percent allowance for action on match results when third party information is late remains. This rule makes an editorial change to clarify that both of the two conditions related to the 20 percent allowance must be met when follow-up action is taken after the 45-day timeframe. (See 7 CFR 272.8(g)(3).)

D. Quality Control

Current rules state at 7 CFR 272.8(h) that the IEVS requirements do not relieve State agencies of the responsibility of determining erroneous payments or of the responsibility for any liability for such payments as determined by QC reviews. IEVS information which caseworkers have not resolved can be used by QC reviewers as leads to information about cases. The IEVS rule published February 28, 1986, added a sentence to 7 CFR 275.15(c) to specify that full field investigations of active cases must include a review of any information pertinent to a particular case which is available through IEVS. This rule allows State agencies to target IEVS-obtained information for follow-up action and so screen out some information items from any further action. In addition, other program agencies which are following up on information items about food stamp household members under the conditions of this rule may screen out information items. The Department believes that all such screened-out information items should be available for QC reviewers as leads to information about cases. Consequently, this rule revises 7 CFR 272.8(h) by adding a sentence which requires that State agencies make available to QC reviewers information items not selected for follow-up action because of the use of targeting methods, including any such methods used by another program agency under an attachment to the State agency's Plan of Operation for IEVS.

E. Reporting

Current IEVS rules at 7 CFR 272.8(j) require that State agencies report as the Secretary prescribes for determining compliance with the IEVS rules and evaluating the effectiveness of the IEVS. The preamble to the final IEVS rules (51 FR 7197, February 28, 1986) stated the intention of the Federal programs to limit reporting to (a) the number of agency records submitted to each IEVS source agency and (b) the number of positive match results received from each source agency. This rule requires that State agencies report annually on targeting-related aspects of IEVS. The reports must cover particular Federal Fiscal Years (October 1 through September 30). This reporting requirement supercedes the reporting requirement in the current rules. It is being established now because the anticipated variety of targeting methods will not allow the Department to estimate matching activity based on general information such as State participation levels and information from data sources such as the IRS and SSA. The Department believes that annual reporting is the longest cycle compatible with the need to monitor IEVS policy and operations, and to report about those matters to Congress. The three months from the end of the Fiscal Year to December 31 should give State agencies adequate time to prepare and submit reports.

In the reports State agencies must assess their targeting activities separately for each data source. For this purpose, the reports must include the actual number of information items acted on and the percentage that that number is of the number of items received. The Department needs this information to report on the level of matching activities, and the State agencies need it for other aspects of the reporting requirement. The information should be readily available to State agencies. The rule also requires that the reports include a summary of any significant operational events and patterns in targeting, and any consequent changes made or planned in such areas as automated data processing and targeting methods. This is being required because the Department expects that State agency experience, new computer technology and other developments will warrant changes in State agency IEVS operations. A third requirement is that the report include any changes to the

cost-benefit justification. This information is required because changes in operations will probably result in changes to the cost-benefit figures.

F. Implementation

Paragraph 272.1(g)(96) states that this rule is effective March 18, 1988, except for paragraphs 272.8(i) (3) and (4) and 272.8(j)(1) which will be effective upon publication in the **Federal Register** of the approval of the information collection burden by OMB. As mentioned in the paragraph in this preamble concerning the Paperwork Reduction Act, after that approval the Department plans to publish a final rule. In that rule it intends to require the submission of the attachments to State Plans of Operations 90 days after publication of that final rule. The first reports required by that rule would be due December 31, 1988.

List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

Therefore, 7 CFR Part 272 is amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority for Part 272 continues to read as follows:

Authority: (7 U.S.C. 2011–2099).

2. In § 272.1, paragraph (g)(96) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(96) Amendment 301. This rule pertains to the Income and Eligibility Verification System (IEVS). It is effective March 18, 1988, except for paragraphs 272.8(i) (3) and (4) and 272.8(j)(1) which will be effective upon publication in the **Federal Register** of the approval of the information collection burden by the Office of Management and Budget (OMB).

3. In § 272.8, the name of paragraph (f) and the introductory clause of paragraph (f) are revised, and a new paragraph (f)(7) is added; paragraph (g) is revised; a new sentence is added to the end of paragraph (h); and paragraphs (i) and (j)(1) are revised. The revisions and the new sentence read as follows:

§ 272.8 State income and eligibility verification system.

* * * * *

(f) *Requesting information about recipients.* Except as provided in paragraph (f)(7) of this section, with respect to all members of recipient households State agencies shall:

* * * * *

(7) Under certain conditions State agencies may exclude from the requests for information specified in this paragraph those members of recipient households who are participating in one of the other programs listed in paragraph (a)(2) of this section. The conditions for such exclusion are that:

(i) The agency responsible for administering such other program is requesting and acting on information on food stamp recipients who are participating in that program as required by the pertinent regulations for that program, including any concerning selective criteria for information items for follow-up action;

(ii) The other program agency agrees to inform the State agency of the information obtained from its follow-up action when that action discovers discrepancies between actual circumstances of food stamp recipients and circumstances known by the other program agency;

(iii) The other program agency agrees to make available, upon the request of the State agency, information items about food stamp recipients which it did not follow up on; and

(iv) The follow-up action taken by the other program agency is at least as beneficial as such action by the State agency.

(g) *Actions on recipient households.* With respect to information items received as a result of requests made according to paragraph (f) of this section, State agencies shall initiate and pursue action according to the attachment to the Plan of Operation specified in paragraph (i) of this section.

(1) State agency action on information items about recipient households shall include:

(i) Review of the information and comparison of it to case record information;

(ii) For all new or previously unverified information received, contact with the households and/or collateral contacts to resolve discrepancies as specified in §§ 273.2(f)(4)(iv) and 273.2(f)(9)(iii) and (iv); and

(iii) If discrepancies warrant reducing benefits or terminating eligibility, notices of adverse action.

(2) State agencies shall initiate and pursue the actions specified in paragraph (g)(1) of this section so that the actions are completed within 45 days of receipt of the information items. Actions may be completed later than 45 days from the receipt of information items on no more than 20 percent of the information items if:

(i) The only reason that the actions cannot be completed is the nonreceipt of verification requested from collateral contacts; and

(ii) The actions are completed as specified in § 273.12 when verification from a collateral contact is received or in conjunction with the next case action when such verification is not received, whichever is earlier.

(3) When the actions specified in paragraph (g)(1) of this section substantiate an overissuance, State agencies shall establish and take actions on claims as specified in § 273.18.

(4) State agencies shall use appropriate procedures to monitor the timeliness requirements in paragraph (g)(2) of this section.

(5) Except for the claims actions specified in paragraph (g)(3) of this section, under the conditions of paragraph (f)(7) of this section, State agencies may exclude from the actions required in paragraph (g) of this section information items pertaining to household members who are participating in one of the other programs listed in paragraph (a)(2) of this section.

(h) *IEVS information and quality control.* * * * State agencies shall make available to quality control reviewers information items which are not selected for follow-up action because of the use of targeting methods specified in paragraph (i)(3) of this section including any information items not selected by other program agencies as provided in paragraph (i)(3)(iii)(C).

(i) *Plan of Operations.* The requirements for the IEVS specified in this section shall be included in an attachment to the State agency's Plan of Operations as required in § 272.2(d). This document shall include:

(1) A description of procedures used, and agreements with the other agencies and programs specified in paragraph (a) of this section, including steps taken to meet requirements of limiting disclosure and safeguarding of information obtained from food stamp households and third parties as specified in § 272.1;

(2) Any of the material concerning alternate data sources as specified in paragraph (c) of this section;

(3) For each of the data sources specified in paragraphs (c) and (f) of this section, a separate description of how the State agency will select (target) information items for the actions specified in paragraph (g)(1) of this section. The description shall:

(i) Describe the targeting method which will be used including such details as: What selective criteria (thresholds) are used, including (when feasible) assurances that the most cost-beneficial data are targeted in instances of redundancy across data sources; what program standards and/or information about households are used, if any; whether the criteria are applied on the basis of individual or groups of information items, and about individual household members or households; and whether the criteria are applied before any follow-up action specified in paragraph (g) of this section are initiated or are applied as part of the comparison of match results to casefile information;

(ii) State the approximate number of information items which will be acted on and the approximate percentage that that number is of the number of information items received;

(iii) Include a sufficiently comprehensive and detailed cost-benefit analysis to justify the targeting method. If the State agency will follow-up on all information items received, it shall certify in its Plan of Operation that it performed an analysis which showed that 100 percent follow up is cost beneficial. If the targeting method will select certain information items for follow up, the justification shall show that following up on more information items than selected would not be cost-beneficial.

(A) Total costs shall include both the Federal and State share of administrative costs. The elements of the total costs shall be limited to the costs of targeting and follow-up action. The justification shall include an estimate of the cost per follow-up action. No costs for any developmental, start-up and other one-time costs or indirect ongoing costs shall be included.

(B) Total benefits shall include such quantifiable factors as the amounts of collections on claims established because of IEVS-obtained information, and the amounts of overissuances and the total of Federal and State administrative costs avoided due to terminating participation and reducing benefits.

(C) As provided in paragraphs (f)(7) and (g)(5) of this section, the State agency may exclude household members from match requests or exclude information items about them from follow up. If the State agency wants to make either of such exclusions, in its cost-benefit justification it shall provide certain information. First, the State agency shall identify the program involved and state that the agency responsible for administering the program meets the conditions of paragraphs (f)(7)(i), (ii) and (iii) of this section. Second, the State agency shall summarize the methods for targeting, or for otherwise selecting information items for follow-up action, used by the other program agency as required in paragraph (f)(7)(i) of this section. In that summary, the State agency shall explain why those actions are at least as beneficial as the action which the State agency would take to comply with paragraph (g) of this section. The summary shall be based on the State agency's review of the description of the targeting or other selection methods as provided by the other program agency; and

(4) The State agency shall submit revisions to the attachment as warranted by information in the annual report required in paragraph (j)(l) of this section.

(j) *Reports and documentation.* (1) The State agency shall annually assess the targeting aspects of its IEVS specified in paragraph (i)(3) of this section and shall report that assessment to FNS. Such reports shall cover a Federal Fiscal Year (October 1 through September 30) and are due to the appropriate FNS Regional Office by December 31 following the particular Fiscal Year. In the reports the State agency shall provide the following information about its targeting activities separately for each data source:

(i) The actual number of information items acted on and the percentage that that number is of the number of items received;

(ii) A summary of any significant operational events and patterns in targeting, and any consequent changes made or planned in such areas as automated data processing and targeting methods; and

(iii) Any change to the cost-benefit justification which is required by paragraph (i)(3) of this section.

* * * * *

Date: January 28, 1988.

Thomas W. Mitchell,

Acting Administrator.

[FR Doc. 88-2079 Filed 2-1-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 932

Expenses and Assessment Rate for Marketing Order Covering California Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 932 for the 1988 fiscal year established for that order. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1988, through December 31, 1988 (§ 932.222).

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 932 [7 CFR Part 932] regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

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

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was issued on December 24, 1987, and published in the **Federal Register** (52 FR 49417, December 31, 1987). That document contained a proposal to add § 932.222 to authorize expenses and establish an assessment rate for the California Olive Committee for the 1988 fiscal year, and provided that interested persons could file comments through January 11, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

Approval of this budget and assessment rate should be expedited

because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register [5 U.S.C. 553].

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

For the reasons set forth in the preamble, § 932.222 is added as follows [This section wil not appear in the Code of Federal Regulations]:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 932 continues to read as follows:

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

2. New § 932.222 is added to read as follows:

§ 932.222 Expenses and assessment rate.

Expenses of $1,620,350 by the California Olive Committee are authorized, and an assessment rate of $23.92 per ton of assessable olives is established, for the fiscal year ending December 31, 1988. Unexpended funds from the 1987 fiscal year may be carried over as a reserve.

Dated: January 22, 1988.

Robert C. Keeney,

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

[FR Doc. 88–2064 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1010–88]

Automatic Conversion of Classification of Beneficiary

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction in rule document No. INS 1010–87 beginning on page 33797 in the issue of Tuesday, September 8, 1987.

SUMMARY: This corrects a typographical error in the final rule published on September 8, 1987, 52 FR 33797.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC. Telephone: (202) 633–5014.

PART 204—PETITION TO CLASSIFY ALIEN AS RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

§ 204.5 [Corrected]

In § 204.5(c), the phrase "12 years of age" should read "21 years of age", where it appears after the phrase "unmarried children under * * *".

Date: December 8, 1987.

James A. Puleo,

Assistant Commissioner, Adjudications.

[FR Doc. 88–2098 Filed 2–1–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket. No. 87–148]

Reservation of Space for Quarantine of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations on reserving space in quarantine facilities maintained by Veterinary Services (VS) by requiring advance payment for all estimated quarantine related costs for birds and poultry. When, in the past, bird and poultry importers defaulted on payments owed to VS for quarantine costs, the federal government absorbed those costs. To prevent further losses, we are requiring that the reservation fees for birds and poultry amount to payment in full for the 30-day quarantine period.

We are also revising the definition section of the animal and poultry regulations. As now defined, pigeons are considered poultry.

EFFECTIVE DATE: March 3, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) prescribe conditions under which animals and poultry may enter the United States. Section 92.4 provides for reservation fees for animals and poultry being imported through quarantine facilities maintained by Veterinary Services (VS).

In a document published in the Federal Register on August 14, 1987 (52 FR 30372–30373, Docket Number 86–088), we proposed to amend § 92.4 of the regulations by requiring advance payment for all estimated costs of quarantining birds and poultry, defined to include pigeons, in the VS facilities. Our proposal invited the submission of written comments which we would consider if postmarked or received on or before October 13, 1987. We received 20 comments. With the exception of one from a State agency, all came from private industry. Two commenters supported the proposed rule; the others objected to it. A discussion of their objections follows.

Seventeen commenters maintained that advance payment of 25 percent of estimated quarantine costs should not be increased. All of these commenters objected to the increased rate, disputing our assertion that the government incurs significant losses when importers default on paying quarantine costs. One commenter suggested that we increase the reservation fee to 50 percent, rather than 100 percent, of estimated costs. He did not explain how he arrived at this compromise figure, nor the rationale behind it. Sixteen commenters stated that we should absorb our losses as a routine cost of doing business. They stated that "for the USDA to lose only twelve thousand dollars ($12,000.00) of all funds * * * collected from the avian imports is not a substantital amount * * *." These commenters erroneously compared the $12,000 lost in fiscal year 1986 with total funds collected from avian imports; in fact, the $12,000 lost represents a percentage of total funds collected in bird quarantine facilities maintained by Veterinary Services. Regulations on VS-maintained bird quarantine facilities concern fewer than one percent of all birds imported into the United States. Of the total number of birds imported into the United States each year—700,000—the number quarantined in VS maintained facilities each year fluctuates between 5,000 and 6,000. The majority of "avian imports" are quarantined in privately operated facilities.

One commenter objecting to the proposal stated that "costs of the care of the birds in many cases are the major factor of the *per diem*, and if there is no bird there, those costs are not incurred."

In recognition of that fact, the current regulations prescribe procedures for canceling reservations. We do not penalize importers who cancel reservations in accordance with the regulations; after subtracting our standard handling fee, we refund the amount of the reservation deposit. The change we proposed will not change the refunding procedures established in the regulations.

Two commenters, including one in favor of our proposal, worried about the administrative burdens we might encounter in processing refunds for unused fees. We expect the bookkeeping complications to be minimal, and the administrative advantage of our new system to outweigh any slight increase in refund-processing activities and costs that might occur.

Finally, one commenter objected to losing interest by depositing money with us. We concede his point, but note that the interest amounts involved are small. The commenter estimated that he would lose between $50 and $150 for a $7,000 quarantine. While we regret the necessity of requiring advance payment, slightly increasing the business expenses of bird importers using VS-maintained quarantine facilities, we are taking this action to prevent past abuses of our reservation fee policy from recurring.

Based on the rationale set forth in this document and in the proposal, we are amending the regulations as proposed.

Executive Order 12291 and Regulatory Flexibility Act

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

This billing procedure requires that bird and poultry importers using VS-maintained quarantine facilities prepay the estimated quarantine costs. Total bird quarantine charges will not increase; only the time of payment will change.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 is amended to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. In § 92.1, the definition of the word "birds" is revised to read: *Birds.* All members of the class aves (including eggs for hatching), other than poultry.

3. In § 92.1, the definition of the word "pigeons" is removed.

4. In § 92.1, the definition of the word "poultry" is revised to read: *Poultry.* Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys (including eggs for hatching).

5. Section 92.2(b) is revised to read:

§ 92.2 General prohibitions; exceptions.

* * * * *

(b) Birds from Canada may be imported in accordance with this section or in accordance with the provisions applicable to importation of poultry from Canada as specified in §§ 92.5(b), 92.19, and 92.26 of this part.

* * * * *

§ 92.2 [Amended]

6. Section 92.2(e) is removed and reserved.

7. Section 92.4 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 92.4 [Amended]

(a) * * *

(4)(i) The importer or importer's agent shall pay or ensure payment of a reservation fee for each lot of animals or birds to be quarantined in a facility maintained by Veterinary Services. For animals other than poultry, the reservation fee shall be 25 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge. This advance payment shall be at least $130 for each horse and $240 for each lot of any other kind of animal except poultry, but shall not exceed $2,500. For birds and poultry, the reservation fee shall be 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge.

* * * * *

Done in Washington, DC this 28th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–2065 Filed 2–1–88; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Borrower Rights; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published final amended regulations under Part 614 on November 25, 1987 (52 FR 45161). These regulations were amended to make Federal land banks and Federal intermediate credit banks subject to the credit review committee requirements and provide that the duties of the board member on such committees may be performed by an alternate, who is also required to be a board member. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the

effective date of the regulations is February 2, 1988.

EFFECTIVE DATE: February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Joanne P. Ongman, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(Secs. 5.17(9) and (10), Pub. L. 92–181, as amended by Pub. L. 99–205, 12 U.S.C. 2252(a)(9)(1))

Dated: January 27, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–2051 Filed 2–1–88; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 270, 273, 375, and 381

[Docket No. RM86–14–000; Order No. 483]

Revisions to the Purchased Gas Adjustment Regulations

Issued January 27, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) on November 10, 1987, amended its regulations governing the procedures by which a natural gas pipeline company (company or pipeline) passes through the cost of purchased gas to its jurisdictional customers. (52 FR 43854 (Nov. 17, 1987)).

In order to afford the natural gas pipeline industry the opportunity to discuss the technical aspects of implementing the revised Purchased Gas Adjustment (PGA) regulations, the Commission is holding a technical question and answer conference.

DATE: This conference is to be held on Tuesday, March 15, 1988, at 9:30 a.m. in a room to be designated in the offices of the Commission. Any revisions required to the time and place of the conference will be announced by, and the new time and place of the conference will be available from, the Commission's Office of Pipeline and Producer Regulation, Cost Analysis and Field Review Branch, (202) 357–9138.

ADDRESS: The address of the Commission offices where the conference is to be held is: Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426.

The room number will be posted on the day of the conference at the guard's desk on the second floor.

FOR FURTHER INFORMATION CONTACT: Robert W. Fulton, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, (202) 357–9138.

In order to afford the natural gas pipeline industry the opportunity to discuss the technical aspects of implementing the revised Purchased Gas Adjustment (PGA) regulations, the Commission's staff will hold a technical conference on Tuesday, March 15, 1988, at 9:30 a.m. The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Both rate and computer technical staff will be present at this conference to answer questions from the conference attendees. Any attendees may submit questions in writing in advance of the conference to Mr. Robert Fulton, 825 N. Capitol St. NE., Room 5410H, Washington, DC 20426.

All interested persons and Staff are invited to attend.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2092 Filed 2–1–88; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket Nos. RM86–7–001 et al.]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued January 27, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on Rehearing; Correction.

SUMMARY: On December 29, 1987, the Commission issued Order No. 473–A, granting rehearing of Order No. 473 to provide protest procedures for all first sellers to obtain compression allowances and to provide several clarifications of the final rule, (53 FR 15 (Jan. 4, 1988)). This notice corrects the date shown in the preamble text by which persons using the protest procedures to obtain compression allowances must make their filings under the expanded protest procedures. The corrected language now reflects the date provided in the regulations.

EFFECTIVE DATE: This change is effective March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: On December 29, 1987, the Commission issued Order No. 473–A, granting rehearing of Order No. 473 to provide protest procedures for all first sellers to obtain compression allowances and to provide several clarifications of the final rule. (53 FR 15 (Jan. 4, 1988)). This notice corrects the date shown in the preamble text by which persons using the protest procedures to obtain compression allowances must make their filings under the expanded protest procedures. On page 16, second column of 53 **Federal Register** (page 6 of the Commission's order), the second sentence of the first full paragraph is revised to read: "Interested persons will have until May 3, 1988 to make their filing."

The corrected language now reflects the date provided in the regulations included in Order No. 473–A and will become effective March 4, 1988, the date the order on rehearing becomes effective. (*See* 18 CFR 271.1104(h)(4)(ii)).

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2093 Filed 2–1–88; 8:45 am]

BILLING CODE 6717–01–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1310

Administrative Cost Recovery

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This final rule amends existing TVA administrative cost recovery regulations by providing for the collection of a $2 fee to accompany applications for quota turkey hunt permits at TVA's Land Between The Lakes (LBL) in western Kentucky and Tennessee. The regulation is promulgated under authority of the Tennessee Valley Authority Act of 1933, as amended, and Title V of the Independent Offices Appropriations Act of 1952 which authorizes TVA to prescribe for certain services or things of value provided by TVA such fee, charge, or price as it determines to be fair and equitable.

EFFECTIVE DATE: February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Elizabeth E. Thack, Director of Land Between the Lakes, Golden Pond, Kentucky 42231, (502) 924–5602.

SUPPLEMENTARY INFORMATION: TVA published the proposed rulemaking in the **Federal Register** on December 16, 1987 (52 FR 47728–29), and invited comments for 30 days ending January 15, 1988. TVA received one comment in general opposition to the quota turkey hunt and the application fee. The commenter did not challenge the basis for instituting the quota hunt or for charging the fee. The quota hunt is being implemented to enable TVA to more effectively manage the turkey population and help reduce the risk of injuries to hunters due to overcrowding. Accordingly, TVA has decided to institute the quota turkey hunt on peak days. TVA already charges a $2 application fee for its quota deer hunts. Not charging for quota turkey hunt applications would be inconsistent, and TVA has decided to charge for quota turkey hunt application processing. Accordingly, TVA is promulgating this final rule as proposed.

Hunters at LBL must hold a State hunting license for the State in which they are hunting (Kentucky or Tennessee) and a hunter use permit from TVA for which TVA charges a fee. Due to the quality of the hunting experience offered, LBL is a very popular turkey hunting site. Because of the large number of people desiring to hunt turkey at LBL, TVA has decided to limit participation in the turkey hunts during peak use days of the hunting season by random selection of applicants for special quota turkey hunt permits as part of an intensively managed hunting program. The special quota turkey hunts will be implemented beginning in April 1988 for the first five days of the season. Limiting hunter density on these days should help reduce the risk of accidental injury and enhance the hunting experience. Actual quota hunt days will be publicized well in advance of each season. In order to participate in quota turkey hunts, hunters will be required to complete an application form which must be received by established deadlines. A drawing will be conducted by computer and a quota hunt permit or rejection notice mailed to the applicant.

The $2 application fee for LBL quota turkey hunt permits will recover administrative costs associated with processing the forms, conducting the drawing, and notifying applicants of rejection or selection. TVA already charges the $2 application fee for LBL quota deer hunts. Application forms must be made available no later than February 1988 in order to process the applications for the 1988 quota turkey hunt. In order to treat all quota hunt applicants equally and in light of the foregoing, TVA has determined that good cause exists to make these regulations effective immediately and that it is impracticable and unnecessary to delay the effective date of this rulemaking beyond the publication date hereof.

TVA has determined that this proposed rule will not be a "major" rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act.

TVA has determined in accordance with section 5.2.9 of TVA's procedures implementing the National Environmental Policy Act (48 FR 19264) that the proposed rule is of a type that does not have a significant impact on the human environment. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 18 CFR Part 1310

Government property, Hunting, Land, Land sales.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1310—ADMINISTRATIVE COST RECOVERY

1. The authority citation for 18 CFR Part 1310 continues to read as follows:

Authority: 16 U.S.C. 831–831dd; 31 U.S.C. 9701.

§ 1310.2 [Amended]

2. Section 1310.2 is amended by adding "and turkey hunt" after "deer hunt" where it appears in paragraph (c) in the heading and text.

§ 1310.3 [Amended]

3. Section 1310.3 is amended by adding "and turkey hunt" after "deer hunt" where it appears in paragraph (d) in the heading and text.

W. F. Willis,

General Manager.

January 26, 1988.

[FR Doc. 88–2059 Filed 2–1–88; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 87N–0358]

Code of Federal Regulations; Authority Citations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing new procedures to ensure that the authority citations for the agency's regulations in Title 21 of the Code of Federal Regulations (CFR) conform to the requirements established by the Administrative Committee of the Federal Register (ACFR). This action does not represent a change in policy and does not increase the burdens on the public.

DATES: Effective February 2, 1988; comments by March 3, 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: T. Rada Proehl, Office of Regulatory Affairs (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 28, 1985 (50 FR 12462), the ACFR amended its regulations (Title 1, Code of Federal Regulations (CFR)) to clarify, among other things, the form and placement of citations of authority in the CFR (1 CFR 21.40).

Under the new regulations issued on March 28, 1985 (see 1 CFR 21.43), authority citations are to be centralized and provided for each part or subpart. ACFR made this change because it considers authority citations for each section to be needlessly repetitious and confusing to the public. ACFR is confident that its new rules will eliminate repetition, result in fewer pages in the CFR, save agency printing costs, and provide easy reference for the reader. If an agency wishes to specify the authority for a particular CFR section, it can do so within the centralized authority citation (see 50 FR 12464).

ACFR also noted that many CFR authority citations are redundant because agencies have not consolidated the Public Law, Statutes at Large, and

United States Code (U.S.C.) citations. Therefore, ACFR amended its regulations (see 1 CFR 21.52) to require only reference to the U.S.C. in authority citations. Use of Public Law and U.S. Statutes at Large citations is now optional.

ACFR noted that its action did not represent a change in policy or an increase in the burdens on agencies or the public. As it stated in the **Federal Register** of March 28, 1985 (see 50 FR 12462):

> The ACFR will not require agencies to reach back and rewrite authority citations for regulations already in the CFR. This centralization of authority citations will take place as agencies amend their regulations. It will be most cost effective for agencies when amending their regulations to remove the authority citations at the section level and centralize the citations at the part or subpart level. This can be done with amendatory language such as:
>
> The authority citation for Part X is revised to read as set forth below and the authority citations following all the sections in Part X are removed.

FDA recognizes that each of its documents classified as a rule or proposed rule in the **Federal Register** must contain a citation of the legal authority under which the agency issues the document (see 1 CFR 21.40). Over the years, FDA has followed the practice of including the authority citations both at the part or subpart level and at the section level. After a preliminary review of FDA's regulations in 21 CFR Parts 1 through 1299, the agency has determined that, although the authority citations are accurate, there are some redundancies and inconsistencies. Therefore, the agency has undertaken a project to review and to revise all of the authority citations in 21 CFR Parts 1 through 1299, to comply with ACFR's authority citation requirements. The agency intends to remove the authority citations that are listed for particular sections and to include all these citations in the authority citation for the part or subpart. The agency recognizes that, as a result, some authority citations included for a part or subpart will not be applicable to all of the regulations included in that part or subpart. Interested persons should be aware of this fact.

The agency also intends to eliminate all references to Public Laws and to the U.S. Statutes at Large when it can cite the U.S.C. However, the agency will cite both the Federal Food, Drug, and Cosmetic Act (Public Health Service Act or other applicable statute) and the U.S.C. in the authority citation.

For example: **Authority:** Secs. 402, 403, 409, 701, 702, 703, 704 (21 U.S.C. 342, 343, 348, 371, 372, 373, 374).

In this final rule, FDA is revising the authority citations in 21 CFR Part 1. The agency anticipates that in the next year, it will review and revise Subchapter A—General Parts 2 to 99 (21 CFR Parts 2 to 99) and Subchapter B—Food For Human Consumption Parts 100 to 169 and Parts 170 to 199 (21 CFR Parts 100 to 169 and Parts 170 to 199) to comply with 1 CFR 21.43. The agency expects to complete its revision of its regulations in 1989. If, however, the agency finds that it is amending a part or subpart, or significant numbers of sections in a part or subpart, as part of a substantive rulemaking activity, it may revise the citations in that part or subpart to comply with the ACFR requirements as part of the rulemaking. Any new parts or subparts that FDA adds will be drafted to conform to 1 CFR 21.43.

The agency believes that it should codify its practices for including authority citations. Therefore, the agency is issuing new § 1.4 *Authority citations.* New § 1.4(a) makes clear that FDA's policy is to review and to revise its regulations as necessary to comply with ACFR's requirements. Where there is no applicable U.S.C. authority for a regulation, the agency, in accordance with new § 1.4(c), will include a citation to the Statutes at Large. If necessary, the agency, in accordance with new § 1.4(d), will include a citation to executive delegations (e.g., Executive Orders), if any, to link the statutory authority to the agency.

New § 1.4(b) provides that, in reading the agency's regulations in 21 CFR Parts 1 through 1299, interested persons should be aware that the agency may rely on one or more of the statutory provisions listed for a part or subpart to implement or to enforce any section in that part or subpart.

FDA has determined that this final rule does not change the statutory authority under which any section of any part or subpart was issued. Accordingly, because the changes that the agency is making are not substantive, the Commissioner of Food and Drugs finds that there is good cause not to engage in notice and public procedures or to delay the effective date of these amendments. FDA is merely conforming the form and placement of authority citations to ACFR's requirements in 1 CFR 21.40, et al. (5 U.S.C. 553).

In accordance with 21 CFR 10.40(e)(1), the agency is providing until March 3, 1988 for interested persons to submit written comments on the changes to the Dockets Management Branch (address above) to permit the agency to determine whether the amendments should subsequently be modified or revoked. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12291, FDA has analyzed the potential economic effects of this final rule and has determined that the rule is not a major rule as defined by the Order. Because the amendments are not substantive, there is no economic impact from them.

The agency has determined under 21 CFR 25.24(a) (8) and (9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 1

Food, Human drugs and biologics, Animal drugs and feeds, Cosmetics, Medical devices, Radiological health products, Administrative practices and procedures, Authority citations.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 1 is amended as follows:

PART 1—GENERAL REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. The authority citation for 21 CFR Part 1 is revised to read as follows and the authority citations following all of the sections in Part 1 are removed:

Authority: Secs. 4, 5, 6 (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371).

2. In Subpart A by adding new § 1.4 to read as follows:

§ 1.4 Authority citations.

(a) For each part or each subpart of its regulations, the Food and Drug Administration includes a centralized citation of all of the statutory provisions that provide authority for any regulation that is included in that part or subpart.

(b) The agency may rely on any one or more of the authorities that are listed for a particular part or subpart in implementing or enforcing any section in that part or subpart.

(c) All citations of authority in this chapter will list the applicable sections in the organic statute (e.g., the Federal Food, Drug, and Cosmetic Act), as well

as the corresponding United States Code (U.S.C.) sections, if they exist. Where there is no corresponding U.S.C. provision, the agency will include a citation to the U.S. Statutes at Large. Citations to the U.S. Statutes at Large will refer to section, page, and volume.

(d) The authority citations will include a citation to executive delegations (i.e., Executive Orders), if any, necessary to link the statutory authority to the agency.

Dated: January 7, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-2038 Filed 2-1-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 86-15]

Accommodation of Utilities; Longitudinal Utility Use of Freeway Right-of-Way

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on the accommodation of utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects to clarify requirements regarding utility use of Federal-aid highway right-of-way and modify the conditions under which certain types of utilities such as fiber optics may be located longitudinally on Federal-aid freeways.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering and Program Development, (202) 366-4652; or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 7th 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 final rule sets forth the FHWA's Accommodation of Utilities; Longitudinal Use of Freeway Right-of-Way policy and it explains what States must address in amending their current accommodation plans to obtain FHWA approval for utilities to use the longitudinal right-of-way, including provisions for the direct access from the roadway to install, service and maintain the utility. Once a State decides to provide for longitudinal use in its accommodation plan and establishes procedures which meet the criteria described in the rule, the State, rather than FHWA, will determine whether a particular request to use the longitudinal right-of-way, including direct access, is appropriate. For administrative convenience, States may set up procedures for individual and/or class approvals of such requests. A State also can decide not to permit longitudinal use, but this must be expressed in its accommodation plan.

This process, therefore, leaves to the States the decision as to whether particular applications should be approved so long as they comply with the regulatory criteria and thus is consistent with E.O. 12612 on "Federalism."

The rule includes three criteria that State plans must meet: Assure that longitudinal installations do not adversely affect highway safety; evaluate the effects that denial of a particular application would have on the productivity of agricultural land; and consider any impairment or interference with the use of the highway.

Background

Under the existing FHWA regulations, the need for allowing utility installations to cross over or under Federal-aid highway right-of-way is recognized, provided certain conditions are satisfied. The policy is designed so that the Federal-aid highway systems do not act as barriers to necessary and orderly land use and development. The existing policy, although strongly discouraging the longitudinal use of the freeway right-of-way within the access control limits, does not prohibit such use, provided certain conditions are met.

On December 19, 1986, the FHWA issues a notice of proposed rulemaking (NPRM) (51 FR 45479, FHWA Docket No. 86-15). On February 11, 1987, the comment period was extended to March 17, 1987 (52 FR 4349). The NPRM solicited comments on proposed revisions to regulations on the accommodation of utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. The proposed revisions sought to clarify requirements regarding utility use of Federal-aid highway right-of-way and to modify the conditions under which certain types of utilities such as fiber optics may be located longitudinally on Federal-aid freeways.

A total of 89 commenters responded to the NPRM. This included 40 State highway agencies (SHA's), 15 utility companies, four governors, four contractors, six national organizations, seven private citizens and 13 others including other State agencies, local agencies and universities.

There were 76 general comments on the NPRM. Thirty-two commenters expressed support for loosening of the longitudinal occupancy policy. Forty-two commenters expressed unfavorable responses to the use of controlled access right-of-way for longitudinal utility installations. The others offered technical comments or did not indicate any preference. Of the responses from SHA's, 24 were unfavorable and 10 were favorable. Comments from State governors, private citizens, universities, and consultants provided 12 unfavorable responses and 15 favorable responses. Eight utility companies supported the rulemaking, and six did not. One offered technical suggestions only.

Further analysis of the general comments showed that 31 of the 42 unfavorable comments expressed opposition to any change from the existing policy. Several expressed strong opposition to any change and cited potential safety problems and fears of proliferation as reasons. Several expressed concern for the availability of information needed to justify use of freeway right-of-way under the NPRM. The favorable comments most often expressed support or non-opposition with the condition that safety should not be compromised.

The specific comments on the NPRM mirror in many respects the general comments. Of the 40 comments on specific provisions, 18 were favorable, 21 may be characterized as unfavorable, and one was technical. The 18 comments in favor of the specific requirements supported the opportunity for use of controlled access right-of-way. Many of the comments which expressed opposition indicated an anticipated difficulty with the justification that would be necessary to support use of the freeway right-of-way.

The following discussion addresses the substantive issues most frequently mentioned by the commenters:

1. Safety and Operations

Under the NPRM, access from the main lanes or ramps would be permitted under very strictly controlled conditions. Nine commenters, mostly utilities, responded that access should be allowed from the main lanes and ramps under various forms of permits or specifications that would require demonstration of the utility's abilities to

comply with traffic control measures. Nine SHA's opposed this position.

Most of the commenters recognized that after a fiber optic cable system is installed, need for access for maintenance or service is minimal. Several noted that the actual maintenance experience with a system in a freeway environment is uncertain because none have been in service long enough. However, judging from other cable installations, very little line maintenance is necessary except at repeater stations or when an accident occurs. Some commenters reported problems with splices and recommended that they be located at non-strategic locations, such as in interchange areas where access would be easy. Others recommended that repeater stations be located at or outside of the right-of-way line so that more frequent maintenance would not be disruptive to highway traffic.

The final rule provides criteria under which States may permit direct access, after FHWA approves the plans, from the main lanes or ramps. Those States that oppose this form of access are not required to allow such access and their accommodation plans can reflect this fact. Prior to granting direct access, States must address the conditions under which it will permit such access in their accommodation plans and the accommodation plans must be approved by FHWA.

The NPRM also raised a question regarding the need for specific standards in the rule. Seven commenters believed that some standards were necessary. However, there was no agreement on what type of standards would be appropriate nor whether the standards should be part of the rule. Three of the commenters recommended that standards be devised but not included in the rule.

FHWA is not adopting detailed programmatic standards for States to adopt uniformly for permits for direct access. States may grant such permits consistent with the generic criteria established by FHWA.

There were 18 comments on a question regarding nature, type and extent of controls on operations and safety if access were to be permitted from the main lanes of a freeway. Nine of the responses were from SHA's whose primary concerns were for proper signing and control of the utility contractor. A frequent SHA statement was that they do not have enough personnel to police the proposed policy under a permit process. Several SHA's and some utilities recommended strict permit procedures or demonstration of ability to perform under freeway conditions. The utilities responding to this question suggested that the installations be at the right-of-way edge to minimize traffic conflicts.

Direct access requirements are included in the final rule and must be addressed by the States in their accommodation plan to ensure that highway safety is not adversely affected. Those States that have concerns can prohibit direct access or address them through their longitudinal use plan, without unnecessary Federal oversight.

2. Class Approval Process

The NPRM also proposed that States could establish, with FHWA prior approval, class approval procedures. Once a plan containing class approval was approved by FHWA, individual longitudinal use requests within the class could be expedited. The class approval process was established for the administrative convenience of the States and it was anticipated that it would assist in expediting approvals where warranted. FHWA solicited comments on the types, terms and conditions that should be imposed on various utilities under a class approval process. Twelve of the 26 comments on this question were from SHA's and directed at the class of utility or type of installation. The comments were in general agreement that there could be a general class of utilities which by type of installation (buried at various depths) and by low frequency of maintenance and low incidence of danger which could be accommodated at or near the right-of-way line. Other commenters, mainly utility companies, thought standards or criteria of installation should include location, depth, access provisions and marking as factors for determining class approval.

There were 14 comments on a question as to what type of utility could warrant approval under the class approval process. The general consensus was that class approval could be given for a utility that (1) could be buried easily, (2) would present very low hazard, (3) would require very little maintenance and (4) would be similar to fiber optics, and (5) could be identified as a class of utilities. Several responses indicated that transmission facilities would meet the class approval criteria, but distribution would not. Some commented that overhead facilities would not be warranted because of visual intrusion and potential for damage. Others expressed views that underground facilities, such as water, gas, oil and sewer lines, would not be warranted because of potential danger or the need for frequent service.

The final rule enables States to establish class approval procedures, but does not distinguish between types of utilities for which class approval will be granted.

3. Limiting Increased Use to Certain Types of Utilities

The NPRM solicited comments on whether only certain types of utilities should be permitted increased use of the right-of-way. Twenty-three SHA's, eight utilities and two private citizens responded to this issue. Seventeen SHA's thought that allowing access for certain utilities while excluding others would be discriminatory, difficult to justify or might raise charges of restraint of trade. Other States thought there would be no problems or that any conflicts could be worked out with proper procedures. Seven of the eight utilities indicated access could be provided fairly if certain controls were adhered to. The two private citizens thought it would not be legally or politically possible to allow only certain types of utilities.

As noted above, the final rule does not distinguish between types of potential users. As long as the regulatory criteria are met, the States will have the option of determining which types of utilities should be permitted along the right-of-way within their jurisdiction. The NPRM, however, did note that underground utility facilities which require little maintenance or servicing obviously would have less impact than above ground utility installations which are more subject to environmental deterioration and may create a safety hazard as a roadside obstacle. States are free to make such a distinction among classes in their accommodation plans, and if consistent with criteria established by this rule, would be approved. Thus, as part of the accommodation plan, States can distinguish between type, nature or function of utility and potential impact of freeway use in setting up a class approval process.

4. Impact on Future Highway Construction and Maintenance

There were four comments on this specific question, three from SHA's and one from a utility. The SHA's expressed concern for the proliferation of use by fiber optics lines and other types of utilities. Their comments indicated that more problems could be anticipated with placement of signing, illumination and guard rails away from the roadway. There was also concern expressed about the presence of utilities limiting further

ability to add to or reconstruct the highway. There were no specific comments which addressed the economic impact on future highway construction and maintenance.

The final rule includes a provision which requires States to consider the interference or impairment of the use of the highway in reviewing applications for longitudinal use of the right-of-way. This provision is consistent with 23 U.S.C. 109(l)(1).

5. Governmental Usage/Defense Enhancements of Telecommunications Facilities

Seven SHA's and two utilities responded to the question of whether a portion of the fiber optic cables should be specifically dedicated for a given use as a condition to approving such installations. Five States thought dedicated use should be required. Two States and the two utilities said it should not be required. Two States also thought specific defense enhancements should be required. The two responding utilities said such enhancements should not be required. One State and one private citizen thought a defense communication system would be vulnerable to attack if placed on the Interstate System.

The final rule does not include any requirements on this issue. If States decide that dedicated use is necessary or specific enhancements should be required, these may be included in their accommodation plans. FHWA, however, will not consider the presence or absence of such restrictions in reviewing and approving accommodation plans.

6. Fees for Use of Right-of-Way

There were 34 responses to the general question of whether and how a fee system could be implemented for use of the right-of-way. The general consensus was that some type of fee should be charged. Four utilities and one utility organization thought the charge should be limited to administrative costs. Six utilities thought there should be no fee. The reasons for no fee ranged from "a fair fee system would be difficult to implement" to "utilities pay for highways through taxes." One State thought there should be no fee if the utility agrees to an indemnification condition. In three States the laws would have to be changed to allow collection of fees. In one State the laws prohibit fees being greater than administrative costs. Others favored charging fees and suggested various methods for setting them.

There was a consensus among respondents that right-of-way should be leased rather than purchased, that States should collect and retain fees collected, and that the revenues should be earmarked for highway purposes.

The final rule contains no provision requiring the SHA's to charge for utility use of Federal-aid highway right-of-way. Rather, the amount, if any, and disposition of fees collected is left to State discretion. FHWA intends to continue to review this issue. Section 126 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (23 U.S.C. 156) requires that States charge fair market value for the sale, use, or lease of right-of-way airspace. However, utility use and occupancy was specifically exempted from this requirement. FHWA intends to leave this issue to State discretion pending further review.

7. Benefits To Be Expected From Increased Use of Right-of-Way

The NPRM asked for comments on the benefits that could be gained by allowing an increased use of the right-of-way. There were nine comments addressing this issue. Those from SHA's (four) were clouded by the question of whether fees would be charged and how the amount of the fee would be determined. Two of the SHA's reported that there should be an economic benefit to the utility because the utility would not have to purchase private right-of-way. One SHA indicated there would be little difference in cost of highway right-of-way versus private right-of-way. The general conclusion was that there would be some benefit to the utility. The utilities commented that there would be considerable benefit to the utility due to reduced construction costs, greater protection offered by freeway right-of-way, and ease in dealing with one agency. All these benefits would be passed on to the utility user. Any fee involved would be of economic benefit to the highway agency.

The final rule does not require that States consider governmental benefits in submitting a plan for FHWA approval or in reviewing individual longitudinal use applications. States are free to evaluate governmental benefits and the absence or presence of such a requirement in their accommodation plans will not be considered by FHWA.

Final Rule

In light of these comments the FHWA is revising its regulation to incorporate the policy as outlined in the NPRM with some modifications and clarification. Under the final rule, as part of the utility accommodation plan, States must indicate whether or not longitudinal installations of utilities will be permitted and submit procedures for the processing of individual requests and, if desired, for class approvals. Once FHWA has approved the plan, it will no longer review installations requests. This does not mean that States must adopt installation approval procedures. However, if States choose not to permit installations, they must indicate clearly their intent to prohibit installation in their accommodation plan. This regulation requires that revisions be made to existing State plans and that, as indicated in the existing regulation (23 CFR 645.215), such revisions must be submitted to FHWA within 1 year of the effective date of this rule.

There are two principal statutory provisions (23 U.S.C. 109 and 111) the States must be cognizant of in developing utility accommodation plans and which FHWA will ensure are complied with before approving such plans. Under 23 U.S.C. 109 (l)(1), in determining whether any right-of-way on any Federal-aid system should be used for accommodating any utility facility, the Secretary "shall":

—Ascertain the effect such use will have on the highway and safety;
—Evaluate the direct and indirect impact on agricultural lands if a freeway right-of-way request is denied; and,
—Consider any interference with or impairment of the highway if a request is granted.

Under 23 U.S.C. 111, States are required to obtain the prior approval of the Secretary before adding any point of access to, or exit from, an existing approved Interstate System project.

The approval required under section 111 and Federal determinations required under 109(l) will be deemed obtained by each State once it has submitted an accommodation plan that meets the requirements of this regulation and the plan is subsequently approved by FHWA. The approval will be conditioned upon complete compliance with the procedures established in the State plan. Although the final rule requires that all States address longitudinal installations in their accommodation plans, States can decide the extent of longitudinal installations that may be permitted or determine that no installations be permitted. All plans that contemplate longitudinal installations must demonstrate compliance with the criteria set out in the rule to obtain FHWA approval. For example, States may wish to permit and promote certain installations. On the other hand, States may choose to submit plans that maintain the current restrictive standards with regard to

longitudinal installations or to prohibit longitudinal installations. As long as States make a showing in their plans that the criteria of this regulation will be met prior to allowing such installations, States will be able to permit them under the approved plan.

Specific Provisions

1. Joint Use Policy Statement: Section 645.205

Paragraph (b) of § 645.205 adds a policy statement which encourages joint highway and utility planning in the design of new highways and the accommodation of utilities in existing highway corridors. This policy statement responds to the comments which pointed out the tradition of accommodating utility service and highway service in the same right-of-way.

2. Utility Definitions: Section 645.207

Section 645.207 clarifies the definitions of utility and utility facilities to include such things as communication lines owned by or dedicated to a governmental agency for its own use. This brings such facilities under the same comprehensive accommodation policy as public utilities. The definitions are also expanded to include hardware and facilities which are part of the utility's physical plant and necessary facilities for the utility's operations.

3. Criteria for Approval: Section 645.209

Section 645.209(c) provides that to obtain FHWA approval, the State plan must demonstrate that it will meet the requirements of 23 U.S.C. 109(l)(1). Each State accommodation plan that contemplates longitudinal installations must adequately demonstrate that such criteria are met prior to installation of any utility.

The criteria are:

—The State must ascertain the effects utility installations will have on highway and traffic safety, since in no case shall any use be permitted which would adversely affect safety.

—The State must evaluate the affects the denial of a particular application would have on the productivity of agricultural land.

—The State must consider any impairment or interference with the use of the highway.

These provisions are based on section 109(l)(1) and section 111. The NPRM had proposed to adopt the American Association of State Highway and Transportation Officials (AASHTO) Policy on the Accommodation of Utilities Within Freeway Right-of-Way standards as part of the criteria for approval of an accommodation plan. The final rule does not do so.

While the criteria must be met by the States to obtain FHWA approval of the accommodation plan, they are intended as minimum requirements and States are free to adopt additional criteria, including those used by AASHTO.

The NPRM proposed additional specific elements, such as the costs and difficulties of using alternative locations, as criteria for FHWA approval. These elements have not been included as regulatory conditions that States must meet to obtain FHWA approval of their accommodation plan because FHWA believes that, once plans are approved, States will be able to make the necessary determinations in implementing their accommodation policies consistent with the statutory and regulatory criteria.

Utility Standards/Strips

FHWA is including § 645.209(c)(2)(v) as a technical clarification. This provision essentially reflects the existing regulation with respect to utility strips and was inadvertently omitted from the NPRM's proposed regulatory language. It was not FHWA's intent to delete this requirement and, therefore, the rule contains provisions for establishment of a utility strip or corridor in which a longitudinal utility could be placed. The utility strip would be formed along the outer right-of-way limit by establishing a utility access control line between the proposed utility installation and the through roadways. The means of enforcing the utility access control line would have to be addressed in the State's utility accommodation policy. No service connections would be allowed from within the utility corridor. Under this concept the original control of access line and right-of-way fence would not have to be moved to establish a utility strip.

FHWA is not adding a specific provision, as requested in several comments received from both highway and utility industry authorities, which recommended establishment of construction standards, location standards, or special marking techniques. These matters are already governed by Part 645, and no additional changes are needed at this time.

4. State Accommodation Policies: Section 645.211

Under § 645.211(a) the State should limit the number or type of utilities that could qualify for longitudinal occupancy if excessive utility installations are likely which could result in conditions detrimental to the highway and its use. The State must have uniform procedures for establishing reasonable limitations in its utility accommodation policy to preserve the integrity of the freeway and preclude proliferation of utility occupancy. The procedures should provide a means of limiting utility use in a fair and equitable manner.

Class Approval Procedures

Section 645.211(e) requires the State to set forth in its accommodation policy detailed procedures, criteria and standards it will use to evaluate and approve proposed utility installations on freeways. To facilitate installations, a class approval process is established. Under this process the State could distinguish by type, nature or function of utility and potential impact on freeway use those utilities which would be considered for approval under the provisions of § 645.209(c). This procedure recognizes that not all utilities impact the highway or its use in the same way and may be treated differenly. These procedures would be added to the State's accommodations policy and if approved by the FHWA, used to evaluate utility proposals. The State highway agency would be responsible in each individual case to ensure that the proposed utility installation meets the criteria of the approved accommodation policy.

6. Submission of Utility Application of FHWA: Section 645.215

Section 645.215(d) has been modified regarding when individual utility applications are to be submitted to FHWA. Under the revised procedures the State must address longitudinal installation in its utility accommodation policy. The State's accommodation policy must address the criteria for utility use of highways in a manner sufficient to permit FHWA approval. FHWA will no longer review individual longitudinal use requests.

Regulatory Impact

The FHWA has determined that this document is not a major rule under Executive Order 12291. However, it is considered a significant regulation under the Department of Transportation's regulatory policies and procedures and has been included in DOT's Regulatory Program for significant rulemakings. The final rule modifies and clarifies existing FHWA policy and procedures for accommodating utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. Specifically, policy and procedural clarifications are set forth

concerning applications of the regulation to placement of new utility facilities on highway right-of-way, particularly longitudinal use of freeway right-of-way.

The revisions will not impose any significant or substantial additional reporting or recordkeeping requirments on the States. Additional justification for longitudinal occupancy would have to be supplied by the utility to the States. Only the conditions under which certain types of utilities may be located longitudinally on Federal-aid freeways will be modified. The modified conditions will merely be incorporated in the States' existing utility accommodation policies if a State so chooses.

The regulatory impacts are addressed in more detail in a Regulatory Evaluation/Regulatory Flexibility Analysis which has been prepared and is available for inspection in the public docket and may be obtained by contacting Mr. James A. Carney at the address provided under the heading "For Further Information Contact."

For the above reasons, 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 accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation are being submitted for approval to the OMB.

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

In developing this final rule, FHWA has considered fully the affect this rule will have on the States, as required by E.O. 12612 on "Federalism", and the final rule is consistent with those principals.

In consideration of the foregoing, the FHWA hereby amends Part 645, Subpart B to Chapter I of Title 23, Code of Federal Regulations, as set forth below.

List of Subjects in 23 CFR Part 645

Grant programs—transportation, Highways and Roads, Incorporation by reference, Reporting and recordkeeping requirements, Utilities.

Issued on January 27, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA is amending 23 CFR Part 645, Subpart B as follows:

PART 645—UTILITIES

Subpart B—Accommodation of Utilities

1. The authority citation for Part 645 is revised to read as follows:

Authority: 23 U.S.C. 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and Executive Order 11990, 42 FR 26961 (May 24, 1977).

2. Section 645.205 is amended by redesignating paragraphs (b) and (c) to read as (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

§ 645.205 Policy.

* * * * *

(b) Since by tradition and practice highway and utility facilities frequently coexist within common right-of-way or along the same transportation corridors, it is essential in such situations that these public service facilities be compatibly designed and operated. In the design of new highway facilities consideration should be given to utility service needs of the area traversed if such service is to be provided from utility facilities on or near the highway. Similarly the potential impact on the highway and its users should be considered in the design and location of utility facilities on or along highway right-of-way. Efficient, effective and safe joint highway and utility development of transportation corridors is important along high speed and high volume roads, such as major arterials and freeways, particularly those approaching metropolitan areas where space is increasingly limited. Joint highway and utility planning and development efforts are encouraged on Federal-aid highway projects.

* * * * *

3. Section 645.207 is amended by revising paragraph (m) to read as follows:

§ 645.207 Definitions.

* * * * *

(m) *Utility facility*—privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purposes of this part, the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

4. Section 645.209 is amended by revising paragraph (c) to read as follows:

§ 645.209 General requirements.

* * * * *

(c) *Installations within freeways.*

(1) Each State highway agency shall submit an accommodation plan in accordance with §§ 645.211 and 645.215 which addresses how the State highway agency will consider applications for longitudinal utility installations within the access control lines of a freeway. This includes utility installations within interchange areas which must be constructed or serviced by direct access from the main lanes or ramps. If a State highway agency elects to permit such use, the plan must address how the State highway agency will oversee such use consistent with this subpart, Title 23 U.S.C., and the safe and efficient use of the highways.

(2) Any accommodation plan shall assure that installations satisfy the following criteria:

(i) The effects utility installations will have on highway and traffic safety will be ascertained, since in no case shall any use be permitted which would adversely affect safety.

(ii) The direct and indirect environmental and economic effects of any loss of productive agricultural land or any productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for accommodation of such utility facility will be evaluated.

(iii) These environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility will be considered.

(iv) [Reserved]

(v) A utility strip will be established along the outer edge of the right-of-way by locating a utility access control line between the proposed utility installation and the through roadway and ramps. Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line. The State or political subdivision is to retain control of the utility strip right-of-way including its use by utility facilities. Service connections

to adjacent properties shall not be permitted from within the utility strip.

(3) Nothing in this part shall be construed as prohibiting a highway agency from adopting a more restrictive policy than that contained herein with regard to longitudinal utility installations along freeway right-of-way and access for constructing and/or for servicing such installations.

* * * * *

5. Section 645.211 is amended by revising paragraph (a) and adding paragraphs (e) and (f) as follows:

§ 645.211 State highway agency accommodation policies.

* * * * *

(a) Utilities must be accommodated and maintained in a manner which will not impair the highway or adversely affect highway or traffic safety. Uniform procedures controlling the manner, nature and extent of such utility use shall be established.

* * * * *

(e) The State highway agency shall set forth in its utility accommodation plan detailed procedures, criteria, and standards it will use to evaluate and approve individual applications of utilities on freeways under the provisions of § 645.209(c) of this part. The State highway agency also may develop such procedures, criteria and standards by class of utility. In defining utility classes, consideration may be given to distinguishing utility services by type, nature or function and their potential impact on the highway and its user.

(f) The means and authority for enforcing the control of access restrictions applicable to utility use of controlled access highway facilities should be clearly set forth in the State highway agency plan.

6. Section 645.215 is amended by removing paragraph (d)(2), by redesignating paragraph (d)(3) to read as paragraph (d)(2), and by revising paragraph (b) as follows:

§ 645.215 Approvals.

(b) Upon determination by the FHWA that a State highway agency's policies satisfy the provisions of 23 U.S.C. 109, 111, and 116, and 23 CFR 1.23 and 1.27, and meet the requirements of this regulation, the FHWA will approve their use on Federal-aid highway projects in that State

* * * * *

[FR Doc. 88-2104 Filed 1-29-88; 9:39 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-266; Re: Notice No. 631]

Middle Rio Grande Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule. Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as Middle Rio Grande Valley, in Sandoval, Bernalillo, Valencia, and Socorro Counties, New Mexico. The viticultural area is located in central New Mexico (near Albuquerque) along the Rio Grande River. This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on May 26, 1987, at 52 FR 19535, Notice No. 631. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: March 3, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguished by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF received a petition for a viticultural area encompassing a narrow valley (no wider than 20 miles) along the Rio Grande River from just north of Albuquerque, New Mexico southward for approximately 106 miles to San Antonio, New Mexico. The viticultural area is known as Middle Rio Grande Valley. The petition was submitted by the Middle Rio Grande Chapter of the New Mexico Vine & Wine Society located in Albuquerque. The viticultural area consists of an irrigated valley of approximately 435 square miles. In response to the petition, ATF published a notice of proposed rulemaking in the **Federal Register.**

Local Viticultural History

Winemaking began in the Middle Rio Grande Valley with the establishment of Franciscan missions in the Seventeenth Century. Winemaking continued in the Middle Rio Grande Valley until Prohibition in 1920 when most vineyards were replaced by other crops. After repeal of Prohibition in 1933, viticulture was revived on a smaller scale. Today there are 6 bonded wineries in the viticultural area with others planned for the near future. There are twenty growers with more than one acre of wine grapes in the viticultural area with a total acreage of approximately 458 acres.

Evidence of Name

The name Middle Rio Grande Valley has been in use for many years to identify this area of New Mexico. In a report of Chief Engineer on the Chronological Development of the Rio Grande Basin, the name Middle Valley and Middle Rio Grande Valley were used to describe the settlement and agricultural attributes of the area. The report stated that the Middle Rio Grande Valley is probably one of the oldest irrigated areas in the United States. According to this report, the name Middle Rio Grande Valley applied to the area from Santa Fe, New Mexico southward to Socorro, New Mexico. Attached to the above described report was a map titled Rio Grande Valley which specifically identified an area of land between Albuquerque and Socorro as the Middle Rio Grande Conservancy District.

Boundary

The boundary of the Middle Rio Grande Valley viticultural area is adopted as proposed.

Geographical Evidence

(a) Climate

The climate in the Middle Rio Grande Valley is classified as arid continental type and it is characterized by low rainfall, warm summers, and mild winters. Most precipitation occurs during summer months as brief thunder showers. Snow occurs occasionally in the winter but accumulations are small. Winds are light to moderate and usually stronger during Spring months. The average number of days without killing frost ranges between 180 to 200 days in this belt. Minimum and maximum daily temperatures fluctuate 30 to 35 degrees. Two tables were published in the notice of proposed rulemaking showing the climate comparisons between the Middle Rio Grande Valley and the surrounding areas.

(b) Soils

The Middle Rio Grande Valley viticultural area is located in a Basin province of the Warm Desert Region of New Mexico. The Rio Grande River is the principal drainage for the Middle Rio Grande Valley. Soils within the viticultural area are on the nearly level floodplain adjacent to the river and are deep, highly stratified and typically non-gravelly. The Typic Torrifluvent association is developed in alluvium of mixed origin. Most of the soil within this association is medium, moderately fine or fine textured, and a high percentage of it is well suited to irrigation for a wide variety of crops. Subsurface layers are similar but may range in texture from sand to clay. Representative soil series of the Middle Rio Grande Valley are of Gila, Glendale or Vinton series. By contrast, soils adjacent to the viticultural area that occur on the strongly sloping uplands north of the Rio Grande plain have soils of the Typic Torriorthents which have gravelly, sandy surface layers and coarse textured subsurface layers. Soil series in this area are Bluepoint and Caliza. Higher soils are rough broken lands of Nickel and Canutio series and include a layer of gravel with subsurface caliche and clay layers. Steep side slopes cut with streambeds often show exposed areas of bedrock in the eroded hilly areas.

(c) Distinct Valley Area

The viticultural area follows the Rio Grande River and surrounding irrigated land for the length of 106 miles. Elevations within the area range from approximately 4,800 feet to 5,200 feet above sea level. The surrounding mountain areas located to the north, east, west and southwest have much higher elevations. There soils, water availability and climates differ from the Middle Rio Grande Valley area. Based on the evidence provided in the notice of proposed rulemaking, ATF finds that the Middle Rio Grande Valley viticultural area defines a region with unique climate and growing conditions and distinct valley features different from the surrounding areas.

Notice of Proposed Rulemaking

On May 28, 1987, Notice No. 631 was published in the **Federal Register** with a 45-day comment period. In that Notice, ATF invited comments from all interested parties regarding the proposal to establish "Middle Rio Grande Valley" as an American viticultural area. No comments were received from the public during the comment period.

Miscellaneous

ATF does not wish to give the impression by approving "Middle Rio Grande Valley" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this viticultural area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "Middle Rio Grande Valley."

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

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

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

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural areas is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.119 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.119 Middle Rio Grande Valley.

Par. 3. Subpart C is amended by adding § 9.119 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.119 Middle Rio Grande Valley.

(a) *Name.* The name of the viticultural area described in this section is "Middle Rio Grande Valley."

(b) *Approved maps.* The approved maps for determining the boundaries of the "Middle Rio Grande Valley" viticultural area are 24 U.S.G.S. Quadrangle (7.5 Minute Series) maps and 1 (15 Minute Series) U.S.G.S. map. They are titled:

(1) Abeytas, N. Mex. (1952), revised 1979.
(2) Alameda, N. Mex. (1960), revised 1967 and 1972.
(3) Alburquerque East, N. Mex. (1960), revised 1967 and 1972.
(4) Albuquerque West, N. Mex. (1960), revised 1967 and 1972.
(5) Belen, N. Mex. (1952), revised 1971.
(6) Bernalillo, N. Mex. (1954), revised 1972.
(7) Dalies, N. Mex. (1952), revised 1971.
(8) Isleta, N. Mex. (1952), revised 1967 and 1974.
(9) La Joya, N. Mex. (1952), revised 1971.
(10) Lemitar, N. Mex. (1952), revised 1971.
(11) Loma De Las Canas, N. Mex. (1959), revised 1979.
(12) Loma Machete, N. Mex. (1954), revised 1972.
(13) Los Griegos, N. Mex. (1960), revised 1967 and 1972.
(14) Los Lunas, N. Mex. (1952), revised 1971 and 1974.
(15) Mesa Del Yeso, N. Mex. (1959).
(16) Placitas, N. Mex. (1954).
(17) San Acacia, N. Mex. (1952), revised 1971.
(18) San Antonio, N. Mex. (1948)—15 minute series.
(19) San Felipe Pueblo, N. Mex. (1954), revised 1978.
(20) Santa Ana Pueblo, N. Mex. (1954), revised 1978.
(21) Socorro, N. Mex. (1959), revised 1971.
(22) Tome, N. Mex. (1952), revised 1979.
(23) Turn, N. Mex. (1952), revised 1979.
(24) Veguita, N. Mex. (1952), revised 1979.
(25) Wind Mesa, N. Mex. (1952), revised 1967.

(c) *Boundary description.* The boundary of the proposed Middle Rio Grande Valley viticultural area is as follows:

(1) The beginning point is at the transmission line tower in the middle of Section 34, T14N, R4E of the Santa Ana Pueblo, N. Mex. U.S.G.S. map;

(2) The boundary follows the power transmission line east for 2.5 miles until it converges with New Mexico State Route 25/Interstate 85 (now known as Interstate 25) at Sec. 1, T13N, R4E on the San Felipe Pueblo, M. Mex. U.S.G.S. map;

(3) It follows I–25 southwest for 1.2 miles until it arrives at an unimproved dirt road approx. .2 mile east of Algodones Cemetery, at Sec. 11, T13N, R4E on the Placitas, N. Mex. U.S.G.S. map;

(4) The boundary follows the unimproved dirt road southeast for 5.5 miles until it meets another unimproved dirt road at Tecolote, NM, south of Sec. 27 and 28, T13N, R5E;

(5) It travels southwest on the unimproved dirt road .7 mile until it meets NM–44 approx. 100 feet northwest of BM 6,075 in Placitas, NM, at T13N, R5E;

(6) It then goes southeast on NM–44 for approx. 250 feet until it intersects the 6,100 foot elevation contour line approx. 250 feet southeast of BM 6,075, at T13N, R5E;

(7) It then travels west for 3.5 miles on the 6,100 feet elevation contour line until it reaches a light-duty road on the Huertas Grant/Cibola National Forest Boundary at Sec. 6, T12N, R5E;

(8) The boundary runs north to northwest on the light-duty road for approx. .9 mile until it meets NM–44 next to BM 5,875 in Sec. 31, T13N, R5E;

(9) It travels west 5.2 miles on NM–44 until it arrives at I–25 (southbound interchange) near the Bernalillo Cemetery at T13N, R4E on the Bernalillo, N. Mex. U.S.G.S. map;

(10) It proceeds south on I–25 for approx. 8.6 miles until it intersects with NM–556 at the east bound interchange at Sec. 1, T11N, R3E on the Alameda, N. Mex. U.S.G.S. map;

(11) The boundary goes east approx. 5 miles on NM–556 until it intersects the 106°30′ longitude meridian, T11N, R4E;

(12) Then it goes south on the 160°30′ longitude meridian for approx. 4.5 miles until it arrives at Montgomery Blvd. at Sec. 34, T10/11N, R4E;

(13) The boundary travels west on Montgomery Blvd. for approx. 6.1 miles until it meets the south exit ramp of I–25 in Sec. 34, T11N, R3E;

(14) Then it travels south on I–25 for approx. 13.3 miles (through Albuquerque, N.M). until it intersects with NM–47 at Sec. 6, T8N, R3E on the Isleta, N. Mex. U.S.G.S. map;

(15) It heads south on NM–47 for approx. 3.2 miles until it converges with the 4,900 foot elevation contour line at Isleta Pueblo, NM, in Sec. 24, T8N, R2E;

(16) The boundary follows the 4,900 foot elevation contour line south for approx. 25 miles until it arrives at a point north on Madron, NM, at the Atchison, Topeka and Santa Fe Railroad (AT&SF RR) tracks, approx. 250 feet east of elevation mark 4,889 feet on the Turn, N. Mex. U.S.G.S. map;

(17) It then travels north on the AT&SF RR tracks for approx. 350 feet until it intersects NM–47 approx. 350 feet north of elevation mark 4,889 feet;

(18) The boundary goes southwest on NM–47 (through Turn, N.M.) for approx. 2.4 miles until it reaches the 106°45′ longitude meridian between the Turn, N. Mex. & Vequita, N. Mex. U.S.G.S. maps;

(19) Then it travels south on the 106°45′ longitude meridian for approx. 4.7 miles until it meets the 34°30′ latitude parallel on the Veguita, N. Mex. U.S.G.S. map;

(20) It then proceeds west on the 34°30′ latitude parallel for approx. 1 mile until it arrives at NM-47 approx. .75 mile south of San Juan Church;

(21) Then it moves south on NM-47 for approx. 13.2 miles until it reaches an improved light-duty road at La Joya, NM, approx. 500 feet west of La Joya Cemetery on the La Joya, N. Mex. U.S.G.S. map;

(22) It then travels south on the improved light-duty road for approx. 450 feet until it intersects another improved light-duty road;

(23) Then it goes 500 feet west on the improved light-duty road until it reaches a north-south unimproved road at a point approx. .9 mile east of the AT&SF RR tracks;

(24) The boundary heads south on the unimproved road for approx. 7.9 miles until it reaches the 34°15′ latitude parallel on the La Joya, N. Mex. U.S.G.S. map;

(25) It travels west on the 34°15′ latitude parallel for approx. .9 mile until it intersects the 106°52′30″ longitude meridian on the Mesa Del Yeso, N. Mex. U.S.G.S. map;

(26) It then goes south on the 106°52′30″ longitude meridian for approx. 3.3 miles until it intersects the south section line of Sec. 19, T1S, R1E;

(27) It then runs east for approx. 1.25 miles until it reaches the east section line (marked altitude 5,058 feet) of Sec. 20, T1S, R1E;

(28) It travels south on the section line for approx. 7.1 miles, until it meets the Grant Boundary at altitude mark 4,734

feet at Sec. 32/33, T2S, R1E on the Loma De Las Canas, N. Mex. U.S.G.S. map;

(29) It proceeds east on the Grant Boundary for .25 mile until it arrives at the section line (Grant Boundary at Sec. 32/33, T2S, R1E;

(30) The boundary moves south on the Grant Boundary for approx. 5.2 miles until it meets the (Grant Boundary) section line near altitude spot 4,702 feet at Sec. 28/29, T3S, R1E;

(31) The boundary goes west on the section line (Grant Boundary) for approx. .25 mile until it arrives at the section line at Sec. 28/29, T3S, R1E;

(32) Then it moves south on the section line for approx. 5.7 miles until it meets an unimproved dirt road at Bosquecito, N.M. on the west section line of Sec. 9, T4S, R1E on the San Antonio, N. Mex. (15 minute series) U.S.G.S. map;

(33) It heads south on the unimproved dirt road for approx. 2 miles until it changes to a light-duty road at Padilla Ranch in Sec. 21, T4S, R1E;

(34) It follows the light-duty road for 2.25 miles until it intersects US-380/85, in Sec. 33, T4S, R1E;

(35) Then it follows US-380/85, first west then it loops north for approx. 8 miles until it meets the 34° 00′ latitude parallel;

(36) The boundary moves west on the 34° 00′ latitude parallel of the Socorro, N. Mex. U.S.G.S. map for approx. .75 mile until it meets the 4,800 foot elevation contour line in Sec. 35;

(37) It meanders north on the 4,800 foot elevation contour line for approx. 9 miles until it meets the 34° 07′ 30″ latitude parallel;

(38) It travels east for approx. .2 mile on the 34°07′30″ latitude parallel until it meets I-25 (US-60/85);

(39) It goes north on I-25 (US-60/85) for approx 27.8 miles until it meets the Belen Highline Canal levee approx. 1.6 mile south of San Antonio Church on the Veguita, N. Mex. U.S.G.S. map;

(40) Then the boundary follows the Belen Highline Canal north for approx. 9.4 miles until it intersects I-25, approx. .5 mile west of Bacaville, NM, on the Belen, N. Mex. U.S.G.S. map;

(41) Then it travels north on I-25 for approx. 16 miles until it meets the 34°52′30″ latitude parallel on the Isleta, N. Mex. U.S.G.S. map;

(42) The boundary goes west on the 34°52 30″ latitude parallel for approx. 1 mile until it arrives at the 106° 45′ longitude meridian;

(43) Then it moves north on the 106° 45′ longitude meridian for approx. 16.5 miles until it reaches the 35°07′30″ longitude meridian on the Albuquerque West, N. Mex. U.S.G.S. map;

(44) At this point it heads east for approx. 1.2 miles along the 35° 07′ 30″ latitude parallel until it reaches the power transmission line towers at Sec. 3/4, T10N, R2E of the Los Griegos, N. Mex. U.S.G.S. map; and finally

(45) From there it follows the power transmission line towers (and for 1 mile along a connecting unimproved road) north and northeast for a total of approx. 24.4 miles to the point of beginning at Sec. 34, T14N, R4E, of the Santa Ana Pueblo, N. Mex. U.S.G.S. map.

Signed. January 11, 1988.

Stephen E. Higgins,

Director.

Approved.

January 19, 1988.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).

[FR Doc. 88–2050 Filed 2–1–88; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

Approval in Part and Disapproval in Part of Amendments to the North Dakota Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of a proposed amendment submitted by the State of North Dakota as a modification to its permanent regulatory program (hereinafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises State regulations on performance bonds, postmining land use and signs and markers for surface coal mining operations.

EFFECTIVE DATE: February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background

Information pertinent to the general background on the State program approval process, the North Dakota program submission, and the Secretary's findings, disposition of comments, and conditional approval of the program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning the approval of program amendments are identified at 30 CFR 934.15.

II. Submission of Amendment

On February 10, 1987, North Dakota submitted a proposed amendment addressing performance bonds, postmining land use and signs and markers for surface mining operations.

The April 14, 1987 **Federal Register** (52 FR 12002) announced receipt of the proposed amendment and invited public comment on its adequacy.

Since no one requested a public hearing, none was held. The public comment period closed on May 14, 1987, but was reopened as noted below.

On July 27, 1987, OSMRE notified the State of deficiencies found in the amendment and provided an opportunity for the State to submit further rule changes, policy statements, legal opinions or other evidence to show that the State's proposed modifications were consistent with the Federal requirements. At the State's request, the contents of this letter were further discussed with OSMRE at a meeting on August 7, 1987. By letter dated August 18, 1987, North Dakota submitted additional proposed rule changes addressing the identified deficiencies. On September 23, 1987, OSMRE announced receipt of the materials submitted on August 18, 1987, and reopened the public comment period until October 8, 1987 (52 FR 35735). On December 10, 1987, OSMRE sent North Dakota a second issue letter requesting further revisions and information to which North Dakota responded on December 14, 1987. OSMRE again reopened the public comment period until January 13, 1988, to allow for public review and comment on this new material (52 FR 49031, December 29, 1987).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments to the North Dakota Administrative Code (NDAC) submitted by North Dakota on February 10, 1987, and revised August 18, 1987, and December 14, 1987. Only those provisions of particular interest

are discussed below. Any provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules. Revisions which are not discussed contain language similar to the corresponding Federal rules or concern nonsubstantive wording changes which do not adversely affect other aspects of the program.

1. Chapter 69–05.2–12 Performance Bonds

(a) *General.* North Dakota has revised the wording of its bonding regulations at NDAC 69–05.2–12–01, 69–05.2–12–02, 69–05.2–12–03, 69–05.2–12–04, 69–05.2–12–06, 69–05.2–12–07, 69–05.2–12–08, 69–05.2–12–09, 69–05.2–12–10 (deleted in full), 69–05.2–12–11, 69–05.2–12–12, 69–05.2–12–13, 69–05.2–12–14, 69–05.2–12–15, 69–05.2–12–16 and 69–05.2–12–18 to clarify and simplify the language without changing the intent or meaning (except as discussed below) and to delete provisions no longer required by the corresponding Federal regulations at 30 CFR Part 800 as revised on July 19, 1983 (48 FR 32932).

Significant changes include: (1) Addition of NDAC 69–05.2–12–01.8 which, like 30 CFR 800.4(g), requires maintenance of adequate bond coverage at all times and specifies that failure to do so is a violation of the permit.

(2) Addition of NDAC 69–05.2–12–04.4 which, like 30 CFR 800.21(f), requires that persons with an interest in collateral posted as bond who desire notice of actions relating to the bond shall be afforded the opportunity to request such notice in writing at the time the collateral is offered.

(3) Addition of a self-bond to the list of acceptable forms of performance bonds at NDAC 69–05.2–12–02.3, as allowed by 30 CFR 800.12(c).

(4) Addition of NDAC 69–05.2–12–08.3 and 69–05.2–12–12.10 and deletion of NDAC 69–05.2–12–10 to clarify that operator-requested bond reductions and adjustments need not be processed as bond releases when the request is not based on reclamation work performed, as allowed by 30 CFR 800.15(c).

(5) Revision of NDAC 69–05.2–12–14.1 to provide the Commission with the authority to arrange access to the permit area for any person with an interest in a proposed bond release, as authorized by 30 CFR 800.40(b)(1).

Since, except as discussed in Findings 1(b) through 1(d), the State's revisions are either editorial in nature or similar to the corresponding Federal regulations, the Director finds these revisions to be no less effective than the Federal regulations, with the exceptions noted below and in Findings 1(b) and 1(d)(1).

In accordance with the Federal rules in effect at the time of approval of the North Dakota program, subsections 4, 5, 6 and 7 of NDAC 69–05.2–12–01 contain provisions that allow for incremental bonding. On October 1, 1984, the Federal rule providing for incremental bonding (30 CFR 800.11(b)) was remanded by the U.S. District Court of the District of Columbia as being inconsistent with section 509 of SMCRA (*In re: Permanent Surface Mining Regulation Litigation II,* Civil Action No. 79–1144). On February 21, 1985 (50 FR 7278), OSMRE suspended 30 CFR 800.11(b) insofar as it allows bond to be posted for less than the entire area within the permit area upon which surface coal mining and reclamation operations will be conducted during the initial permit term. The Director, by letter dated February 3, 1986, notified North Dakota that it would need to amend its program to be consistent with the District Court's decision and requested that the State, in accordance with 30 CFR 732.17(f)(1), submit a timetable for doing so. On April 1, 1986, North Dakota responded that the elimination of incremental bonding would require a statutory amendment, not just regulatory revisions. Accordingly, while this amendment revises the bonding requirements of NDAC 69–05.2–12 to address all other concerns of the Director as stated in the February 3, 1986 letter, it fails to remove the provisions authorizing incremental bonding. Therefore, to avoid the appearance of condoning an incremental bonding system in conflict with the court decision, the Director is not approving the proposed editorial revisions to subsections 4, 5, 6 and 7 of NDAC 69–05.2–12–01.

(b) *Surety bond replacement.* At NDAC 69–05.2–12–03.3, North Dakota proposes to require a permittee with a surety bond to obtain replacement bond within 30 days after receiving notice from the North Dakota Public Service Commission of the incapacity of the surety company. The Federal rule at 30 CFR 800.16(e)(2) requires that, upon incapacity of a bank or surety company, if adequate bond is not posted by the end of the period allowed, the operator cease coal extraction and begin reclamation in accordance with the approved reclamation plan and 30 CFR 816.132 or 817.132. The proposed North Dakota rule does not contain fully comparable provisions specifying when extraction is to cease and reclamation to begin.

Therefore, the Director finds the North Dakota rule at NDAC 69–05.2–12–03.3 to be less effective than the Federal rule at 30 CFR 800.16(e)(2) with respect to surety bonds. However, since the North Dakota program, unlike the Federal rules, does not permit the posting of irrevocable letters of credit as a form of performance bond, and since all cash accounts and certificates of deposit are fully insured or guaranteed, the Director finds that the State's failure to address insolvent banks, as does the Federal rule, does not render the North Dakota rule less effective than 30 CFR 800.16(e)(2) with respect to collateral bonds. The Director is requiring that North Dakota further amend its program to require that, if adequate bond coverage is not posted within the specified time period following notification of the incapacity of a surety, the operator cease coal extraction and begin permanent reclamation.

(c) *Certificates of deposit.* At NDAC 69–05.2–12–04.1(d), the State proposes to allow acceptance of certificates of deposit backed by the Bank of North Dakota without placing a dollar limit on these certificates. The Federal rules at 30 CFR 800.21(d) (1) and (3) provide for the posting of cash accounts or certificates of deposit which are Federally insured or equivalently protected. However, 30 CFR 800.21(d)(4) does not allow the regulatory authority to accept an individual cash account or certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

The Bank of North Dakota is a State-owned bank, created by Chapter 6–09 of the North Dakota Century Code (NDCC) in 1919. NDCC 6–09–10 states that all deposits in the Bank of North Dakota are guaranteed by the State. North Dakota has assured OSMRE that no cash limits are placed on this guarantee. The State rule limits the maximum amount of cash accounts or certificates backed by all other financial institutions in the same manner as the Federal rule. Therefore, the Director finds the North Dakota rule at NDAC 69–05.2–12–04 to be no less effective than the Federal regulations which limit cash deposits to the maximum amount which is Federally insured or equivalently protected.

(d) *Self-bonding.* As it existed prior to this amendment, the North Dakota program did not allow self-bonding. North Dakota has now proposed to add self-bonding provisions at NDAC 69–05.2–12–01.9, 69–05.2–12–01.10 and 69–05.2–12–05 to correspond to the Federal self-bonding requirements at 30 CFR 800.5(c) and 800.23. The North Dakota

rules include no counterpart to that portion of 30 CFR 800.23(e)(4) which requires that, if permitted under State law, the indemnity agreement, when under forfeiture, operate as a judgement against those parties liable under the agreement. However, by letter of December 14, 1987, North Dakota explained that State law does not allow this procedure, and that the provision is therefore inapplicable.

The Director finds that the proposed North Dakota self-bonding provisions are substantively equivalent to and, except as discussed in Finding 1(d)(1) below, no less effective than the Federal rules.

(1) *Rural electric cooperatives.* At NDAC 69–05.2–12–05.1(c)(4), North Dakota proposes to establish separate criteria for self-bonding by a rural electric cooperative (REC). North Dakota's proposed language is similar to 30 CFR 800.23(b)(3), which establishes the minimum financial criteria to be met before a self-bond may be accepted by the regulatory authority. However, in order for an REC to self-bond, North Dakota proposes to substitute Rural Electrification Administration (REA) loan qualification criteria for the total liabilities to net worth ratio of 2.5 or less required by 30 CFR 800.23(b)(3) (ii) and (iii). North Dakota asserts that State law (NDCC Chapter 10–13) prevents RECs, as nonprofit corporations, from accumulating the equity necessary to achieve a total liability to net worth ratio of 2.5 or less.

The total liabilities to net worth ratio required by the Federal rules assures that the entity is not over-extended, that is, that the debts of the entity are not disproportionate to the entity's assets. The financial showings of 30 CFR 800.23(b)(3) are designed to ensure that only well-established, financially sound companies with a minimal risk of failure will qualify to self bond. Companies which cannot attain the financial status necessary to qualify for self-bonding must post either a collateral or a surety bond.

The Director finds that North Dakota has not shown that the REA loan criteria would provide the same degree of risk protection as the financial criteria of the Federal regulations. Although the State has submitted sample REA mortgage covenants, North Dakota has not explained how the REA loan criteria or mortgage covenants would be used to evaluate self-bond applications or how they would provide the same degree of risk protection as the financial showings required by the Federal rules at 30 CFR 800.23(b)(3). Therefore, the Director is disapproving NDAC 69–05.2–12–05.1(c)(4), which would have established separate financial criteria for self-bonding by rural electric cooperatives.

North Dakota also proposes to revise NDAC 69–05.2–12–01.9(a) to clarify that an REC qualifying to self-bond or guarantee an applicant's self-bond must meet all indemnity agreement requirements as if it were a corporation. The Federal rules do not address self-bonding by cooperatives. However, since cooperatives are structured in a manner similar to corporations, the Director finds that requiring them to meet all requirements as if they were corporations will ensure that any cooperative self-bond is no less effective than a corporate self-bond. Therefore, the Director finds this North Dakota provision to be no less effective than the Federal self-bonding rules at 30 CFR 800.5(c) and 800.23.

(2) *Third party guarantees.* Proposed NDAC 69–05.2–12–05.2, as originally submitted, would have allowed a third party to guarantee the applicant's self-bond, provided the third party met all self-bonding criteria as if it were the applicant. As promulgated on August 10, 1983, the Federal rules at 30 CFR 800.23(c) provided for third party guarantees only by the applicant's parent corporation. However, on December 3, 1987, the Assistant Secretary of the Interior for Land and Minerals Management, acting for the Secretary, approved revisions to 30 CFR 800.23 which would allow third party guarantees by non-parent corporations, provided both the applicant and the third party guarantor meet certain criteria and execute an indemnity agreement containing provisions designed to ensure its validity and enforceability. These revisions were published as a final rule in the January 14, 1988 **Federal Register** (53 FR 994–997).

On December 14, 1987, North Dakota submitted a revised version of the amendment; the revised rule includes provisions which are substantively identical to the December 3, 1987 changes in the Federal rules. Therefore, the Director finds the provisions of proposed NDAC 69–05.2–12–05 pertaining to third party guarantees to be no less effective than the revised Federal rules at 30 CFR 800.23 (c), (d), (e), (f) and (g).

2. Chapter 69–05.2–13–04 Performance Standards

(a) *Signs and markers.* North Dakota has revised the wording of NDAC 69–05.2–13–04 concerning signs and markers, primarily to clarify and simplify the language without changing the meaning or intent. However, the State has made one substantive change, inserting a sentence stating that the permittee shall, at a minimum, sign and mark those areas of the permit for which a performance bond has been posted. In general, the corresponding Federal regulations at 30 CFR 816.11 apply to the entire permit area. However, the preamble to these Federal regulations explains that "proper markings of perimeters and working areas will be particularly valuable in preventing equipment operators from inadvertently entering areas not authorized for disturbance, and should help eliminate arguments over location of perimeters" (44 FR 15137, March 13, 1979). The preamble also cites reduction of hazards to the general public and mine personnel and prevention of adverse environmental effects as purposes of the signs and markers regulation.

Since NDAC 69–05.2–12–01.7 prohibits the permittee from disturbing any areas until the bond covering the area to be affected is approved, requiring posting of signs and markers on only the bonded area rather than the entire permit area would not adversely affect any of the stated purposes of the Federal rule. Instead, requiring posting and marking of only the area authorized for disturbance would better achieve these purposes in that permitted but as yet unbonded areas would be less likely to be inadvertently disturbed. Therefore, the Director finds that the revised State rule is no less effective than the corresponding Federal rule at 30 CFR 816.11.

(b) *Land use.* North Dakota has revised NDAC 69–05.2–23–01 and 69–05.2–23–03, which concern premining and alternative postmining land uses, to more closely resemble the corresponding Federal regulations at 30 CFR 816.133 (b) and (c). Specifically, NDAC 69–05.2–23–01, like 30 CFR 816.133(b), now requires that the postmining land use be compared to those premining uses which the land previously supported under proper management. NDAC 69–05.2–23–03 has been revised to replace the rigid criteria for the approval of alternative postmining land uses previously required with the more flexible criteria permitted under 30 CFR 816.133(c), as revised on September 1, 1983 (48 FR 39892). Therefore, the Director finds the proposed revisions to be no less effective than the corresponding Federal rules.

North Dakota has also revised the wording of NDAC 69–05.2–23–02 concerning land use categories to clarify and simplify the language without changing the intent or meaning. The Director finds these revisions to be

nonsubstantive and, therefore, no less effective than the corresponding Federal rule concerning land use categories at 30 CFR 701.5.

IV. Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to the portion of this notice entitled "Submission of Amendment."

One comment was received from—the North Dakota Resource Council. The commenter was concerned that North Dakota's proposal to allow RECs to self-bond under separate financial criteria set a bad precedent and did not provide adequate risk protection. As discussed in Finding 1(d)(1), the Director is disapproving NDAC 69–05.2–12–05.1(c)(4), which would have established separate criteria for self-bonding by RECs.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies. No substantive comments were received.

V. Director's Decision

The Director, based on the above findings, is approving the proposed amendment as submitted by North Dakota on February 10, 1987, and modified on August 18, 1987, and December 14, 1987, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations. For the reasons discussed in Finding 1(d)(1), the Director is disapproving NDAC 69–05.2–12–05.1(c)(4), which would have allowed special consideration for rural electric cooperatives in meeting the financial criteria necessary for self-bonding. Also, as indicated in Finding 1(b), he is requiring that North Dakota further amend its program concerning the replacement of surety bonds. The Director has notified North Dakota, pursuant to 30 CFR 732.17, that a required program amendment will be necessary. In addition, as discussed in Finding 1(a), he is deferring action on the proposed revisions to subsections 4, 5, 6 and 7 of NDAC 69–05.2–12–01, which concern incremental bonding.

The Federal rules at 30 CFR Part 934 are being amended to implement this decision. This final rule is being made effective immediately to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

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

VI. Procedural Requirements

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

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

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 934

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

Date: January 28, 1988.

James W. Workman,

Deputy Director, Operations and Technical Services.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.12 is amended by revising the section heading to read as follows:

§ 934.12 North Dakota program provisions affirmatively disapproved in accordance with court order.

* * * * *

3. Section 934.14 is added to read as follows:

§ 934.14 State program amendments disapproved.

The following provision of an amendment to the North Dakota permanent regulatory program, as submitted to OSMRE on February 10, 1987, and modified on August 18, 1987, and December 14, 1987, is hereby disapproved: Paragraph (c)(4) of the North Dakota Administrative Code, Article 69–05.2–12–05.1, which would have established separate financial criteria for self-bonding by rural electric cooperatives.

4. Section 934.15 is amended by revising the section heading and adding a new paragraph (j) to read as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendment to the North Dakota permanent regulatory program, as submitted to OSMRE on February 10, 1987, and modified on August 18, 1987, and December 14, 1987, is approved effective February 2, 1988, with the exceptions identified herein or in section 934.14: Modifications to North Dakota Administrative Code (NDAC) Article 69–05.2–12, addressing performance bonds, with the exception of modifications to the incremental bonding provisions of subsections 4, 5, 6 and 7 of NDAC 69–05.2–12–01, on which action is deferred; NDAC 69–05.2–13–04, addressing signs and markers; and NDAC 69–05.2–23, addressing postmining land use.

5. Section 934.16 is added to read as follows:

§ 934.16 Required program amendments.

By May 1, 1988, North Dakota shall submit a revised version of NDAC 69–05.2–12–03.3 or otherwise propose to amend its program to require that, if adequate replacement bond coverage is not posted within the specified time period following notification of the

incapacity of a surety, any operator bonded by that surety must cease coal extraction, begin reclamation and follow the requirements for permanent cessation.

[FR Doc. 88-2039 Filed 2-1-88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 203

Emergency Employment of Army and Other Resources, Natural Disaster Procedures (ER 500-1-1)

AGENCY: Army Corps of Engineers, DOD.

ACTION: Interim final rule with request for comments.

SUMMARY: These changes amend the regulation dated December 21, 1983, and provide revised procedures for the Corps of Engineers in conducting certain emergency activities pursuant to Public Law (Pub. L.) 84-99.

This action provides minor modifications to clarify previous rules on Corps of Engineers emergency operations activities in support of state and local flood fight efforts. The amended rules implement procedures for assistance under the expanded authority provided by section 917, Pub. L. 99-662, amendment to Pub. L. 84-99. These changes are being implemented as an interim final rule because timely implementation of these procedures would be impeded by the notice and public comment requirements of section 553 of the Administrative Procedure Act. Given the inherent unpredictability of natural disasters and the potential threat to the safety of disaster victims, these changes are being implemented without delay.

EFFECTIVE DATE: February 2, 1988. Written comments should be provided on or before March 3, 1988.

ADDRESS: Comments should be addressed to: HQUSACE (CECW-OE-O), Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Buettner, (202) 272-0251.

SUPPLEMENTARY INFORMATION: The Corps of Engineers has authority under Pub. L. 84-99 to supplement state and local flood fight activities. However, prior to November 17, 1986, there was no authority to continue supplemental assistance in response to life and improved property threatening situations after flood waters had receded. Section 917, Pub. L. 99-662 expanded the authority to include activities that are necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. The amendment established the basis for requesting assistance, time limitation on providing assistance, and types of potential assistance.

Note.—The U.S. Army Corps of Engineers has determined that this regulation is not a major rule under Executive Order 12291. I certify that under the criteria of the Regulatory Flexibility Act that this interim final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 203

Disaster assistance, Flood assistance, Drought assistance.

For the reasons set forth in the preamble, 33 CFR Part 203 is amended as follows:

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

1. The authority citation for 33 CFR Part 203 continues to read as follows:

Authority: Pub. L. 84-99, 69 Stat. 186; 33 U.S.C. 701n.

* * * * *

2. Section 203.12 is revised to read as follows:

§ 203.12 Authority.

Flood and Coastal Storm Emergencies (33 U. S. C. 701n (69 Stat. 186) (Pub. L. 84-99). An emergency fund is authorized to be expended at the discretion of the Chief of Engineers for: Flood emergency preparation; flood fighting and rescue operations; repair or restoration of flood control works threatened; damaged, or destroyed by flood; emergency protection of federally authorized hurricane or shore protection projects being threatened; and, the repair and restoration of any federally authorized hurricane or shore protective structures damaged or destroyed by wind, wave, or water of other than an ordinary nature. The law, as amended, includes provision of emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality and activities necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. The law, as amended, authorizes the Secretary of the Army to construct wells and to transport water within areas he determines to be drought-distressed.

3. Section 203.13(b) is revised to read as follows:

§ 203.13 Non-federal interests responsibilities.

* * * * *

(b) *Emergency operations.* During emergency operations, including flood response (flood fight and rescue operations) and post flood response, non-Federal interests must commit available resources to include; manpower, supplies, equipment, and funds. Requests for Corps assistance will be in writing from the Governor or his/her authorized representative. Non-Federal interests must furnish formal written assurances of local cooperation which are detailed in Subpart G of this regulation. Following a flood response, it is a non-Federal responsibility to remove expedient flood control structures installed by the Corps under Pub. L. 84-99.

* * * * *

4. Subpart C, consisting of §§ 203.31 and 203.32, is revised to read as follows:

Subpart C—Emergency Operations

Sec.
203.31 Authorities.
203.32 Policy.

Subpart C—Emergency Operations

§ 203.31 Authorities.

This authority applies to flood response and post flood response activities. Flood response activities include flood fighting, rescue operations, and protection of Corps constructed hurricane and shore protection projects. Flood fighting measures are applicable to any flood control structure (Federal, state, local, and private) where assistance is supplemental to state and local efforts. Corps assistance is not appropriate to protect flood control structures constructed and/or maintained by other Federal agencies where those agencies have emergency authority.

(a) *Flood response.* Corps assistance in support of other Federal agencies or state and local interests may include the following: technical advice and assistance; loaning of flood fight supplies, e.g., sandbags, polyethylene sheeting, lumber, stone; loaning of Corps-owned equipment; hiring of equipment and operators for flood fight operations; emergency contracting.

(b) *Post flood response.* Corps divisions/districts are provided authority to furnish assistance for a period not to exceed 10 days in response to a Governor's request. This assistance may include the following: provision of technical advice and assistance; clearing of drainage channels, bridge openings, or structures blocked by

debris deposited during a flood event; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; removal of minimum debris necessary to reopen critical transportation routes; temporary construction to restore critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or public property.

§ 203.32 Policy.

During or immediately following a flood or coastal storm, emergency operations may be undertaken by the Corps to supplement state and local activities. Corps assistance is limited to the preservation of life and improved property, i.e., residential/commercial developments and public facilities/services. Direct assistance to individual homeowners or businesses is not permitted. Assistance will be temporary, meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Office of Emergency Services or equivalent. Reimbursement of state or local emergency costs is not authorized. The assurances required for the provision of Corps assistance apply only to the work performed under Pub. L. 84–99 and will not prevent state or local governments from receiving other Federal assistance.

(a) *Flood response.* Request for Corps assistance will be in writing from the Governor or his/her authorized representative. When time does not permit a written request, a verbal request from either a responsible state or local official will be accepted followed by a written confirmation from the State. Corps assistance may include operational control of flood response activities, if requested by the responsible state official. However, legal responsibility remains with state and local officials. Corps assistance will be terminated when the flood waters recede below bankfull. Removal of ice jams is a local responsibility; however, Corps technical advice and assistance, as well as assistance with flood fight operations can be provided to supplement state and local efforts. The Corps will normally not perform ice jam blasting operations.

(b) *Post flood response.* A written request from the Governor to the district or operating division commander is required to receive Corps assistance. Corps assistance will be limited to major flood or coastal storm disasters resulting in life threatening situations. The Governor's request should include: verification that the Federal Emergency Management Agency (FEMA) has been requested to initiate Preliminary Damage Assessments (PDA); statement that assistance required is beyond the State's capability; specific damage locations; extent of Corps assistance required to supplement state and local efforts. The Governor's request should be transmitted concurrently with the request to FEMA for PDA. Corps assistance is limited to 10 days following receipt of the Governor's written request or on assumption of activities by state and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period or trigger a new 10-day period. The Corps will deny a Governor's request if it is received subsequent to a Presidential declaration or denial. Shoreline or beach erosion damage reduction/prevention will not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or issue of supplies and equipment.* Issuance of Government owned equipment or materials to non-Federal interests is authorized only in actual emergencies. Providing Government supplies is authorized only after local resources have been fully committed. Equipment which is loaned should be returned to the Corps immediately after the flood operation ceases in a fully maintained condition. Expendable supplies such as sandbags will be replaced in kind or paid for by local interests to the extent considered feasible and practicable by the division or district commander. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Dated: December 4, 1987.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–1704 Filed 2–1–88; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS–50562A; FRL–3322–8]

1–Chloro–2–Bromoethane; Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 1–chloro–2–bromoethane (CBE) (CAS No. 107–04–0). The Agency believes that this substance may be hazardous to human health and/or the environment and that any use of CBE may result in significant human or environmental exposure. As a result of this rule, certain persons who intend to manufacture, import, or process this substance for any and all uses are required to notify EPA at least 90 days before commencing that activity. The required notice will provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it occurs.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 pm. eastern time on February 16, 1988. This rule becomes effective on March 17, 1988.

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

SUPPLEMENTARY INFORMATION: The SNUR for 1–chloro–2–bromoethane requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of CBE for any use. This rule was proposed in the **Federal Register** of September 4, 1987 (52 FR 33606). No public comments were received in response to the proposal.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5 (b) and (d)(1), the exemptions

authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a chemical substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in that **Federal Register** notice, and interested persons should refer to that document for further information. On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions some of which would apply to this SNUR.

III. Summary of This Rule

The chemical substance which is the subject to this SNUR is 1-chloro-2-bromoethane (CAS No. 107-04-0). EPA is designating any use of CBE as a significant new use of the substance. This rule requires persons who intend to manufacture, import, or process CBE for any use to notify EPA at least 90 days before such manufacture, import, or processing.

IV. Background

A. Production and Use Data

EPA reviewed both the TSCA Chemical Substances Inventory data base and other information sources to identify current manufacturers, importers, and processors of CBE.

Apparently, CBE is no longer produced in the United States and currently there are no commercial uses, though small amounts are imported and used for research and development. Because of health concerns about the chemical substances, substitutes have been found for commercial applications. CBE is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 et seq.) for use as an active pesticide ingredient and has been used in the United States as a fumigant for fruits and vegetables. However, there is no evidence that CBE is currently used as a pesticide in the United States. It has potential use in plant growth and fruit maturity enhancement agents, as well as in agents to regulate plant metabolism. Such uses also would be regulated under FIFRA. CBE could be used as a solvent for cellulose esters and ethers and as an intermediate in chemical synthesis, especially of compounds containing haloalkylamino groups. It is conceivable that CBE could also be used as a substitute for ethylene dibromide (EDB) and ethylene dichloride (EDC) as a lead scavenger in gasoline, and as an intermediate in the production of numerous pharmaceutical agents, such as analgesics, antihistamines, and tranquilizers.

B. Health Effects

CBE has demonstrated mutagenic activity in the Ames *Salmonella* assay and the Chinese hamster ovary cell HGPRT assay. It also showed activity in a deoxyribonucleic acid (DNA) repair assay with *E. coli* and caused *in vivo* DNA damage in mice comparable in degree to that caused by EDB.

No studies examining the relationship between human exposure to CBE and the incidence of human cancer were found in the literature. No animal carcinogenicity studies on CBE were reported in the literature. However, based on its mutagenic activity and structural similarity to EDB and EDC, CBE is a suspected carcinogen as well as a potential mammalian mutagen. For these reasons, EPA has concluded that exposure to CBE may present a risk of injury to human health.

C. Exposure

Although present exposure to CBE is thought to be minimal, because of the high probability of carcinogenic activity implied by the *in vitro* results and CBE's close structural analogy to the known carcinogens EDB and EDC, there is concern for exposures from any future use of CBE.

V. Determination of Significant New Uses

To determine what would constitute a significant new use of CBE, EPA considered relevant information on the toxicity of the substance, likely exposures and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA expects to achieve the following objectives with regard to the significant new use that is designated in this rule:

1. The Agency wants to ensure that it will receive notice of any company's intent to manufacture, import, or process CBE for any use before that activity begins. Potential uses of CBE as a solvent, as a chemical intermediate, or as a substitute for EDB and EDC could also result in significant human exposure. Risk from these releases cannot be assessed without detailed data on worker exposure, potential releases to the environment, and the chemical fate of CBE in these uses.

2. The Agency wants to ensure that it will have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing CBE for any use.

3. The Agency wants to ensure that it will be able to regulate prospective manufacturers, importers, or processors of CBE before any use of this substance begins, provided that the degree of potential health and environmental risk if sufficient to warrant such regulation.

CBE has demonstrated mutagenic activity and is a close structural analogue to the known carcinogens EDB and EDC. There is concern that CBE may find new markets and that increased usage could occur without notification of appropriate regulatory authorities. CBE is not subject to any federal regulation that would notify the government of activities that might result in adverse exposures to CBE or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the resumption of any use and the associated manufacture, import, or processing of CBE have a high potential to increase the magnitude and duration of exposure to this substance. Also, given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to CBE at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to designate any use of CBE as a significant new use of this chemical substance.

VI. Alternatives

In the proposed SNUR, EPA considered alternative regulatory actions for CBE including the promulgation of a TSCA section 8(a) reporting rule or a section 6 regulation. No comments were received that addressed the regulatory approach chosen and for the reasons discussed in the preamble to the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for this substance.

VII. Applicability of Rule to Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, any person could defeat the SNUR by initiating the proposed significant new use before the rule became final. This would make it extremely difficult for the Agency to establish SNUR notice requirements.

Thus, persons who began commercial manufacture, importation, or processing of CBE for the significant new use designated in this rule between proposal and promulgation of the SNUR must cease that activity before the effective date of this rule. To resume their activities, these persons must comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5(a)(2), persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are required only to submit test data in their possessions or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential risks that may be posed by a significant new use of CBE, EPA encourages SNUR notice submitters to conduct tests that would permit a reasoned evaluation of risks posed by this substance when utilized for an intended use. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to evaluate reasonably the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure and environmental release that may result from the significant new use of CBE. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements of potential manufacturers, importers, and processors of CBE. The Agency's complete economic analysis is available in the rulemaking record for the rule (OPTS–50562A).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50562A). The record includes basic information considered by the Agency in developing this rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The proposed rule.
2. The economic analysis of this rule.
3. A summary of data on CBE prepared by Tracor Jitco/Technical Resources, Inc.
4. This final rule.

A public version of this record containing sanitized copies from which confidential business information has been deleted is available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE–G004, 401 M St. SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the reporting cost for submitting a significant new use notice would be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikly to discourage an innovation that has a high potential value.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters are small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2070–0038 to this rule.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 8, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.648 to read as follows:

§ 721.648 1-Chloro-2-bromoethane.

(a) *Chemical substance and significant new use subject to reporting.*

(1) The chemical substance 1-chloro-2-bromoethane (CAS No. 107-04-0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: any use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section execpt for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070-0038)

[FR Doc. 88-2073 Filed 2-1-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 721

[OPTS-50565; FRL-3322-2]

Significant New Use Rule; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document redesignates and renumbers 40 CFR Part 721, Subpart B to Subpart E. There are no substantive or language changes. This redesignation has been made for a more orderly and symmetrical development of regulations under 40 CFR Part 721. The new designation will allow space for future growth as Significant New Use Rules are published. Because these are non-substantive changes, notice and public comment are not required.

DATES: This document is effective February 2, 1988.

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

SUPPLEMENTARY INFORMATION: For the convenience of the user, the following redesignation table has been included.

Old section	New section
721.109	721.350
721.120	721.400
721.180	721.520
721.195	721.550
721.205	721.575
721.230	721.600
721.290	721.800
721.320	721.950
721.324	721.975
721.342	721.1150
721.347	721.1175
721.350	721.1200
721.370	721.1250
721.385	721.1300
721.497	721.1475
721.575	721.1750
721.615	721.1875
721.975	721.2100
721.1021	721.2200
721.1125	721.2550

Lists of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

Subpart B—[Redesignated as Subpart E]

2. Subpart B is redesignated as Subpart E and §§ 721.109, 721.120, 721.180, 721.195, 721.205, 721.230, 721.290, 721.320, 721.324, 721.342, 721.347, 721.350, 721.370, 721.385, 721.497, 721.575, 721.615, 721.975, 721.1021, and 721.1125 are redesignated as §§ 721.350, 721.400, 721.520, 721.550, 721.575, 721.600, 721.800, 721.950, 721.975, 721.1150, 721.1175, 721.1200, 721.1250, 721.1300, 721.1475, 721.1750, 721.1875, 721.2100, 721.2200, and 721.2550 respectively.

[FR Doc. 88-2074 Filed 2-1-88; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction; Distribution Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Food Distribution Program Regulations to strengthen provisions concerning the processing of donated foods and to increase uniformity between provisions governing State processing activities and those governing the National Commodity Processing (NCP) Program (Part 252).

DATE: To be assured of consideration comments must be received or postmarked on or before March 18, 1988.

ADDRESS: Comments should be sent to: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22303.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch at (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule related notice published June 24, 1983 (48 FR 29112).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in § 250.15 of this rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under control number 0584–0007.

Background

Section 250.15 of the current regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts for processing of donated foods.

Discussion of Proposed Rule

In an effort to enhance processing activities and provide for consistency between State processing and the NCP Program, the Department is proposing modifications to provisions contained in the current Food Distribution Program Regulations (7 CFR Part 250) concerning: substitution, sales verification, value-pass-through systems, duration of contracts, termination of contracts, and listing of ingredients.

Definition of Refund Payments

A definition of "Refund" is being incorporated in Section 250.3 under this proposed rule. "Refund" is defined as a credit or check issued to a distributor in an amount equal to the contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price and a check issued to a recipient agency in an amount equal to the contract value of donated foods contained in an end product sold under a refund system as defined in § 250.3.

By defining "Refund" in this manner, processors will be permitted to credit a distributor's account rather than issue individual checks for all refund applications submitted by a distributor. As under the current regulations, processors will be required to provide refund payments by check to recipient agencies. The Department believes that permitting processors to credit the account of a recipient agency for the value of the donated food is not in the best interest of the recipient agency. The recipient agency may no longer choose to use a particular processor or distributor which could result in a loss of the credit given for the value of the donated foods.

Sales Verification

Section 250.15(b)(2)(ii) of the current regulations requires that distributing agencies design and implement a system to verify on a quarterly basis a statistically valid sample of all sales which have been made through a distributor at a discount to the recipient agency. Distributing agencies may delegate this responsibility to processors. If the responsibility is delegated, § 250.15(m)(1)(ix) requires processors to report the results of sales verification efforts quarterly.

This proposed rule amends § 250.15 (b)(2)(ii) and (m)(1)(ix) to require that distributing agencies or processors conduct a statistically valid sample of such sales twice a year rather than quarterly. The verification of sales and submission of the data twice a year will reduce the distributing agencies' and processors' work load while providing sufficient data to accomplish the monitoring goals.

Section 250.15(b)(2) has also been revised to require that the sample size ensure a 95 percent confidence level. This change will further ensure the statistical validity of the sample selected. This is also consistent with NCP Regulations.

In addition, § 250.15(b)(2) has been revised to require adjustment of

performance reports and processing inventory reports to reflect invalid sales which were identified as a result of the sales verification effort and the development and submission of a corrective action plan by the processor designed to correct deficiencies. This change will ensure that recipient agencies are receiving the benefit of the donated foods and that the value pass through system being used is accountable.

Section 250.15(b)(2) also requires distributing agencies to review the processor's sales verification system and findings in instances in which the responsibility for sales verification has been delegated to the processor.

As part of the distributing agency's review of the processor's sales verification system, § 250.15(b)(2) of this proposed rule has been revised to require distributing agencies to select a sub-sample of at least 10 percent of all sales verified by the processor. Each sale selected as part of the sub-sample must be reverified by the distributing agency by contacting the recipient agency either by telephone or through written correspondence. The reverification of these sales will assist the distributing agency in determining the efficacy of the processor's sales verification system.

In instances in which poor processor performance is revealed, the distributing agency must require the processor to discontinue the abused value pass through system, initiate an audit or review to determine the extent to which sales are to be disallowed, establish a claim, and/or terminate the contract. While the Department has always considered such action to be warranted in instances in which poor processor performance occurs, under this proposed rule such action is required to further ensure accountability for the donated foods.

Contract Duration

Section 250.15(c) of the current regulations requires the termination of processing contracts no later than one year after they have been initiated. Under this proposed rule, processing contracts will terminate as of June 30 of each year. The reason for this change is twofold. First, establishing a fixed expiration date will help regularize those activities associated with audits and management evaluation reviews especially among multi-State processors. Second, this provision is consistent with NCP Regulations.

End Product Data

Section 250.15(c)(4)(ii) of the current regulations requires that each processing contract include the quantity of each donated food and any other ingredient needed to yield a specific number of units of each product except for flavorings and seasonings.

This proposed rule eliminates the requirement that processors list the quantity of non-donated foods. However, processors will continue to be required to identify these ingredients. The listing of ingredients will provide contracting agencies with information for which they have expressed a need while ensuring that information which is considered to be "trade secrets" by some processors is not disclosed. This change is also consistent with NCP Regulations.

Value-Pass-Through (VPT) Systems

Paragraphs (d) and (e) of § 250.15 of the current regulations permit the sale of processed end products to recipient agencies through four specific VPT systems.

This proposed rule amends paragraphs (d) and (e) to allow the use of other VPT systems which have been approved for use by FNS at the request of an individual distributing agency. This change will encourage processors and other interested parties to submit for approval innovative VPT systems that are accountable and appealing to recipient agencies. The Department and its authorized representatives retain the authority to inspect and review all pertinent records regarding the sale of processed end products under all systems including the application of a statistically valid verification method.

Paragraph (e) has been revised to require that distributors maintain invoices issued to recipient agencies when end products are sold through a discount system. The invoices must be provided to the processor upon request. This will significantly reduce the flow of paper between processors and distributors while ensuring accountability. This change is also consistent with NCP Regulations.

In an effort to ensure that recipient agencies are receiving the benefit of the donated foods contained in the end products, paragraphs (d) and (e) are also being revised to require that processors ensure that invoices clearly indicate the discount included or refund due on the end product and that the invoice clearly identifies that the discount included or refund payment due is for the value of the donated food regardless of the VPT system used. This change is also consistent with NCP Regulations.

Contract Termination

Section 250.15(j) of the current regulations requires that payment for commodities remaining in a processor's inventory be based on the Department's replacement costs or the contract value as stated in the processor's contract.

Under this proposed rule, the option of requiring payment for commodities remaining in a processor's inventory based on the CCC unrestricted sales price has been added. This provision is consistent with NCP Regulations.

Refunds

Paragraph (k) of § 250.15 of the current regulations requires that recipient agencies submit refund applications to processors within 60 days of the date of purchase of end products in order to receive benefits. In instances in which refunds are to be provided to distributors, refund applications must be submitted by the distributor within 60 days of the date of sale to the recipient agency in order to receive benefits. The processor is required to make payment within 10 days after the receipt of any refund application.

Under this proposed rule, paragraph (k) is being revised to require the submission of refund applications by recipient agencies and distributors within 30 days of receipt of the processed end product by the recipient agency. Processors will be required to make payment within 30 days after receipt of any refund application. However, at the end of the contract period, processors must make refunds as soon as possible, but no later than 60 days after the close of the contract period. This allows a 60-day period to close-out any remaining refunds due after the end of the contract period. This change is consistent with NCP regulations. However, the Department is specifically soliciting comments as to whether the time period associated with the submission of refund applications should be tied to the date the end product was purchased, date the end product was received, or some other time period.

Performance Reports

Section 250.15(m) of the current regulations requires processors to report the number of pounds of each donated food represented in sales to distributors.

This requirement is being deleted under this proposed rule. However, processors will continue to be required to maintain this information as part of the inventory control system to ensure an acceptable audit trail.

Annual Reconciliation

Section 250.15(n)(3) of the current regulations requires that as part of the

annual reconciliation, processors must pay distributing agencies for the contract value of any donated foods for which a timely refund application has not been submitted and for excess inventories.

The Department has received several requests for clarification concerning these provisions. Thus, the intent of these provisions is being clarified under this proposed rule by rewording this section to state that processors must pay distributing agencies for all donated food inventory remaining at contract termination.

Audits

Section 250.15(t) of the current regulations requires that multi-State processors obtain an independent CPA audit. The frequency of the audit cycle is based on the value of the donated foods received by the processor during the year.

In order to clarify the Department's intent, this section is being revised to state that the audit frequency is determined by adding the value of donated foods received by the processor under State and National Commodity Processing contracts.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch program, Surplus agricultural commodities.

Accordingly, Part 250 is amended as follows:

PART 250—DONATION OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301).

2. In § 250.3, the definition of "Refund" is added to read as follows:

§ 250.3 Definitions.

* * * * *

"Refund" means (1) a credit or check issued to a distributor in an amount equal to the contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price and (2) a check issued to a recipient agency in an amount equal to the contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

* * * * *

§ 250.15 [Amended]

3. In § 250.15, paragraph (b)(2)(ii)(A) and paragraph (b)(2)(ii)(C) are revised and paragraphs (b)(2)(ii)(D) through (b)(2)(ii)(F) are added to read as follows:

(b) * * *

(2) * * *

(ii) * * *

(A) Provide for a semi-annual review of a statistically valid sample of sales for the previous six-month period of all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors. The sample size must ensure a 95 percent confidence level;

* * * * *

(C) Provide for the assessment of claims against the processor in accordance with FNS Instruction 410–1, Non-Audit Claims, Food Distribution Program, in instances when deficiencies have been identified.

(D) Provide for the adjustment of performance reports and processing inventory reports to reflect any invalid sales;

(E) Provide for the development and submission by processors to the distributing agency of a corrective action plan designed to correct problems identified during the sales verification; and

(F) In instances in which the distributing agency has delegated the responsibility of sales verification to processors, the distributing agency must:

(*1*) Establish guidelines which ensure that the criteria contained in paragraphs (b)(2)(ii) (A) through (E) are met;

(*2*) Ensure that processors report their findings to the distributing agency on a semi-annual basis in accordance with § 250.15(m);

(*3*) Review the processor's findings and select a random sub-sample of at least 10 percent of all sales verified by the processor and reverify the sale by contacting the recipient agency by telephone or through written correspondence; and

(*4*) Submit a copy of the processor's review report and findings and the results of the reverification efforts to the appropriate FNSRO.

In instances of poor processor performance, the distributing agency shall require the processor to discontinue the abused value pass through system, initiate an audit or review to determine the extent to which sales are to be disallowed, establish a claim, and/or terminate the contract.

* * * * *

4. In § 250.15, the first two sentences of paragraph (c)(1) are revised to read as follows:

(c) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form and be reviewed by the appropriate FNSRO. Processing contracts shall terminate on June 30 of each year. * * *

* * * * *

5. In § 250.15, paragraphs (c)(4)(ii) and (c)(4)(viii)(I) are revised to read as follows:

(c) * * *

(4) * * *

(ii) A description of each end product, the quantity of each donated food and the identification of any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), the processor's free on board (FOB) plant price schedule for quantity purchases of processed products, and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. For substitutable donated foods, at least 100 percent of the donated food provided to the processor must be physically contained in the end products with no allowable tolerance;

* * * * *

(viii) * * * (I) Submit annual reconciliation reports and make payments to distributing agencies for any inventory remaining at the termination of the contract in accordance with paragraph (n)(3) of this section.

* * * * *

6. In § 250.15, paragraphs (d) and (e) are revised to read as follows:

(d) *End products sold by processors.* (1) When recipient agencies pay the processor for end products, the processing contract shall include

(i) The processor's established wholesale price schedule for quantity purchases of specified units of end products, and

(ii) An assurance that

(A) The price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or

(B) A refund equal to the value of the donated foods contained therein shall be made upon presentation of proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section or

(C) The value of donated food contained therein shall be passed to the recipient agency through a system which has been approved by FNS at the request of the distributing agency.

(2) Any value pass through system approved under this part must comply with the sales verification requirements specified in § 250.15(b), or an alternative verification system approved by FNS. The Department retains the authority to inspect and review all pertinent records under all value pass through systems, including records pertaining to the verification of a statistically valid sample of sales.

(3) Processors shall ensure that invoices clearly indicate the discount included or refund due on the end product and that the invoice clearly identifies that the discount included or refund due is for the value of the donated food regardless of the value pass through system used.

(4) Processors shall retain invoices from recipient agencies when end products are sold through a discount system.

(e) *End products sold by distributors.* (1) When a processor transfers end products to a distributor for sale and delivery to recipient agencies, such sales shall be under either a refund system as defined in Section 250.3 or a system which provides refunds to distributors and discounts to recipient agencies unless another value pass through system has been approved in accordance with paragraph (d)(2) of this section. The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

(2) Processors shall ensure that invoices clearly indicate the discount included or refund due on the end product and that the invoice clearly identifies that the discount included or refund due is for the value of the donated food regardless of the value pass through system used.

(3) Processors shall ensure that distributors maintain invoices from recipient agencies when end products are sold through a discount system and that such invoices shall be provided to the processor upon request.

* * * * *

7. In § 250.15, new paragraphs (j)(1)(i)(D) and (j)(1)(ii)(F) are added to read as follows:

(j) *Termination of processing contracts.* (1) * * *

(i) * * *

(D) Pay the contracting agency the CCC unrestricted sales price;

(ii) * * *

(F) Pay the contracting agency the CCC unrestricted sales price.

* * * * *

8. In § 250.15, paragraph (k) is amended by changing the words "60 days" wherever they appear to "30 days" and by changing "10 days" to "30 days".

9. In § 250.15, a new paragraph (k)(4) is added to read as follows:

(k) * * *

(4) At the close of the contract period, processors shall pay refunds as soon as possible, but not later than 60 days from the end of the contract period.

* * * * *

10. In § 250.15, paragraph (m)(1)(vii) is removed, and paragraphs (m)(1)(viii) through (m)(1)(x) are redesignated (m)(1)(vii) through (m)(1)(ix) and newly redesignated paragraph (m)(1)(viii) is revised to read as follows:

(m) *Performance reports.* (1) * * *

(viii) In instances in which sales verification has been delegated to the processor pursuant to § 250.15(b)(2), sales verification findings shall be reported as an attachment to the December and June performance reports in whatever format the distributing agency deems necessary.

* * * * *

11. In § 250.15, paragraph (n)(3) is revised to read as follows:

(n) * * *

(3) Processors shall complete and submit annual reconciliation reports to distributing agencies within 90 days following the end of the contract period. As a part of the annual reconciliation, processors shall pay distributing agencies for the contract value of any donated food inventory remaining at the termination of the contract except in those instances in which the processor has entered into a contract with the contracting agency for the next year. In such instances the processor shall pay the distributing agency for any donated food inventory in excess of the inventory level which has been approved by the distributing agency.

* * * * *

12. In § 250.15, paragraph (t)(1) is amended by inserting a sentence between the third and fourth sentences to read as follows:

(t) *CPA Audits.* (1) * * * The total value of donated food received shall be computed by adding the value of food received under State and National Commodity Processing contracts. * * *

* * * * *

Dated: January 26, 1988.

Sonia Crow,

Acting Administrator.

[FR Doc. 88-2032 Filed 2-1-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 907 and 908 for the 1987-88 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by February 12, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mark Niederkofler, Volume Control Programs, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908), regulating the handling of California-Arizona navel and Valencia oranges. Both orders are effective under

the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 123 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange growers and handlers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Navel Orange Administrative Committee (NOAC) met on December 1, 1987, and recommended, by an 8 to 3 vote, 1987–88 fiscal year expenditures of $1,160,020 and an assessment rate of $0.026 per carton of navel oranges. In comparison, 1986–87 fiscal year budgeted expenditures were $1,039,000 and the assessment rate was $0.022 per carton. Expenditure categories in the 1987–88 budget are $297,695 for program administration, $133,205 for compliance activities, $558,520 for the field department, $167,300 for direct expenses, and $3,300 for a salary reserve. Assessment income for 1987–88 is expected to total $1,092,000, based on shipments of 42 million cartons of oranges. Interest and incidental income is estimated at $54,960. The NOAC may expend operational reserve funds of $13,060 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

The Valencia Orange Administrative Committee (VOAC) met on December 15, 1987, and unanimously recommended 1987–88 fiscal year expenditures of $669,030 and an assessment rate of $0.029 per carton of Valencia oranges. In comparison, 1986–87 fiscal year budgeted expenditures were $626,200 and the assessment rate was $0.027 per carton. Excess income for 1986–87 of $58,260 was distributed to handlers as assessment refunds. Expenditure categories in the 1987–88 budget are $152,405 for program administration, $68,195 for compliance activities, $285,930 for the field department, $160,800 for direct expenses, and $1,700 for a salary reserve. Assessment income for 1987–88 is expected to total $623,500, based on shipments of 21.5 million cartons of oranges. Interest and miscellaneous income is estimated at $29,070. The VOAC may expend operational reserve funds of $16,460 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for both programs need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 907 and 908

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

For the reasons set forth in the preamble, it is proposed that new §§ 907.225 and 908.227 be added as follows:

1. The authority citation for both 7 CFR Parts 907 and 908 continues to read as follows:

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

2. New §§ 907.225 and 908.227 are added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.225 Expenses and assessment rate.

Expenses of $1,160,020 by the Navel Orange Administrative Committee are authorized, and an assessment rate of $0.026 per carton of navel oranges is established for the fiscal year ending October 31, 1988. Unexpended funds from the 1987–88 fiscal year may be carried over as a reserve.

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

§ 908.227 Expenses and assessment rate.

Expenses of $669,030 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of $0.029 per carton of Valencia oranges is established for the fiscal year ending October 31, 1988. Unexpended funds from the 1987–88 fiscal year may be carried over as a reserve.

Dated: January 27, 1988.

Robert C. Keeney,

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

[FR Doc. 88-2131 Filed 2-1-88; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 917

Pears, Plums, and Peaches Grown in California; Proposed Increase in Expenses for 1987-88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenditures for the Plum and Peach Commodity Committees established under Marketing Order 917 for the 1987-88 fiscal year. For plums, the expenses would be increased from $3,036,485 to $3,125,626. For peaches, the expenses would be increased from $2,401,435 to $2,409,180. The increases reflect higher than estimated costs for market development and promotion activities undertaken by the plum and peach committees in marketing the 1987 crops of these fruits.

DATES: Comments must be received by February 12, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-5464.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act".

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

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

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

There are approximately 649 handlers of California plums, peaches, and nectarines under these marketing orders, and approximately 2,800 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $3,036,485 for the Plum Commodity Committee and $2,401,435 for the Peach Commodity Committee for the fiscal period ending February 29, 1988, was published in the **Federal Register** on August 20, 1987 (52 FR 31375). That action also fixed assessment rates to be levied on peach and plum handlers during the 1987-88 fiscal period. At a meeting held on December 9, 1987, the Plum Commodity Committee voted unanimously to increase its budget of expenses from $3,036,485 to $3,125,626. On December 8, 1987, the Peach Commodity Committee also voted unanimously to increase its budget of expenses from $2,401,435 to $2,409,180.

Both committees incurred higher than expected market development and promotion costs because the 1987 plum and peach crops were larger than anticipated. The proposed increases are needed to cover these expenses.

No change is assessment rates were recommended by the committees. Adequate funds are available to cover any proposed increase in expenses for the Plum and Peach Commodity Committees that may result from this action.

Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget increase approval for both committees needs to be expedited. The committees need to have authority to pay their expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, it is proposed that §§ 917.247 and 917.248 be amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

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

2. Sections 917.247 and 917.248 are amended as follows:

§ 917.247 [Amended]

Section 917.247 is amended by changing "$3,036,485" to $3,125,626".

§ 917.248 [Amended]

Section 917.248 is amended by changing "$2,401,435" to $2,409,180".

Dated: January 27, 1988.

Robert C. Keeney,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-2067 Filed 2-1-88; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 925

Expenses and Assessment Rate for Marketing Order No. 925

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 925 for the 1988 fiscal period. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by February 12, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and

will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 925 (7 CFR Part 925) regulating the handling of grapes grown in a designated area of southeastern California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 22 handlers of California desert grapes under this marketing order, and approximately 87 desert grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable grapes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The California Desert Grape Administrative Committee met on January 14, 1988, and unanimously recommended a 1988 budget of $45,000. The proposed budget is $1,700 more than last year's due to added expenditures for the committee manager's automobile expenses and salary increases for the committee manager and the Los Angeles market monitor. Other increases include payroll taxes, postage, telephone, utilities, rent, office equipment, and insurance. No funds have been allocated for research, or the Mexican border monitor's salary and automobile expenses, and funds have been reduced for employee travel. The committee also recommended an assessment rate of $0.004 per lug. This rate, when applied to anticipated shipments of 8,000,000 lugs would yield $32,000 in assessment revenue which, when added to $13,000 from interest income and reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 925

Marketing agreements and orders, grapes (California).

For the reasons set forth in the preamble, it is proposed that § 925.207 be added (the following section prescribes annual expenses and assessment rate and will not be published in the Code of Federal Regulations):

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

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

2. New § 925.207 is added to read as follows:

§ 925.207 Expenses and assessment rate.

Expenses of $45,000 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.004 per 22-pound container of grapes is established for the fiscal period ending December 31, 1988. Unexpended funds may be carried over as a reserve.

Dated January 27, 1988.

Robert C. Keeney,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–2128 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–22–M

Farmers Home Administration

7 CFR Parts 1823, 1930, 1933, 1942, 1944, 1948, and 1980

Audit Reports

AGENCY: Farmers Home Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farmers Home Administration (FmHA) will, as soon as regulations and guidelines can be finalized, implement OMB Circular A–73. The circular requires audits of borrowers and grantees to comply with the requirements as set forth by the Comptroller General of the United States.

DATE: This advance notice of proposed rulemaking is subject to a comment period ending April 4, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room

6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Booker Reaves, Senior Loan Officer, Multiple Housing Processing Division, FmHA, Room 5337, Washington, DC 20250, telephone (202) 382–1624.

SUPPLEMENTARY INFORMATION: This is to announce that FmHA will adopt and implement the requirement of OMB Circular A–73 that audits submitted in accordance with program requirements must be prepared on the basis of the audit standards issued by the Comptroller General of the United States. These standards are published in "Standards for Audit of Governmental Organizations, Programs, Activities, and Function." It is important to note that the standards include the requirement that the generally accepted government auditing standards (GAGAS) be used instead of the generally accepted auditing standards (GAAS).

Audits must be submitted by certain participants in certain FmHA programs, including the Housing Programs, Community and Business Programs and Farmer Programs.

Proposed changes in these programs will be published later in the **Federal Register** for comment by interested parties. Any comments received in response to that publication will be considered by FmHA in the formulation of the final, applicable changes in the programs.

Written proposals and/or comments may also be submitted at this time for a period of 60 days from the date of this publication.

The other affected programs are listed in the Catalog of Federal Domestic Assistance: 10.405, Farm Labor Housing Loans and Grants; 10.415 Rural Rental Housing Loans; 10.433 Rural Housing Preservation Grants; 10.420, Rural Self-Help Housing Technical Assistance; 10.411, Rural Housing Site Loans; 10.422, Business and Industry Loans; 10.418, for Water and Waste Disposal Systems for Rural Communities; 10.423, for Community Facilities Loans; 10.419, Watershed Protection and Flood Prevention Loans; 10.414, Resource Conservation and Development Loans; 10.430, Energy Impacted Area Development Assistance Program; 10.434, Nonprofit National Corporations Loan and Grant Program; and 10.421, Indian Tribes and Tribal Corporation Loans. The Energy Impacted Area Development Assistance Grant, Industrial Development Grant Programs, Association Loans for Irrigation and Drainage and other Soil and Water Conservation Measures, and Association Loans for Shift-in-Land-Use projects, are not listed in the Catalog. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

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

Dated: January 26, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–2127 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

[Docket No. PRM–31–4]

GENE-TRAK Systems; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking from GENE-TRAK Systems.

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated November 18, 1987, which was filed with the Commission by GENE-TRAK Systems. The petition has been assigned Docket No. PRM–31–4. The petition requests that the Commission establish that 100 microcuries of phosphorus-32 used in GENE-TRAK Salmonella and Listeria assays by a food laboratory is an exempt quantity under a general license according to § 31.11.

DATE: Submit comments by April 4, 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: All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments may be inspected and copied for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7086 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The food industry and its regulators are continuously concerned with the transmission of disease producing organisms, or pathogens, through processed food products. Food laboratories throughout the country routinely test food products for the presence of pathogens such as Salmonella and Listeria.

Salmonella, an important cause of food transmitted illness, is widely distributed in nature. There are approximately 2,000 different Salmonella organisms all potentially harmful to humans. Because of the widespread nature of Salmonella in the environment, there is the possibility that food products may be contaminated after processing. Therefore, many food manufacturers routinely test finished products for the presence of Salmonella.

Listeria is an emerging pathogen of special significance. In contrast to common food poisoning agents which generally cause gastrointestinal disease, Listeria infection can produce severe disorders such as meningitis, septicemia, and abortion.

Listeria, which is ubiquitous in nature and is able to survive and multiply at refrigeration temperature, is a contaminant most likely to be found in foods of animal origin. The presence of species of Listeria may be significant indicators of food plant sanitation conditions.

The Petitioner

GENE-TRAK Systems is a joint venture formed between Integrated

Genetics, Inc., Framingham, Massachusetts and AMOCO Corporation of Chicago, Illinois. The company currently markets and sells in-vitro diagnostic tests for food bacteria such as Salmonella and Listeria in food products. GENE-TRAK Systems has applied new technology to improve on conventional microbiological methods of identifying these pathogens.

The Process

Because of new advances in molecular biology, it is now possible to isolate DNA from the bacteria to be tested for, label it with phosphorus-32, a radioactive isotope, and use it in a test system to identify the bacteria if it is present in food samples. The petitioner has developed test procedures using DNA probes for both Salmonella and Listeria. The petitioner asserts that these tests are more accurate because the DNA probes are highly specific. In addition, the tests are speedier, requiring only two days for completion rather than the seven days needed for conventional methods.

The Problem

Because of the presence of byproduct material in the form of phosphorus-32 in amounts exceeding currently exempt quantities, those desiring to use the DNA probe assays must apply for and obtain a specific license from the NRC that authorizes the use. The amount of phosphorus-32 used per test is 0.5 microcurie and the amount shipped in a single vial is 75 microcuries. The assays are in-vitro diagnostic tests conducted in food laboratories.

The Solution

The petitioner requests that NRC amend § 31.11(a) to include food laboratories and to include up to 100 microcuries of phosphorus-32 as an exempt quantity.

The petitioner asserts that authorizing the use of these products under a general license would assist food manufacturers and food laboratories by eliminating the licensing procedure. In addition, the paperwork burden on both the NRC and the industry would be reduced.

Dated at Washington, DC this 27th day of January 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-2123 Filed 2-1-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-25286, File No. S7-1-88]

Request for Comments on a Proposed Revision of Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Form Revisions.

SUMMARY: The Commission is publishing for comment a proposed revision of Form BD, the uniform registration form that is filed by an applicant to become registered as a broker-dealer. The revision would add to the form an explicit consent to service of process for any application for protective decree brought by the Securities Investor Protection Corporation.

DATE: Comments should be submitted by March 3, 1988.

ADDRESS: All comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should refer to File No. S7-1-88. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Henry E. Flowers, Esq., at (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In May 1987, the Commission proposed for comment a revision to Form BD,[1] the uniform registration form that is filed by an applicant to become registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Act"). The revision provided that the applicant consents that service of any civil actions brought by or notice of any proceeding before the Commission or any self-regulatory organization ("SRO") in connection with the applicant's broker-dealer activities may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address identified on Form BD, or mailing address if different.

The Commission received one comment letter on the proposed revision.[2] The commentator, the Securities Investor Protection Corporation ("SIPC"), requested that the proposed Form BD consent provision be expanded to include language explicitly providing that the applicant broker-dealer consents that service or notice of any application for a protective decree ("application") filed by SIPC may be given in the same manner as provided in the proposed consent, that is, by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address identified on Form BD, or mailing address if different. The Commission is proposing for comment inclusion of this provision in Form BD, and at the same time has adopted the proposed revision in a separate release.[3]

II. Discussion

SIPC's request arises from the difficulty it has experienced in a number of instances in obtaining adequate service of process in applications for protective decrees for broker-dealers that failed financially. These difficulties have resulted in delays in filing applications or in some cases refusals to entertain such applications by the courts. SIPC, a non-profit membership corporation,[4] created by the Securities Investor Protection Act of 1970 ("SIPA"), files applications for protective decrees in its essential role of providing protection to customers of member broker-dealer that fail financially. If SIPC concludes that a member broker-dealer has failed or is in danger of failing to meet its obligations to customers, and finds conditions suggestive of financial irresponsibility, SIPC, upon notice to the member broker-dealer, files an application for a protective decree in a United States Federal District Court. If the court agrees with SIPC's determination, it will appoint a trustee to oversee the liquidation of the member broker-dealer. SIPC is required to advance the trustee sufficient funds to ensure that customers of the broker-dealer receive return of their funds and securities left with the broker-dealer up to certain limits. SIPC funds are available to satisfy the claims of each customer up to a maximum of $500,000 including up to $100,000 on cash claims (as distinct from claims for securities). Thus, SIPC's ability to obtain

[1] Securities Exchange Act Release No. 24402 (May 7, 1987), 52 FR 17301.

[2] Letter from Theodore H. Focht, President & General Counsel, SIPC, to Jonathan G. Katz, Secretary, SEC (June 5, 1987).

[3] Securities Exchange Act Release No. 25285 (January 22, 1988).

[4] SIPC membership is composed of all broker-dealers registered under section 15(b) of the Act, with some minor exceptions.

timely service of its applications for protective decrees is important for the protection of customers of broker-dealers that fail financially.

SIPC's functions are subject to broad Commission supervision. SIPC must file with the Commission proposed rule changes for approval and proposed by law changes which become effective thirty days after filing unless disapproved by the Commission. The Commission can require SIPC to adopt, amend, or repeal any bylaws or rules. The Commission may examine SIPC's operations and require SIPC to furnish it with such reports as it considers to be in the public interest. In addition, should SIPC fail to file an application for a protective decree in what the Commission determines to be an appropriate case, the Commission may apply to a United States Federal District Court for an order compelling SIPC to file an application for a protective decree.

SIPC has no simple way of obtaining consent to service of process on its own behalf. The Commission and SROs provide SIPC's only official channel of information regarding the financial health of its members. It does not receive regular filings and the SROs serve as collection agents for SIPC-imposed assessments. Consequently, the Commission preliminary believes the Form BD should include a provision obtaining consent that service or notice of process provided to the Form BD contact employee for any application for a protective decree by SIPC is adequate for notice and jurisdictional purposes. The Commission requests comment on this provision.

III. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a "significant economic impact on a substantial number of small entities." [5]

[5] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity", the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10. *See* Securities Exchange Act Release No. 18452 (January 28, 1982). A broker or dealer generally is a "small business" or "small organization" if it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d). *See* Rule 0-10(c).

The Chairman of the Commission has certified that the proposed revision to Form BD, is adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendments would not provide any additional cost on broker-dealers.

It is highly unlikely that the proposed amendment to Form BD would have a significant impact on a substantial number of small entities. New broker-dealers would consent to service of process only when completing the Form BD. In addition, existing broker-dealers will execute this consent to service of process only when they amend Form BD for some other reason.

IV. Statutory Authority

The proposed change to Form BD would be adopted pursuant to sections 15(b), 17(a) and 23(a) of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Form BD prescribed by § 249.501 is amended by revising the Execution paragraph to read as follows:

§ 249.501 [Amended]

Uniform Application for Broker-Dealer Registration

* * * * *

Execution

* * * * *

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Item 1G.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: January 22, 1988.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Form BD set forth in Securities Exchange Act Release No. 25286, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendment, if adopted, would result in no additional costs on broker-dealers.

David S. Ruder,

Chairman.

Dated: January 26, 1988.

[FR Doc. 88-2119 Filed 2-1-88; 8:45 am]

BILLING CODE 8010-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Employment Services for Certain Eligible Veterans

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: It is proposed to amend existing rules governing the provision of employment services under chapter 31 to make clear that the Veterans Administration (VA) is empowered to furnish such assistance to help a veteran already qualified for suitable employment obtain or maintain suitable employment if he or she is otherwise eligible for assistance under this program. Existing rules have been misinterpreted to limit the provision of employment assistance only to veterans who first have received vocational training assistance in a vocational rehabilitation program under chapter 31, or in a vocational rehabilitation program authorized under the Rehabilitation Act of 1973, as amended.

DATES: Comments must be received on or before March 3, 1988. Comments will be available for public inspection until March 17, 1988. It is proposed to make these changes effective the date of final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 17, 1988.

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

SUPPLEMENTARY INFORMATION: These proposed amendments are intended to clarify the authority of the VA to assist those service-disabled veterans otherwise eligible for vocational rehabilitation services under chapter 31, who have problems in obtaining or maintaining suitable employment, but who do not require training assistance to achieve such employment. Such veterans are entitled to employment assistance even if they have not participated in a vocational rehabilitation program. The proposed amendments make clear that employment services may be provided to any veteran found to have an employment handicap under 38 CFR 21.51 or a serious employment handicap as determined under 38 CFR 21.51 and 21.52. In effect, provisions of such services becomes that veteran's program of vocational rehabilitation to be provided under chapter 31.

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

The Administrator certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed regulatory amendments concern the rights and responsibilities of individual VA beneficiaries under chapter 31. Thus, no regulatory burdens are imposed on small entities by these changes.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

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

Approved: December 30, 1986.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. Section 21.47 is revised to read as follows:

§ 21.47 Eligibility for employment assistance

(a) *Providing employment services to veterans eligible for a rehabilitation program under chapter 31.* Each veteran, other than one found in need of a program of independent living services and assistance, who is otherwise currently eligible for and entitled to participate in a program of rehabilitation under chapter 31 may receive employment services. Included are those veterans who:

(1) Have completed a program of rehabilitation services under chapter 31 and been declared rehabilitated to the point of employability;

(2) Have not completed a period of rehabilitation to the point of employability under chapter 31, but:

(i) Have elected to secure employment without completing the period of rehabilitation to the point of employability; and

(ii) Are employable; or

(3) Have never received services for rehabilitation to the point of employability under chapter 31 if they:

(i) Are employable or employed in a suitable occupation;

(ii) Have an employment handicap or a serious employment handicap; and

(iii) Need employment services to secure and/or maintain suitable employment.

(Authority: 38 U.S.C. 1502)

(b) *Veteran previously participated in a VA vocational rehabilitation program or a similar program under the Rehabilitation Act of 1973, as amended.* A veteran who at some time in the past has participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 as amended, and is employable is eligible for employment services under the following conditions even though he or she is ineligible for any other assistance under chapter 31:

(1) The veteran is employable in a suitable occupation;

(2) The veteran has filed a claim for vocational rehabilitation or employment assistance;

(3) The veteran has a service-connected disability which:

(i) Was incurred on or after September 16, 1940; and

(ii) Is compensable, but for payment or retired pay; and

(4) The veteran:

(i) Completed a vocational rehabilitation program under 38 U.S.C. Ch. 31 or participated in such a program for at least 90 days on or after September 16, 1940; or

(ii) Completed a vocational rehabilitation program under the Rehabilitation Act of 1973 after September 26, 1975, or participated in such a program which included at least 90 days of postsecondary education or vocational training.

(Authority: 38 U.S.C. 1517)

(c) *Veteran never received vocational rehabilitation services from the Veterans' Administration or under the Rehabilitation Act of 1973.* If a veteran is currently ineligible under chapter 31 because he or she does not have an employment handicap, and has never before participated in a vocational rehabilitation program under chapter 31 or under the Rehabilitation Act of 1973, no employment assistance may now be provided to the veteran under chapter 31.

(Authority: 38 U.S.C. 1517)

(d) *Duration of period of employment assistance.* The periods during which employment assistance may be provided are not subject to limitations on periods of eligibility for vocational rehabilitation provided in §§ 21.41 through 21.45 of this title, but entitlement to such assistance is, as provided in § 21.73, limited to 18 total months of assistance.

(Authority: 38 U.S.C. 1505)

2. In § 21.51, paragraphs (f)(1)(i) and (iii) and (f)(2)(i) and (iii) are revised to read as follows:

§ 21.51 Employment handicap.

* * * * *

(f) *Determinations of employment handicap.*

(1) * * *

(i) The veteran has an impairment of employability; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons not within their control;

* * * * *

(iii) The veteran has not overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests.

(2) * * *

(i) The veteran's employability is not impaired; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons within their control;

* * * * *

(iii) The veteran has overcome the effects of the impairment of

employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests, and is successfully maintaining such employment.

(Authority: 38 U.S.C. 1502)

3. In § 21.73, paragrpah (a) is revised to read as follows:

§ 21.73 Duration of employment assistance programs.

(a) *Duration.* Employment assistance may be provided to the veterans for the period necessary to enable the veteran to secure employment in a suitable occupation, and to adjust in the employment. This period shall not exceed 18 months. A veteran may be provided such assistance if he or she is eligible for employment assistance under the provisions of § 21.47.

(Authority: 38 U.S.C. 1505(b))

* * * * *

4. In § 21.250, paragraph (b)(3) is added and paragraphs (c) (1) and (2) are revised to read as follows:

§ 21.250 Overview of employment services.

* * * * *

(b) * * *

(3) The term "employable" means the veteran is able to secure and maintain employment in the competitive labor market or in a sheltered workshop or other special situation at the minimum wage.

(Authority: 38 U.S.C. 1501, 1506, 1516, 1517)

(c) *Determining eligibility for, and the extent of, employment services.*

(1) A veteran's eligibility for employment services shall be determined under the provisions of § 21.47;

(2) The duration of the period of employment services is determined under provisions of § 21,73;

* * * * *

[FR Doc. 88-2100 Filed 2-1-88; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50563; FRL-3322-7]

Diphenyl-2,4,6-Trimethylbenzoyl Phosphine Oxide; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance diphenyl-2,4,6-trimethylbenzoyl phosphine oxide [CASRN: 73980-60-8], which was the subject of premanufacture notice (PMN) P-87-586. The Agency believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human exposure. As a result of this rule, certain persons who intend to manufacture, import, or process this substance for a significant new use would be required to notify EPA at least 90 days before commencing that activity. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it occurs.

DATE: Written comments should be submitted by April 4, 1988.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St. SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50563. Nonconfidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE-G004 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit X of this preamble.

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

SUPPLEMENTARY INFORMATION: This notice announces a proposed significant new use rule for the chemical substance which was the subject of PMN P-87-586. The Agency believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human exposure.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5 (b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed there in detail and persons should refer to that document for further information. EPA is proposing that these general provisions apply to this SNUR. On April 22, 1986, EPA proposed revisions to the general provisions (51 FR 15104), some of which would apply to this proposed SNUR.

III. Summary of this Proposed Rule

The chemical substance which is the subject of this proposed rule is identified as diphenyl-2,4,6-trimethylkbenzoyl phosphine oxide [CASRN: 73980-60-8]. It was the subject of PMN P-87-586. EPA is proposing to designate the

following as significant new uses of the substance: (1) Any manner or method of manufacture associated with any use within the United States, (2) any manner or method of import in dust or powder form associated with any use within the United States, or (3) use other than in solution with styrene.

IV. Background

On February 10, 1987, EPA received a PMN which the Agency designated as P–87–586. EPA announced receipt of the PMN in the **Federal Register** of February 20, 1987 (52 FR 5333). The notice submitter intends to manufacture the substance for use as a photoinitiator for (1) light-cured unsaturated polyester resins, (2) manufacture of small plastic parts using fiberglass, and (3) coating of small thin shell molds.

The notice submitter claimed the following as confidential business information (CBI): The compnay's identity, production volume, process information, use formulation concentrations, percent production devoted to each use, and exposure and release estimates. Under section 14(a)(4) of TSCA, the Agency may disclose CBI when relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its specific chemical name and PMN number.

The Agency is concerned that P–87–586 may present risks to human health. The Agency is specifically concerned that exposure to P–87–586 might induce neurotoxic effects in workers exposed to the substance. These conclusions are based primarily on the structural analogy of the PMN substance with triphenyl phosphine oxide.

Although the Agency identified potential adverse effects of P–87–586, no action was taken during the PMN review period. This was because the Agency does not expect exposures to workers under the conditions of use described by the notice submitter in the PMN to pose a significant health risk. That is, in light of the fact that P–87–586 will be imported in styrene solution, the Agency believes that the workplace controls for styrene presently required by the Occupational Safety and Health Administration will adequately reduce the risk of neurotoxic effects for workers exposed to P–87–586. However, during other potential activities, such as the manufacture of P–87–586 in the United States (where exposure to the substance in dust or powder form could occur), import in dust or powder form, or use other than in solution with styrene, the Agency believes that significant exposures might occur.

When the notice submitter commences commercial import of the substance and submits a Notice of Commencement of Import to EPA, the Agency will add the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without restrictions. Therefore, EPA is proposing to designate the uses set forth in proposed § 721.855(a)(2) as significant new uses so the Agency can review those uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P–87–586 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposes to designate the significant new uses of P–87–586 as set forth in proposed § 721.855(a)(2).

VI. Exemptions To Reporting Requirements

EPA has codified, in § 721.19, general exemption provisions covering SNUR reporting. On a case-by-case basis, the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

On April 22, 1986, EPA issued amendments to 40 CFR Part 720, the premanufacture notification rule (51 FR 15096), including revisions of §§ 720.36 and 720.78(b) which contain detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. Because §§ 720.36 and 720.78(b) were not in effect when EPA codified § 721.19, the Agency has relied on the definition of small quantities solely for research and development in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities by manufacturers, importers, and processors of substances identified in SNURs qualify under this exemption. On April 22, 1986, EPA proposed amendments to 40 CFR Part 721 (51 FR 15104) to redesignate § 721.19 as § 721.18 and to establish a new § 721.19 with detailed rules for the section 5(h)(3) exemption for SNURs which would ultimately apply to this SNUR. The proposed new § 721.19 is similar to revised §§ 720.36 and 720.78(b). Until the SNUR amendments are promulgated, manufacturers, importers, and processors of chemical substances identified in SNURs may look to §§ 720.36 and 720.78(b) and the proposed new § 721.19 for guidance in complying with the section 5(h)(3) exemption.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance solely for export, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting.

The term "manufacture solely for export" is defined in § 720.3(s) of the PMN rule; and amendment clarifying this definition was issued on April 22, 1986 (51 FR 15096). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S. except in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacturer or processor; and (3) distribution in commerce is limtied to purposes of export or processing solely for export. If a person manufactured or processed the substance both for export and for use in the U.S., the

manufacturing or processing would be for use in the U.S. regardless of whether any quantity of the substance were exported at the same time or at a later date.

VII. Applicability of Proposed Rule To Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter begins import of the substance, the submitter will send EPA a Notice of Commencement of Import and the substance will be added to the Inventory. The notice submitter indicated that it did not intend to undertake the activities designated in this proposal as significant new uses, and EPA has no indication that the submitter will do so contrary to its original intent. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance identified in this SNUR is added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, any person could defeat the SNUR by initiating a proposed significant new use before the rule became final. This would make it extremely difficult for the Agency to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, importation, or processing of P–87–586 for a significant new use between proposal and promulgation of this SNUR would have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expired.

EPA recognizes that this interpretation of TSCA may disrupt the commercial activities of persons who begin to manufacture, import, or process the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who manufacture, import, or process for a proposed significant new use prior to promulgation of a final SNUR, has proposed a new § 721.18(h) in Subpart A of 40 CFR Part 721 (51 FR 15104) to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation).

VIII. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of this substance, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the potential risks posed by this substance when utilized for an intended use. The Agency believes that the results of a 90-day oral toxicity study with a functional observational battery and neuropathology examination would adequately characterize possible neurotoxic effects of the substance. This study may not be the only means of addressing the potential risks. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, or processors of this chemical substance. The Agency's complete economic analysis is available in the public record for this rule (OPTS-50563). This economic analysis is summarized below.

The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's cost of issuing and enforcing the SNUR. It is estimated that the Agency costs of issuing a SNUR are from $10,504 to $20,488. While enforcement costs may also be incurred, the Agency cannot quantify them at this time.

Subsequent to promulgating the SNUR, the Agency believes that there would be three possible outcomes associated with this SNUR. a company could: (1) Manufacture, import, process, distribute in commerce, or use the substance within the limits of this SNUR; (2) manufacture, import, process, distribute in commerce, or use the substance under circumstances requiring the submission of a SNUR notice; or, (3) not manufacture, import, process, distribute in commerce, or use the substance.

If a company intends to produce the substance not under the terms of the SNUR, it will incur the cost of filing a SNUR notice (from $1,400 to $8,000). The company may also incur up to a 3.2 percent reduction in profits due to delays in manufacture or processing, and the cost of regulatory follow-up, if any.

EPA recognizes that persons are not required to develop any particular test data before submitting a SNUR notice; however, the Agency believes that the results of a 90-day subchronic oral toxicity study with a functional observation battery and neuropathological examination ($103,000) would adequately characterize possible neurotoxic effects of the substance.

If a company chooses to perform this test, it would incur the cost of testing ($103,000), the cost of filing the SNUR notice, the delay costs, if any, and the cost of regulatory follow-up, if any.

Some companies could find the cost of controlling manufacture, import, or processing of the substance, associated with certain uses too expensive to justify. Under this outcome a company would not incur any direct costs as a result of the SNUR. The company and society, however, could lose any potential benefits that would have been derived from those uses of the substance.

The Agency has not qualified the benefits of the proposed SNUR. In general, benefits will accrue if the

proposed action leads to the identification and control of unreasonable risks before significant health effects occur. The proposal and promulgation of the SNUR provide benefits to society by minimizing or eliminating potential health effects for the substance.

X. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50563). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. This proposed rule.
4. The economic analysis of the proposed rule.
5. The toxicology support document.
6. The engineering support document.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE–G004, 401 M St. SW., Washington, DC.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA believes that the cost would be low. EPA believes that, because of the nature of the proposed rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage innovation that has high potential value.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA has determined that this proposed rule would not, if promulgated, have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, the Agency believes that the number of small businesses affected by this proposed rule would not be substantial even if all the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.*, and has assigned OMB control number 2070–0012 to this proposed rule. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 15, 1988.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

Part 721—[Amended]

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.855 to read as follows:

§ 721.855 Diphenyl-2,4,6-trimethylbenzoyl phosphine oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its chemical name and CAS number is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: Dipheny-2,4,6–trimethylbenzoyl phosphine oxide [CASRN: 73980–60–8].

(2) The significant new uses are:

(i) Any manner or method of manufacture associated with any use within the United States,

(ii) Any manner or method of import in dust or powder form associated with any use within the United States, or

(iii) Use other than in solution with styrene.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 88–2075 Filed 2–1–88; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 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

Federal Grain Inspection Service

Designation Renewal of the State of Alabama (AL)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Alabama Department of Agriculture and Industries (Alabama), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: March 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Alabama's designation terminates on February 29, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the September 1, 1987, **Federal Register** (52 FR 32947). Applications were to be postmarked by October 1, 1987. Alabama was the only applicant for designation in its geographic area and it applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the November 2, 1987, **Federal Register** (52 FR 42024) and requested comments on the designation renewal of Alabama. Comments were to be postmarked by December 17, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Alabama is able to provide official services in the geographic area for which the Service is renewing its designation. Effective March 1, 1988, and terminating February 28, 1991, Alabama will provide official inspection and Class X or Class Y weighing services in its entire specified geographic area, previously described in the September 1 **Federal Register**.

Interested persons may obtain official services by contacting the agency at the following address: Alabama Department of Agriculture and Industries, 1445 Federal Drive, Montgomery, AL 36193.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–2019 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the State of Alaska (AK), and Little Rock (AR) and Memphis (TN) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to the Alaska Department of Natural Resources, Division of Agriculture (Alaska), Little Rock Grain Exchange Trust (Little Rock), and Memphis Grain and Hay Association (Memphis).

DATE: Comments to be postmarked on or before March 18, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090–6454. *Telemail* users may respond to [IRSTAFF/FGIS/USDA] telemail. *Telex* users may respond as follows: To: Lewis Lebakken, Jr., TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the December 7, 1987, **Federal Register** (52 FR 46384). Applications were to be postmarked by January 4, 1988. Alaska, Little Rock, and Memphis were the only applicants for designation in their geographic area and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicants. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: January 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–2020 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Jamestown (ND) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is Grain Inspection, Inc. (Jamestown).

DATE: Applications to be postmarked on or before March 3, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Jamestown, located at 217 4th Avenue, Jamestown, ND 58401, was designated under the Act as an official agency to provide inspection functions on August 1, 1985.

The official agency's designation terminates on July 31, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Jamestown, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to U.S. Route 52; U.S. Route 52 southeast to State Route 15; State Route 15 east to U.S. Route 281; U.S. Route 281 south to Foster County; the northern Foster County line; the northern Griggs County line east to State Route 32;

Bounded on the East by State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and

Bounded on the West by the western North Dakota State line north to Interstate 94.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Coop Elevator, Fessenden, Farmers Union Elevator, and Manfred Grain, both in Manfred, all in Wells County (located inside Grand Forks Grain Inspection Department's area); and Norway Spur, and Oakes Grain, both in Oakes, Dickey County (located inside North Dakota Grain Inspection Service, Inc.'s area).

Exeptions to Jamestown's assigned geographic area are the following locations inside Jamestown's area which have been and will continue to be serviced by the following official agencies:

1. Aberdeen Grain Inspection, Inc.: Farmers Elevator, Guelph, Dickey County; Farmers Equity Exchange, and Sun Grain, both in New England, Hettinger County; Regent Grain Company, and Regent Equity, both in Regent, Hettinger County; and

2. Minot Grain Inspection, Inc.: Farmers Elevator & Mercantile Co., and Coast Trading Company, both in Underwood; and Merle A. Larson Elevator, Inc., Washburn all in McLean County.

Interested parties, including Jamestown, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period begining August 1, 1988, and ending July 31, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official sevices in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: January 27, 1988.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 88–2021 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Export Administration.

Title: Request for and Notice of Amendment Action.

Form Number: Agency—ITA–685P; OMB—0625–0003.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 8,620 respondents; 2,298 reporting/recordkeeping hours.

Needs and Uses: The information provided by export license holders is used by Export Administration as a basis for granting approval of

amendment requests to revise outstanding export licenses.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion/ recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–2053 Filed 2–1–88; 8:45am]

BILLING CODE 3510-CW-M

Minority Business Development Agency

[Transmittal No. 06–10–88009–01, Project I.D. No. 06–10–88009–01]

Little Rock, AR Minority Business Development Center (MBDC); Program Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of June 1, 1988 to May 30, 1989. The MBDC will operate in the Little Rock, Arkansas Standard Metropolitan Statistical Area (SMSA).

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

Name	Federal	Non-federal	Total
Little Rock SMSA	$165,000	[1] $29,118	$194,118

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

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

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

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

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

DATE: The closing date for receipt of application is February 29, 1988.

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

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Acting Business Development Clerk, Dallas Regional Office, 214/767–8001.

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

A pre-bid conference will be held in Dallas on February 12, 1988 at 1:00 pm. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Melda Cabrera,

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

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development
Project Name: Little Rock MBDC (Geographic Area or SMSA)
Project Identification Number: 06–10–88009–01
Project Start and End Dates: 06/01/88 to 05/30/89
Project Duration: 12 months
Total *Federal Funding* (85%): $165,000
Minimum *Non-Federal Share* (15%): $29,118
Total Project Cost (100%): $194,118

Closing Date for Submission of this Application: February 29, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Little Rock, Arkansas.*

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

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

MBDA's minimum level of effort:
Financial packages $2,747,000
Billable M&TA $84,000
Number of Professional Staff 3
Procurements $5,493,000
M&TA Hours 1,680
Number of Clients 76

[FR Doc. 88–2135 Filed 2–1–88; 8:45 am]

BILLING CODE 3510-21-M

[Transmittal No. DRO–88–9999, Project I.D. No. DRO–88–9999]

Tulsa, OK Minority Business Development Center (MBDC); Program Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its

Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of June 1, 1988 to May 30, 1989. The MBDC will operate in the Tulsa, Oklahoma Standard Metropolitan Statistical Area (SMSA).

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

Name	Federal	Non-federal	Total
Tulsa SMSA.....	$165,000	[1] $29,118	$194,118

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

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

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

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

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

DATE: The closing date for receipt of application is March 4, 1988.

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

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Acting Business Development CLerk, Dallas Regional Office, 214/767–8001.

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

A pre-bid conference will be held in Dallas on February 12, 1988 at 1:00 pm. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Melda Cabrera,

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

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development
Project Name: Tulsa MBDC (Geographic Area or SMSA)
Project Identification Number. DRO–88–9999
Project Start and End Dates: 07/01/88 to 06/30/89
Project Duration: 12 months
Total *Federal Funding* (85%): $165,000
Minimum *Non-Federal Share* (15%): $29,118
Total Project Cost (100%): $194,118

Closing Date for Submission of this Application: March 4, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Tulsa, Oklahoma.*

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

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

MBDA's minimum level of effort:
Financial packages $2,747,000
Billable M&TA $84,000
Number of Professional Staff 3
Procurements $5,493,000
M&TA Hours 1,680
Number of Clients 76

[FR Doc. 88–2137 Filed 2–1–88; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene separate public meetings of its advisory bodies as follows:

Special Red Drum and Standing Scientific and Statistical Committee—will convene February 17, 1988, from 8:30 a.m. to 3:30 p.m., to review new stock assessment information on red drum and the draft amendment which would close Federal waters to the harvest of red drum. The public meeting will be held at the Days Inn Rocky Point Island, 7627 Courtney Campbell Causeway, Tampa, FL.

Red Drum Advisory Panel—will convene February 26, 1988, from 10 a.m. to 4 p.m., to discuss the same agenda items as stated above for the Special Red Drum and Standing Scientific and Statistical Committee. The public meeting will be held at the Sheraton Hotel, 2150 Veterans Boulevard, Kenner, LA.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: January 27, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–2094 Filed 2–1–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcements of Import Restraint Levels and Guaranteed Access Levels for Certain Cotton, Man-Made Fiber and Other Vegetable Fiber Textile Products From Jamaica, Effective on January 1, 1988; Correction

January 28, 1988.

In the second column on page 49186, the letter to the Commissioner of Customs, published in the **Federal Register** on December 30, 1987, should be corrected to refer to trade in

Categories 445/446 during the period which began on January 1, 1987 and extends through December 31, 1987, instead of the period June 1, 1987 through December 31, 1987.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-2136 Filed 2-1-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Operation of U.S. Army Kwajalein Atoll (USAKA), Republic of the Marshall Islands

AGENCY: U.S. Army Strategic Defense Command, Army Department, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The U.S. Army Kwajalein Atoll ((USAKA) formerly the Kwajalein Missile Range) is a subordinate command under the U.S. Army Strategic Defense Command and is one of two National Test Range facilities authorized to conduct anti-ballistic missile (ABM) tests under the 1972 ABM treaty between the United States and the U.S.S.R. USAKA is located at Kwajalein Atoll, Republic of the Marshall Islands (RMI), about 2,100 nautical miles southwest of Honolulu, Hawaii. USAKA is subject to the provisions of the National Environmental Policy Act (NEPA) and the substantive provisions of some other Federal environmental statutes pursuant to the Compact of Free Association between the U.S. Government and the RMI Government (48 U.S.C. 1681).

2. Currently, USAKA provides research and support facilities for about 2,800 personnel. The proposed DEIS will assess the effects of construction and operations relating to ongoing personnel and facilities support activities, and Strategic Defense Initiative (SDI) research and testing activities. As previously announced (52 FR 28859, August 4, 1987), the DOD Strategic Defense Initiative Organization concluded that SDI Demonstration and Validation test activities would require an Environmental Impact Statement for the entire range of operations at USAKA.

3. Alternatives to be considered include:

a. No action.

b. Reduced activities at USAKA (including relocating some or all of USAKA or the SDI activities elsewhere).

c. Differences in the duration of operations at USAKA.

4. Potentially significant environmental concerns include the effects of a population increase (principally on Kwajalein Island); the redistribution of the population; the past, present and future economic impact of USAKA operations on the RMI economy; indirect socioeconomic impacts to nearby Micronesian residents outside the boundary of the range; the potential destruction of historic and prehistoric cultural materials, even in disturbed environments; the potential destruction of rare native forests; the disturbance to marine environments previously unaffected by or recovering from past construction and operations; disturbance to nesting seabirds and threatened and endangered sea turtles; reduced access to fishery grounds of subsistence value to the Marshallese residents; possible radio-frequency and radar hazards to civilian personnel, schools, and family housing areas; adequacy of explosives safety quantity distance (ESQD) buffers; air, noise and water quality; and management and disposal of liquid and solid waste. Various measures to avoid, reduce or mitigate for possible adverse environmental impacts will also be considered.

5. The DEIS will be based upon input from field studies, including the description and evaluation of past, present and future effects on the marine environment, the terrestrial environment, the socioeconomic setting, and archaeological and historic sites, augmented by interviews and field investigations by Army Corps of Engineers personnel, and a public involvement program. Public involvement and scoping will include three public workshops on Kwajalein, and Ebeye Island and at Majuro, the capitol of RMI. Notice of these meetings will be placed in local newspaper. The research will also include inteviewing selected Marshallese and USAKA residents, and local/RMI governmental and USAKA officials. All interested organizations and individuals are strongly encouraged to provide written comments including input to the process of identifying and evaluating issues and concerns, and of formulating alternative measures to avoid, reduce, or mitigate potential adverse impacts.

6. In conducting this DEIS, contact is planned with various U.S. Army commands, Army contractors preparing master plans for USAKA, various USAKA community organizations, the Marshallese land owners of USAKA-controlled properties (i.e. Kwajalein Landowners Association), adjoining landowners, the Kwajalein Atoll Development Authority, RMI Government agencies, the RMI Nitijela (Parliament), and Federal agencies having authority with reference to US activities at USAKA. In addition, the Army will solicit the advice of other Federal agencies with environmental expertise such as the US Fish and Wildlife Service, the US Environmental Protection Agency, the National Marine Fisheries Service, the National Park Service and the Advisory Council on Historic Preservation.

7. The DEIS is scheduled to be available for public review in October 1988. Questions and written comments about the proposed action and DEIS can be addressed to: Mr. Bennie D. Wall, U.S. Army Strategic Defense Command, ATTN: CSSD-H-TF, PO Box 1500, Huntsville, Alabama 35807-3801. Telephone: (205) 895-4823

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 88-2068 Filed 2-1-88; 8:45 am]

BILLING CODE 3710-08-M

Intent To Grant a Limited Exclusive Patent License to Roberts Pharmaceutical Corp.

The Department of the Army announces its intention to grant Roberts Pharmaceutical Corporation, a corporation of the State of New Jersey, a limited exclusive license under U.S. Patent No. 4,657,903, issued April 14, 1987, entitled "Transition Metal Complexes of the Selenium Analogs of 2-Acetyl- and 2-Propionylpyridine Thiosemicarbazones Useful for Treating Malarial Infections and Leukemia" by John P. Scovill, et al.

The proposed limited exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR Part 404. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Patent Counsel, Walter Reed Army Institute of Research, Washington, DC 20307-5100.

For further information concerning this notice, contact: Lieutenant Colonel Francis A.Cooch, Patent Counsel,

Building T–20, Room 206E, Walter Reed Army Institute of Research, Washington, DC 20307–5100. Telephone No. (Area Code 202) 576–4369/4370.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–2037 Filed 2–1–88; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Inland Waterways Users Board; Meeting

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of open meeting.

SUMMARY: 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 Committee: Inland Waterways Users Board.

Date of Meeting: March 2, 1988.

Place: Quality Inn—Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

Time: 9 a.m. to 5 p.m.

Proposed Agenda

A.M. Session

09:00 Call to Order and Disposition of Prior Meeting Minutes.

9:15 Review, Explanation, and Evaluation of Information Provided to Board by Support Staff.

11:00 Review and Update of 1987 Board Recommendations for Inland Waterways Development Priorities.

P.M. Session

1:30 Discussion of Testimony before Congressional Committees on Fiscal Year 1989 Budget Priorities.

3:30 Other Business.

4:00 Public Comment Period.

4:30 Identification of Information to be Provided to the Board by Support Staff.

5:00 Meeting Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Holliday, Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314–1000 at (202) 272–0146.

H.J. Hatch,

Major General, USA, Executive Director to the Inland Waterways Users Board.

[FR Doc. 88–2036 Filed 2–1–88; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Educational Research and Improvement National Advisory Council; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full council meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: March 2, 3, and 4, 1988.

ADDRESS: The Council will meet on March 2 in the Nicholas de Basily Room, Hoover Tower, Stanford University, Stanford, California, from 4:30 p.m. to 5:45 p.m.; on March 3 in the Stauffer Auditorium, Hoover Institution, from 9 a.m. to 5 p.m.; on March 4, in Room 130 (or as posted) in the Hoover Memorial Building, from 9 a.m. to 12 noon, and from 1 to 5 p.m. in the School of Education (room to be announced), Stanford University.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4064, Washington, DC 20202, (202) 732–4504.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Amendments, Pub. L. 92–318, as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498, 20 U.S.C. 1221e). The Council is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90–247 as amended; (20 U.S.C. 1233 *et seq.*)), and the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2). The Council advises the President, the Secretary and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI).

Meetings of the Council are open to the public. The agenda for March 2 includes a briefing by Mr. Charles Palm, director of Hoover Archives. On March 3 the Council will sponsor a conference on Soviet education. Hoover scholars and other eminent Sovietologists will speak. On March 3 the Council will conduct a business meeting from 9 a.m. to 12 noon and will conduct a site visit at the Stanford School of Education from 1 to 5. Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4064, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: January 28, 1988.

Mary Grace Lucier,

Executive Director.

[FR Doc. 88–2102 Filed 2–1–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the General Counsel

Second Plan of Action To Implement the International Energy Program

AGENCY: Department of Energy.

ACTION: Notice of Approval of "Second Plan of Action to Implement the International Energy Program."

SUMMARY: The Department of Energy (DOE) gives notice that the Secretary of Energy and the Attorney General have approved the "Second Plan of Action to Implement the International Energy Program." That document describes the types of substantive actions which the seventeen U.S. oil companies participating in the "Voluntary Agreement and Plan of Action to Implement the International Energy Program," which was adopted in 1976, may take during implementation of emergency international oil sharing as provided in the Agreement on an International Energy Program (IEP). The IEP emergency oil sharing system, operated by the International Energy Agency (IEA), can be activated only when the IEA group of countries as a whole or an individual IEA country experiences an oil supply emergency involving at least a seven percent supply shortfall.

Section 252 of the Energy Policy and Conservation Act makes available a limited antitrust defense with respect to actions taken by U.S. oil companies to implement the information and allocation provisions of the IEP,

provided that such actions are described in a voluntary agreement or plan of action. A plan of action is required to be as specific in its description of proposed substantive actions as is reasonable in light of known circumstances.

The approved "Second Plan of Action to Implement the International Energy Program," which appears as an appendix to this notice, is the product of extensive interchanges over a period of years involving representatives of U.S. oil companies participating in the Voluntary Agreement, the IEA's Secretariat, and staffs of DOE, the Department of Justice, the Department of State and the Federal Trade Commission. U.S. oil companies participating in the Voluntary Agreement considered the Second Plan of Action at a meeting of the IEA's Group of Reporting Companies held at the Department of State on July 29, 1987. At the conclusion of that meeting, the IEA Secretariat advised the U.S. Government that the Group of Reporting Companies favored proceeding with adoption of this Plan of Action. Public comments then were solicited on the Plan of Action, and a public hearing was held with respect to it on September 22, 1987.

On December 18, 1987, after consulting with the Federal Trade Commission, the Assistant Attorney General (Antitrust) advised the Secretary of Energy of his approval, on behalf of the Attorney General, of the Second Plan of Action. On January 26, 1988, the Secretary of Energy thereupon gave his approval to the Second Plan of Action, which would go into effect only if the President finds that an "international energy supply emergency" exists.

DOE also gives notice that the Department of Justice intends to amend the existing Voluntary Agreement, effective 20 days after the publication of this Notice, to incorporate the approved Plan of Action into, and make conforming technical changes to, the Voluntary Agreement.

FOR FURTHER INFORMATION CONTACT:

Craig S. Bamberger, Assistant General Counsel for International Affairs, Department of Energy, Forrestal Building, Room 6A–167, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–2900

James R. Weiss, Chief, Transportation, Energy & Agricultural Section, Antitrust Division, Department of Justice, Judiciary Center, 555 4th Street NW., Room 9824, Washington, DC 20044, Telephone: (202) 724–6526

Ronald B. Rowe, Assistant Director, Bureau of Competition, Federal Trade Commission, 601 Pennsylvania Avenue NW., Room 3303, Washington, DC 20580, Telephone: (202) 326–2622

David H. Small, Assistant Legal Adviser for Economic, Business and Communications Affairs, Office of the Legal Advisor, Department of State, 2201 C Street NW., Room 6420, Washington, DC 20520, Telephone: (202) 647–5242.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Plan of Action
1. Coverage of the Plan of Action
2. Exclusions from the Plan of Action
3. Recordkeeping, Reporting and Monitoring
III. Public Comments on the Plan of Action
IV. U.S. Government Approval of the Plan of Action
Appendices
Appendix 1: Second Plan of Action to Implement the International Energy Program
Appendix 2: Amendments to the Voluntary Agreement and Plan of Action to Implement the International Energy Program
Appendix 3: Correspondence Concerning Approval of the Second Plan of Action

I. Background

Following the oil embargo of 1973, the United States and certain other members of the Organization for Economic Cooperation and Development (OECD) entered into the Agreement on an International Energy Program (IEP), TIAS 8278, which provided for creation of the International Energy Agency (IEA), headquartered in Paris, France, as an autonomous agency of the OECD. The IEP's main purposes include reducing the Free World oil consuming nations' vulnerability to supply disruptions by encouraging self-sufficiency in oil supplies; avoiding competition for short supplies of available oil during a disruption through an Emergency Sharing System for equitably allocating those supplies among the signatory countries; establishing a comprehensive international information system; and creating a forum for cooperation with governments and consultation with oil companies. There are now 21 IEA member countries, consisting of all OECD members except France, Finland and Iceland. The IEP provides that the IEA's Emergency Sharing System (ESS) may be activated only when the IEA group of twenty-one member countries as a whole or an individual IEA country experiences a seven percent or greater shortfall of available petroleum supplies, measured against a specified base period.

The oil companies of the U.S. and the other IEA countries would play a vital role in the implementation of the Emergency Sharing System, providing essential information, advising the IEA on supply and logistical matters, and actually effecting international oil allocation. It has been recognized from the outset that the performance of these functions at the behest of governments could expose companies to antitrust and breach of contract risks under U.S. law. To facilitate U.S. company participation in the IEA, the Congress in 1975 enacted section 252 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6272, which authorizes the development of voluntary agreements and plans of action to implement the allocation and information provisions of the IEP, and makes available a limited antitrust defense and a breach of contract defense with respect to actions taken to develop or carry out voluntary agreements and plans of action.

A "Voluntary Agreement and Plan of Action to Implement the International Energy Program" (Voluntary Agreement) was agreed to in 1976 by a number of U.S. oil companies. *See* 41 FR 13998 (April 1, 1976) and 2 CCH Federal Energy Guidelines, para. 15,845. At the present time the following seventeen companies, which have agreed to be IEA Reporting Companies, are participants in the Voluntary Agreement:

Amerada Hess Corporation
Amoco Corporation
ARCO
Ashland Oil, Inc.
Caltex Petroleum Corporation
Chevron Corporation
CONOCO, Inc.
Exxon Corporation
Mobil Oil Corporation
Occidental Petroleum Corporation
Phillips Petroleum Company
Shell Oil Company
The Standard Oil Company
Sun Company, Inc.
Texaco Inc.
Union Pacific Resources Company
Unocal Corporation

Section 6(c)(1) of the Voluntary Agreement provides for the development of plans of action elaborating and applying IEA allocation principles and measures, and describing the types of substantive actions which may be taken under the plan, in the event that the Emergency Sharing System is triggered by an oil supply emergency.

Section 252 of the EPCA, and the existing Voluntary Agreement, contemplate that the oil companies which participate in the Voluntary Agreement will play a role in developing plans of action. Before a plan of action can be made effective, it must be approved by the U.S. Government:

EPCA section 252(d) requires approval by the Attorney General, after he has consulted with the Federal Trade Commission, and the Voluntary Agreement itself calls for approval of plans of action by the Secretary of Energy. The existing Voluntary Agreement contains a plan of action describing company actions which may be taken when IEP oil sharing has been triggered. However, the provisions of that plan of action understandably are very broad and general, since it was adopted in 1976 while the IEP Emergency Sharing System was in an early stage of development, whereas EPCA section 252(d)(3) requires that a plan of action describe the "types of substantive actions" which may be taken under the plan, and calls for a plan of action "as specific in its description of proposed substantive actions as is reasonable in light of known circumstances." For that reason, efforts have been under way for a period of years to prepare a new draft plan of action setting out in much more precise detail those activities in which industry would engage while implementing IEP emergency oil sharing, and to which the limited antitrust and breach of contract defenses would apply.

The oil company participants in the Voluntary Agreement several years ago indicated their desire that the Executive Branch take the lead in drafting a new plan of action. Accordingly, staff of DOE, in cooperation with staff of the Departments of Justice and State and the Federal Trade Commission, initially performed this function, preparing draft texts for consideration by the participating companies; the first two such drafts were published in the **Federal Register** on May 8, 1981 (46 FR 26026), and October 28, 1983 (48 FR 49906), respectively, to solicit public comments. subsequently, the companies elected to play a greater role in drafting the proposed plan of action, and the Plan of Action which has been adopted is the product of an extensive interchange at meetings of Subcommittee C of the IEA's Industry Advisory Board (IAB) involving representatives of U.S. Reporting Companies, the IEA's Secretariat, and staffs of the concerned U.S. Government agencies.

The Plan of Action was essentially finalized at a meeting of Subcommittee C held in White Plains, New York, on April 2, 1987, and a subsequent meeting of the IAB in Paris on June 9, 1987. The final draft of the Plan of Action was considered by U.S. Voluntary Agreement participants at a meeting of the IEA Group of Reporting Companies at the Department of State on July 29, 1987. At that meeting some concerns were voiced that the Plan of Action was less flexible than might be desired in order to facilitate oil company implementation; in particular, the recordmaking and recordkeeping provisions were perceived as burdensome, and questions were raised as to the operational effects of omitting Plan of Action coverage for so-called "Type 1 activities" (discussed below). Nonetheless, at the conclusion of the meeting the IEA Secretariat advised the Department of Energy that, on balance, the Group of Reporting Companies favored proceeding with adoption of this Plan of Action.

Following the meeting, DOE published a copy of the draft Second Plan of Action in the **Federal Register** along with a solicitation of public comments and an announcement of a public hearing (*see* 52 FR Part II, August 21, 1987). The public hearing was held at DOE on September 22, 1987. The public comments submitted in writing or made at the hearing are discussed below.

II. Discussion of the Plan of Action

Section 6(a) of the existing Voluntary Agreement authorizes the participating oil companies, during an "international energy supply emergency," to "take such actions as may be necessary or appropriate to implement emergency allocation programs of the IEA," including certain specified actions. The new Plan of Action, which appears below at Appendix 1, replaces paragraph (B) of section 6(a), which specifies as one type of action the participating companies are authorized to engage in, "Arrangements among the participants for the purchase, loan, sale, or exchange of petroleum by and among themselves, or with other persons or entities."

Because of the length and complexity of the Plan of Action, it is being placed in an appendix (Appendix B) to the Voluntary Agreement, and incorporated by reference into the Voluntary Agreement. All of the remaining provisions of the Voluntary Agreement will apply to the Plan of Action as though its full text physically were within the Voluntary Agreement, including the Voluntary Agreement's Section 6 provisions for carrying out the Plan of Action only following a Presidential determination that there exists an "international energy supply emergency."

The Plan of Action consists of ten sections and two annexes; in addition to the Plan of Action *per se*, there are several implementing amendments to the Voluntary Agreement. Much of the Plan of Action is devoted to describing the IEA Emergency Sharing System which the participating oil companies would help carry out, in the event that the Sharing System were activated during an emergency; certain other provisions deal with administrative arrangements.

There are three key sections of the Plan of Action. In terms of conveying legal protection to the companies for their participation in the IEA Emergency Sharing System, the most significant provisions are in section 5, "Specification of Substantive Actions," and section 6, "Confidential or Proprietary Information Which May Be Communicated by or to Voluntary Agreement Participants and Their Employees," each as limited by a provision in section 2.2 which excludes from the Plan of Action all so-called "Type 1 activities" (explained below). The third key section is section 8, "Requirements for Recordkeeping, Reporting and Monitoring."

1. Coverage of the Plan of Action

Section 252(f) of the EPCA makes available a limited defense to a legal action brought under the antitrust laws, in respect to actions taken to carry out a properly approved plan of action, unless such actions to carry out the plan of action were taken "for the purpose of injuring competition." [1] However, this defense is available "only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved plan of action." And as noted above, section 252(d)(3) conditions the Government's approval of any plan of action on its describing with specificity the substantive actions which may be taken under it. The function of section 5, therefore, is to specify the substantive actions which may be taken under the Plan of Action by participating U.S. Reporting Companies and those of their affiliates which participate in the Voluntary Agreement, inclusive of activities undertaken through the IAB or in the Industry Supply Advisory Group (ISAG), which is comprised of industry technical experts who would advise the IEA Secretariat in Paris on oil allocation during an emergency.

The function of section 6 is to specify what types of confidential or proprietary information or data may be communicated, either in writing or

[1] The contract breach defense under section 252(j) applies where the breach was caused "predominantly by action * * * to carry out" a plan of action.

orally, when the Voluntary Agreement participants take substantive actions that are covered by the Plan of Action. This section is based on similar provisions that have been used in U.S. Government approval letters for IEA Allocation Systems Tests. *See, e.g.*, 50 FR 41383 (October 10, 1985).

2. Exclusions From the Plan of Action

The coverage provided by sections 5 and 6 is, however, subject to certain express exclusions. A question which has received considerable attention in the development of the new Plan of Action is whether there should be antitrust protection for the communication by participating U.S. oil companies to the IEA's Emergency Management Organization (EMO), consisting of the ISAG and the Secretariat, of transactional oil price information. Section 5.5 specifically excludes such oil price communications from the Plan of Action, with certain very narrow exceptions for special functions of the IEA Secretariat. In addition, section 6.15 excludes from Plan of Action coverage, the communication of confidential or proprietary information or data concerning company oil costs, market shares, or long-term programs for investment, divestment, refining, operating, transportation or marketing.

Another important exclusion from the Plan of Action, alluded to above, is contained in section 2.2:
"Notwithstanding any other provision of this Plan of Action, specifically excluded from this Plan of Action are all Type 1 activities." Simply stated, "Type 1 activities" are those oil supply transactions and related activities which oil companies would undertake voluntarily and independently of the EMO and of the IEP Emergency Sharing System procedures for EMO approval of proposed oil transactions ("voluntary offers"). "Type 2 activities," in contrast, involve the submission of proposed "voluntary offers" to the EMO for review by the ISAG and IEA Secretariat, and Type 2 supply transactions are not to be implemented unless and until they have been approved by the EMO.[2] And until the recent adoption of the IEA Governing Board of a proposal described below, the Emergency Sharing System was structured so that the "voluntary offers" could not be submitted to the EMO by participating oil companies until roughly mid-way through each monthly allocation cycle, when each IEA member country's exact oil allocation right or allocation obligation under the Sharing System formula would be known.

The question of antitrust and breach of contract protection for Type 1 activities has been the most controversial issue raised during preparation of the Plan of Action. The issue gained prominence during and after the IEA's Second Allocation Systems Test (AST–2) in 1978, as the participating U.S. oil companies observed in IEA test activities an increasing EMO emphasis on the use of Type 1 transactions within the IEP Emergency Sharing System, and in that connection on the role of the IEA secretariat and the ISAG in exhorting Reporting Companies to redirect oil to countries thought likely to have rights to receive it under the IEP Sharing System's formula. Over time, the U.S. Reporting Companies became more worried that efforts of the Secretariat or the ISAG to influence their Type 1 transactions could expose the companies to antritrust risks like those arising from their Type 2 transactions, which it is generally recognized need antitrust protection. Because the IEP Emergency Sharing System depends upon the voluntary participation of oil companies, which was being thrown into doubt by Type 1 legal risks, in 1984 the Department of Energy, with the concurrence of the Department of Justice, began to explore with the IEA Secretariat and the U.S. Reporting Companies whether it was possible to develop some selective form of Type 1 coverage; that is, whether a narrowly constructed, carefully monitored Type 1 coverage could be developed in the Plan of Action which would allay the concerns of the companies and facilitate the operation of the Sharing System, without overextending antitrust and breach of contract protections to normal commercial transactions that might have occurred without regard to IEA oil allocation.

In 1985, however, while these efforts were under way, apprehension developed on the part of the General Accounting Office and in the Congress that overly broad Type 1 Plan of Action coverage might ultimately be allowed. As a result, in the course of enacting legislation to extend the EPCA, the Congress added a new subsection (m) to section 252. Under this provision, any Plan of Action which made the section 252 defenses available to Type 1 activities would have to be submitted to Congress under a prescribed Congressional review procedure, in order for the Type 1 coverage to be valid. Public Law No. 99–58, Section 105 (July 2, 1985).

Although consideration of proposals for Type 1 coverage in the Plan of Action subsequently resumed, what now has made possible the completion of a Plan of Action which excludes Type 1 coverage, is a significant innovation in the IEP Emergency Sharing System with respect to *Type 2* activities. On November 6, 1986, the IEA Governing Board adopted a proposal of the IEA Secretariat which was designed to enhance the operational effectiviness of the IEP Emergency Sharing System, and which had corollary benefits for the potential development of a Plan of Action satisfactory to the U.S. Government, The IEA Secretariat, and the U.S. oil companies participating in the Voluntary Agreement.

The operational problem with which the proposal was meant to deal, was that the current oil allocation system as well as the Voluntary offer procedure were established more than ten years previous, at a time when a relatively small number of large, integrated oil companies accounted for a greater share of the world oil market than today and when long-haul crude oils traded via long-term contracts were still the main element in the markets. At that time, it was believed that decisions to eliminate or reduce supply imbalances among IEA member countries through redirection of floating crude oil cargoes could be made without undue haste in view of the long travelling times and the small number of main players. But the increased importance since then of short-haul oil cargoes and of spot crude oil and refined product transactions has changed this situation, and now necessitates a faster responding decision process. Furthermore, technical improvements (*e.g.*, current computing capabilities) permit a more flexible EMO operating approach than was considered possible then years before.

The Secretariat's proposal, known as the "Wider Window" concept, dealt exclusively with the so-called "closed-loop" form of Type 2 voluntary offers—*i.e.*, with proposed international supply transactions that already have been worked out with a prospective trading partner, either within the same international oil company or with an independent company. This is in contradistinction to an "open-loop" type of voluntary offer, which is a firm's proposal to either supply oil to or receive oil from a company in another country, without predesignation of a trading partner, so that its offer may be matched up with a proposed trading partner by the EMO. Under the "Wider

[2] There also is a category of "Type 3 activities," involving government-mandated supply actions, as a last resort if the voluntary system fails.

Window" proposal, as adopted by the Governing Board, "closed-loop voluntary offers" could be submitted to the ISAG or the IEA Secretariat at any time during an allocation cycle, not just at specified times, as in the case of "open-loop" voluntary offers. Moreover, the Secretariat and the ISAG, on an expedited basis (within a period of no more than 48 hours after receipt of the "closed-loop" voluntary offer), are to process each proposed Type 2 transaction and notify the proposing company or companies of the EMO's approval, disapproval, or determination that there is insufficient information to act upon a voluntary offer.

In adopting the IEA Secretariat's proposal, the IEA Governing Board requested the Secretariat to prepare draft implementing amendment to the IEA Emergency Management Manual (EMM), an IEA-classified document which condifies Governing Board decisions on the operation of the IEP Emergency Sharing System. In the interim, the Governing Board agreed to apply these Emergency Sharing System modifications on a provisional basis, in order to enable the U.S. Government to proceed with a Plan of Action which takes them into account.

The approved Second Plan of Action which appears below reflects the IEA's adoption of the "Wider Window" concept. By allowing Type 2 activities to occur at any time during a monthly allocation cycle, it gives the participating companies a means to avoid the antitrust risks previously associated with Type 1 activities.

3. Recordkeeping, Reporting and Monitoring

In order to enjoy the benefits of the legal defenses contained in section 252, a participating oil company must comply with the conditions of this Plan of Action applicable to it. Section 8 of the Plan of Action, "Requirements for Recordkeeping, Reporting and Monitoring," imposes such conditions. It is basically through this section that there is to be established and maintained the "full and complete record of any meeting held," and of "any communication (other than in a meeting) made, between or among participants or potential participants," which is required by EPCA section 252(c)(3), and by regulations of the Departments of Energy and Justice at 10 CFR Part 209 and 28 CFR Part 56, respectively.

Provisions for recordkeeping, reporting and monitoring have been included in the U.S. Government's approval letters for each of the IEA's five Allocation Systems Tests (ASTs). *See e.g.*, 50 FR 41383 (October 10, 1985). These AST approval letters, which gradually have been improved and clarified over the years, were used as a starting point in the preparation of Section 8. As Section 8 was developed, all parties concerned were conscious of the desirability of simplifying and clarifying its provisions, and of removing burdens on industry to the maximum extent possible consistent with the Government's antitrust responsibilties. Extensive drafting efforts repeatedly have been made toward that end.

Nonetheless, it is recognized that the recordkeeping provisions of the Plan of Action are complex. While most of the issues raised by these requirements already have been the subject of substantial discussion, the Government will remain receptive to any suggestions for lightening or simplifying them in a manner consistent with the Government's responsibilities under the EPCA and the antitrust laws. It should be noted that the provisions at Annex I to the Second Plan of Action, for the disposition and retention of "computer documents", are of more recent origin and are considered to be tentative in nature. As the Annex explains, it is intended that these provisions be tested in the IEA's next simulated exercise of the IEA's Emergency Sharing System, AST–6, presently scheduled for late 1988, in order to evaluate whether companies are capable of complying with these requirements without undue burden.

III. Public Comments of the Plan of Action

In response to the August 21, 1987, Federal Register notice, written comments were submitted by Sun Company, Inc., the Petrochemical Energy Group and the Petroleum Marketers Association of America. The Petrochemical Energy Group also presented its comments in an oral statement at the public hearing on the Second Plan of Action on September 2, 1987. The following is a discussion of these comments.

Sun Company, Inc., the only IEA Reporting Company and U.S. Voluntary Agreement participant which submitted comments, criticized the Plan of Action's recordkeeping and reporting requirements as excessive, and contended that the burdensomeness of these requirements could make the Plan unworkable in an emergency.

As noted above, when the recordkeeping provisions were developed, intensive efforts were made to simplify and clarify them, and to remove burdens on industry to the maximum extent possible consistent with the Government's antitrust responsibilities under section 252 of the EPCA. Admittedly, there were limits beyond which these efforts could not be carried without sacrificing requirements imposed by law or which the antitrust authorities considered important to the fulfillment of their mission.

It is regrettable but perhaps inevitable that the Government's statutory and programmatic antitrust responsibilities result in Plan of Action reporting and recordkeeping responsibilities more extensive than industry considers necessary. However, some of the complexities of Article 8 of the Plan of Action stem directly from initiatives of oil industry counsel to address special problems, such as those of foreign affiliates of Reporting Companies which are covered under the Voluntary Agreement and Plan of Action. In any event, all of the particulars of Article 8 have been subject to lengthy and exhaustive discussion between the Government and industry, and notwithstanding the Government's disposition of the various issues presented, the IEA's Group of Reporting Companies has indicated that it favors proceeding with the adoption of this Plan of Action.

The Petroleum Energy Group (PEG), consisting of seven independent petrochemical companies,[3] criticized the Plan of Action for its failure to provide any participatory or advisory role for the independent petrochemical industry, and recommended that the Second Plan of Action be modified to provide for the participation of petrochemical companies in the IEA's Industry Advisory Board (IAB) and Industry Supply Advisory Group (ISAG) which, PEG stated, were "established" by the Plan of Action. According to PEG, its members have substantial interest in decisions made to allocate world oil supplies because of their dependence upon domestic and imported petroleum both as a feedstock and as a source of fuel for manufacturing; in addition, a number of the U.S. oil companies participating in the IEA are competitors as well as supplies of PEG members. Consequently, PEG contented that its members should be eligible to participate in the IAB and ISAG, along with the U.S. and foreign oil companies, in advising the U.S. Government and the IEA on IEA oil allocation.

PEG was incorrect in stating that the IAB and the ISAG were established by

[3] Borg-Warner Chemicals, Inc., Dow Chemical U.S.A., The Goodyear Tire & Rubber Co., Hercules Incorporated, Rohm and Haas Company, Texas Eastman Company, and Union Carbide Corporation.

the Plan of Action and that they serve as advisory bodies to the U.S. Government. Both groups were established by the IEA Governing Board as industry advisory bodies to the IEA. Both are comprised of representatives of U.S. and foreign oil companies operating in IEA member countries which have consented to be designated by the IEA as IEA "Reporting Companies."

It is possible, however, that some of PEG's members are in fact eligible to become Reporting Companies, and then to apply for participation in the U.S. Voluntary Agreement and Plan of Action. To become a participant in either the IAB or the ISAG, a PEG member first would have to request that the IEA designate it as a Reporting Company. Under the IEP, Reporting Company status is accorded only to "oil companies" which "play a significant role in the international oil industry," but "oil companies" is defined sufficiently broadly that some petrochemical firms may fit the definition. In deciding whether to designate a firm as a Reporting Company, the IEA considers what contribution that firm could make to the operation of the IEP Emergency Sharing System. If so designated, a PEG member then could request membership in the IAB and/or the ISAG. Once designated an IEA Reporting Company, a PEG member could participate in the Voluntary Agreement and in the Plan of Action, if its participation were recommended by the Secretary of Energy and approved by the Attorney General. The Department of Energy has encouraged PEG to pursue among its members who may qualify, the question of their becoming IEA Reporting Companies and U.S. Voluntary Agreement participants.

Admittedly, not all U.S. petrochemical firms will qualify as Reporting Companies. It is the responsibility of the DOE, as the U.S. "National Emergency Sharing Organization," to see to it that Non-Reporting Companies are kept apprised of and involved in IEA activities during an emergency.

The comments of the Petroleum Marketers Association of America (PMAA), a federation of 41 state and regional associations representing approximately 11,000 independent petroleum marketers across the United States, expressed general approval of the Second Plan of Action. In particular, PMAA supported the exclusion, from the Plan of Action's antitrust portection, of the communication by U.S. oil companies of transactional oil price information to the IEA, because of the possibility of misuse of such data. PMAA also agreed with the Plan of Action's recordkeeping requirements, commenting that comprehensive recordkeeping requirements are an essential condition of the antitrust protection available under the Plan of Action. Finally, PMAA supported the decision to exclude Type 1 activities from the Plan of Action's coverage.

However, PMAA expressed concern that "closed-loop" Type 2 transactions submitted under the recently adopted "Wider Window" modification to the IEA's Emergency Sharing System (which PMAA's comments inaccurately characterize as "Type 1" activity) might not receive the same degree of antitrust scrutiny from the U.S. Government antitrust monitors as "open-loop" Type 2 transactions, in light of the fact that the IEA is not involved in the matching up of supplying and receiving companies in closed-loop transactions, and because of the fast-track IEA review that will be accorded such transactions. PMAA is even more concerned that the contract breach defense which is provided by EPCA section 252(j) to actions taken under the Plan of Action, might enable suppliers of refined products to renege on their supply commitments, in order to obtain a higher price.

The U.S. Government agencies charged with antitrust monitoring of U.S. company participation in the IEA's Emergency Sharing System are responsible for subjecting both "open-loop" and "closed-loop" Type 2 transactions to scrutiny. In addition, the IEA's review procedures for "closed-loop" transactions under the "Wider Window" modification to the Emergency Sharing System include a special category, in which the Secretariat may decline either to approve or to disapprove a proposed transaction if there is insufficient informaton available about the effects of the transaction; in that event, no legal protection would attach to the transaction under U.S. law.

The question of potential misuse of the contract breach defense was addressed exhaustively in an August 1, 1985, DOE staff response to a General Accounting Office (GAO) report. The Department's response was especially concerned with utilization of the contract breach defense in *Type 1* transactions, since that was the subject discussed in the GAO's report. However, the analysis contained at pages 14–26 of the Department's response is equally applicable to contract breach defenses against lawsuits based on *Type 2* IEA transactions.

With respect to supplies of refined petroleum products (the chief concern of PMAA), the Department's August 1, 1985, paper pointed out several reasons why the Plan of Action's coverage for IEA transactions should not meaningfully increase the contract breach risks of PMAA's members during an oil supply emergency. Where term supply contracts for product remain in use today, they generally stipulate that prices will fluctuate with the market, thereby reducing the supplier's incentive to renege on commitments in order to obtain a higher price. These supply contracts typically include various kinds of *force majeure* clauses to excuse the supplier from his commitments in specified circumstances such as those associated with emergencies. But under U.S. law there are significant legal constraints on a supplier's freedom of action: even where a valid excuse for contractual nonperformance is recognized in U.S. courts, the seller has a legal duty to deal fairly and act in good faith to meet his contractual obligations to the extent practicable, and absent an express contractual provision to the contrary, this may be held to entail an obligation to allocate his supplies equitably. The applicability of the EPCA section 252(j) breach of contract defense to certain transactions covered by the Second Plan of Action should not eliminate these legal constraints. Moreover, under section 252(j) this defense is available only if the supplier can prove that a contract breach was caused "predominantly" by his efforts to carry out the Plan of Action, which even further limits any potential for misuse of this defense.

Copies of the August 1, 1985, legal analysis will be made available by DOE upon request.

IV. U.S. Government Approval of the Plan of Action

Section 6(c)(1) of the existing Voluntary Agreement requires that the Secretary of Energy approve a plan of action, before it may be carried out. In adddition, section 252(d) of the EPCA provides that before a plan of action can be made effective, it must be approved by the Attorney General, after consultation with the Federal Trade Commisison, which is required to publish in the **Federal Register** its views as to whether the plan of action should be approved.

In accordance with these procedures, on October 14, 1987, the Secretary of Energy submitted the proposed Second Plan of Action to the Attorney General for his approval, and to the Federal Trade Commission and the Secretary of

State for their comments. By letter dated November 13, 1987, the Secretary of State recommended that the Attorney General and the Secretary of Energy approved the Second Plan of Action. On December 18, 1987, after consulting with the Federal Trade Commission, the Assistant Attorney General (Antitrust) advised the Secretary of Energy of his approval, on behalf of the Attorney General, of the Second Plan of Action. The Secretary of Energy thereupon, on January 26, 1988, gave his approval to the Second Plan of Action. The correspondence among DOE, the Departments of Justice and State and the Federal Trade Commission concerning the approval of the Second Plan of Action appears below at Appendix 3. The Federal Trade Commission published the text of its letter to the Department of Justice in the **Federal Register** on December 17, 1987 (52 FR 47974).

The Department of Energy also has received from the Department of Justice, notice of the latter's approval, pursuant to its authority under section 252(d)(1) of the EPCA and section 11(b) of the existing Voluntary Agreement, of necessary implementing amendments to the Voluntary Agreement. The text of these amendments is set forth below in Appendix 2. The first amendment would revise section 6(a)(1)(B) of the Voluntary Agreement to incorporate the Second Plan of Action as Appendix B to the Voluntary Agreement. The second modification would revise section (6)(e)(1) to clarify that when the Second Plan of Action is in effect, following a Presidential finding of an international energy supply interruption, the Plan of Action's provisions for oil company recordkeeping and reporting to the U.S. Government would apply in lieu of the reporting requirement in section 6(e)(1). The final amendment would modify section 9(b)(3) to permit a Voluntary Agreement signatory to designate for Voluntary Agreement coverage, in addition to any subsidiary which is more than fifty percent owned by the signatory, any company which owns fifty percent of the signatory (that is, its parent company), and any company which is more than fifty percent owned by the same parent company (that is, a sister company).

As indicated by the correspondence in Appendix 3, prior consultation with the Federal Trade Commission and the Department of State concerning these amendments has taken place, as required by section 252(d)(1) of the EPCA. The Department of Justice's December 18, 1987, letter authorizes DOE, on behalf of the Justice Department, to give notice to the Voluntary Agreement participants, as required by section 11(b) of the Voluntary Agreement, that the Department of Justice intends to adopt the implementing amendments to the Voluntary Agreement effective twenty days after the date of this **Federal Register** notice. Therefore, this **Federal Register** notice constitutes the notice to Voluntary Agreement participants which the Department of Justice is required to provide pursuant to section 11(b) of the Voluntary Agreement.

As indicated above, section 252(m)(1) of the EPCA, added in 1985, provides with respect to a new plan of action that only after the Congressional review prescribed in that subsection shall the section 252 antitrust and breach of contract defenses be applicable to Type 1 activities. Even though the approved Second Plan of Action which we publish today at Appendix 1 to this notice does not provide for the so-called "Type 1" coverage which as a legal matter would necessitate submission to Congress, under prescribed procedures for Congressional review, DOE nonetheless intends to transmit a copy of the Plan of Action to Congress.

The "Second Plan of Action to Implement the International Energy Program" would go into effect only if the President finds that an "international energy supply emergency" exists. EPCA section 252(k)(1) defines this term as meaning a period when the President determines that oil allocation to IEA countries is required by the IEP.

Issued in Washington, DC, January 28, 1988.

Eric J. Fygi,

Acting General Counsel.

Appendix 1—Second Plan of Action To Implement the International Energy Program

1.0 *Definitions.*

For purposes of this Plan of Action:

"Allocation site" means that space in IEA headquarters or elsewhere designated by the Allocation Coordinator as the area in which the Emergency Management Organization shall conduct its operations.

"Communication" means any written or unwritten disclosure, provision or exchange of information or data relating to the carrying out of this Plan of Action.

"Confidential or proprietary information or data" means information or data relating to an oil company or group of oil companies that (A) may tend to cause harm to competition or to the competitive position of that company or group if disclosed and (B) customarily (i) is not disclosed by that company or group to other persons or (ii) is disclosed to other persons pursuant to a restriction on further disclosure of such information or data.

"Document" means any material substance containing information or data relating to the carrying out of this Plan of Action, including "computer documents" (as defined in Annex I hereto) but excluding voice recordings.

"Emergency Management Organization" means any or all of the functional offices or groups at the allocation site which will supervise IEA oil allocation, and includes the Standing Group on Emergency Questions, the Standing Group on Emergency Questions Emergency Group, the Allocation Coordinator and his team, various task forces of the IEA Secretariat, the Industry Advisory Board, including its subcommittees, and the Industry Supply Advisory Group.

"EMM" means the Emergency Management Manual approved by the IEA Governing Board and issued by the IEA, as in effect during an international energy supply emergency.

"Employee" means any employee or director of a Voluntary Agreement participant. A person serving on the Industry Supply Advisory Group who is an employee or director of an affiliate of a Voluntary Agreement participant shall be deemed an employee of such participant without regard to whether such affiliate is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

"IEA oil allocation" means international allocation of petroleum activated and taking place in accordance with Chapters III, IV and the Special Section of Chapter V of the IEP, as in effect during an international energy supply emergency.

"ISOM" means the Industry Supply Advisory Group/IEA Secretariat Operations Manual describing activities of the Industry Supply Advisory Group and the IEA Secretariat during a period when the IEA Secretariat and the Industry Supply Advisory Group are assisting the Allocation Coordinator in IEA oil allocation.

"Questionnaire A" means the monthly data submission by a Reporting Company to the IEA Secretariat, which provides for the current month, the two prior months and the two following months, specified data on imports by country of origin, exports by country of destination, indigenous production, bunkers, stocks at sea and inventories to, from or in the IEA countries as prescribed in the EMM and denominated therein as "Questionnaire A".

"Questionnaire B" means the monthly data submission by the National Emergency Sharing Organization ("NESO") or other governmental agency of an IEA country to the IEA Secretariat which provides for the current month, the two prior months and the two following months, specified data on imports by country of origin, exports by country of destination, indigenous production, bunkers, stocks at sea and inventories for all oil companies engaged in such activities in the country concerned, as prescribed in the EMM and denominated therein as "Questionnaire B".

"Type 1 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 1" activities in the EMM. They include activities of such companies to rearrange their supply systems in response to the emergency situation, including sale or exchange transactions with or by affiliated or non-affiliated companies, undertaken voluntarily and independently of the Emergency Management Organization and of the voluntary offer procedures set forth in the EMM. In undertaking these activities, such companies may take into account information on IEA countries' allocation rights and allocation obligations.

"Type 2 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 2" activities in the EMM. They also include submission of data to NESOs or other governmental agencies of IEA countries and to the IEA Secretariat; communication with NESOs, the Emergency Management Organization, or other Reporting or Non-Reporting Companies in connection with the making of voluntary offers to reallocate or redirect oil supplies in accordance with the procedures set forth in the EMM; and implementation of voluntary offers which have been approved by the Allocation Coordinator ("Type 2 transactions"). Type 2 activities do not include the implementation of oil supply arrangements other than those for which voluntary offers have been approved by the Allocation Coordinator.

"Type 3 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 3" activities in the EMM. Generally, these will include all actions to implement IEA oil allocation mandated by governments of IEA countries ("Type 3 transactions").

"Voluntary Agreement" means the "Voluntary Agreement and Plan of Action to Implement the International Energy Program" as amended or modified (to which this Plan of Action is Appendix B).

"Voluntary Agreement participant" means an oil company whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) thereof, and also any affiliate of that oil company covered, pursuant to section 9(b)(3) of the Voluntary Agreement, through the approval of that oil company.

See Section 3 of the Voluntary Agreement for additional definitions.

2.0 *Scope of This Plan of Action.*

2.1 This Plan of Action describes and specifies substantive actions of Voluntary Agreement participants and their employees in advising and assisting the IEA in implementing oil allocation during an international energy supply emergency. Actions taken to carry out this plan of Action are entitled to the antitrust defense accorded under section 252(f) of EPCA provided that the person taking them has complied with the applicable requirements of section 252 of EPCA, the regulations implementing section 252 of EPCA, the Voluntary Agreement, and the conditions of this Plan of Action applicable to such person.

2.2 *Exclusion.* Notwithstanding any other provision of this Plan of Action, specifically excluded from this plan of Action are all Type 1 activities.

3.0 *Description of Entities Involved.*

This section describes the entities presently expected to participate in IEA oil allocation during an international energy supply emergency.

3.1 The Standing Group on Emergency Questions ("SEQ"), composed of representatives of IEA countries, carries out functions assigned to it in the IEP, and any other function delegated to it by the IEA Governing Board. The SEQ Emergency Group ("SEQ–EG") is an IEA body reporting to the IEA Governing Board, composed of representatives from each IEA country, which is convened during the period of IEA oil allocation. The SEQ–EG is responsible for ensuring intergovernmental agreement or consensus as regards decisions taken in implementation of the IEP during an emergency; it also is responsible for maintaining communications between the IEA and IEA countries on matters of emergency policy or problems.

3.2 The Allocation Coordinator is the Executive Director of the IEA. The Allocation Coordinator is assisted by a small team and may designate one or more members of this team to act on his behalf on particular matters. The Allocation Coordinator and his team wil be responsible to the SEQ–EG for the supervision and direction of IEA oil allocation. This responsibility will include reviewing and approving proposed allocation actions, coordinating with the SEQ–EG on policy guidance and on problems, and ensuring that the implementation of allocation is consistent with the principles and objectives of the IEP and the EMM. The Allocation Coordinator is responsible for approving for implementation those voluntary offers he deems most suitable in the circumstances.

3.3 The IEA Secretariat, consisting of the Executive Director and the staff, will be organized as appropriate to deal with various aspects of IEA oil allocation.

3.4 NESOs are governmental organizations in each IEA country which will be responsible for national oil reallocation, other national energy emergency measures, and liaison with the IEA on matters of international oil allocation in an emergency. They may at times include oil company personnel.

3.5 The Industry Supply Advisory Group ("ISAG") is an *ad hoc* group of the Industry Advisory Board made up of employees of Reporting Companies or their affiliates (including Voluntary Agreement participants), which is responsible to the IEA. The ISAG will serve as an advisory group to the Allocation Coordinator during IEA oil allocation. It is composed of oil company supply, logistics, maritime and other experts and includes an ISAG Manager, a Deputy Manager and the heads and members of the following subgroups:

(A) The Supply Coordination Group, each of whose members is assigned to communicate with and process the material received from a specified number of Reporting Companies. A Supply Coordination Group member will not serve as liaison with his own Voluntary Agreement participant employer unless the Allocation Coordinator determines otherwise for reasons of efficiency.

(B) The Country Supply Group, each of whose members is assigned, together with a member of one of the Secretariat's task forces, to communicate with and process the material received from a specified number of IEA country NESOs.

(C) The Supply Analysis Group, which assists the analytical efforts of the

Supply Coordination Group and the Country Supply Group as assigned, and is responsible for all other ISAG analytical work on supply reallocation problems or potential problems identified in the course of supply emergency.

3.6 The Reporting Companies are a group of oil companies which have consented to be so designated by the IEA, including all oil companies whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) thereof (but excluding their affiliates). During each monthly cycle the Reporting Companies are responsible for the submission of appropriate Questionnaires A to the IEA Secretariat, and they carry out Type 1, Type 2 and Type 3 activities.

3.7 The Non-Reporting Companies are firms which are not Voluntary Agreement participants or other Reporting Companies, or affiliates thereof, which may submit data comparable to that reported on Questionnaire A, and may make voluntary offers to redirect petroleum supplies. These submissions and offers are made to NESOs but not to the IEA Secretariat directly.

3.8 The Industry Advisory Board together with its subcommittees ("IAB"), whose members are drawn from the group of Reporting Companies, has been established by the IEA to provide advice and consultation on emergency oil sharing and related questions. When IEA oil allocation is activated the IAB may be consulted on specific oil sharing and related questions by the Allocation Coordinator and his team and by the ISAG, as described in section 4.9. It also may be consulted from time to time by the ISAG Manager on ISAG organizational, administrative and personnel matters.

4.0 *Description of IEA Oil Allocation.*

IEA oil allocation generally is governed by a cycle of scheduled activities set by the Allocation Coordinator, based principally upon the calculation of IEA countries' allocation rights and allocation obligations monthly or at changed intervals as necessary. While normal commercial activities of the Reporting Companies and Non-Reporting Companies, both within countries and in international trading, will go forward and change throughout the allocation cycle in response to changing circumstances, the actions of Reporting Companies and of the ISAG which are described in this Plan of Action are guided by this cycle as to both timing and type of activity undertaken. Unless circumstances require modification by the Allocation Coordinator, the timetable governing operations typically would be in accordance with sections 4.1 through 4.10. However, in the case of IEA oil allocation carried out pursuant to Article 17 of the IEP (a "selective trigger"), the SEQ-EG would be convened to discuss with the Allocation Coordinator, in consultation with the IAB, the most suitable means to fulfill IEA countries' allocation rights and allocation obligations and in this context whether a partial or full application of the general procedures for allocation implementation is required; thus some modifications in the activities described in this Plan of Action may be necessary in connection with a selective trigger.

4.1 As soon as a trigger finding to activate IEA oil allocation has been made, the IEA Secretariat or the ISAG or both will notify Reporting Companies of the finding and of the need to consider rearranging supply programs. The IEA Secretariat or the ISAG also may provide preliminary calculations of IEA countries' supply rights and advice as to the general direction of reallocation likely to be required. Based on this information, the Reporting Companies, their affiliates, and Non-Reporting Companies will ascertain whether their supplies can be reallocated in order to assist in the reallocation process, through "closed-loop" voluntary offers (*i.e.*, proposed transactions with affiliates or with other oil companies or NESOs) to divert quantities of oil from a specified country to another specified country. Commencing with the finding, and possibly prior to the submission and processing of Questionnaires A and B described in section 4.2 and 4.3, and continuing throughout each allocation cycle, Reporting Companies and Non-Reporting Companies, on their own initiative or upon the request of the Emergency Management Organization, may submit to the IEA Secretariat or to the ISAG "closed-loop" voluntary offers. The IEA Secretariat or the ISAG, on an expedited basis (within a period of no more than forty-eight hours after receipt of the offer), will process "closed-loop" voluntary offers as described in Sections 4.6 and 4.7, and the IEA Secretariat or the ISAG will notify the appropriate Reporting Companies and NESOs of the Allocation Coordinator's approval or disapproval, or determination of insufficient information to act upon, such voluntary offers.

4.2 Reporting Companies will submit Questionnaires A to the IEA Secretariat after the beginning of each allocation cycle; Questionnaire A submissions may be made before the trigger finding upon the request of the Executive Director of the IEA and, in the case of a Voluntary Agreement participant, pursuant to approval under section 5 of the Voluntary Agreement. At the same time, they or their affiliates in IEA countries will submit to their NESOs or other government agencies similar information or data on operations in those countries. These data will be incorporated, along with aggregate information with respect to domestic Non-Reporting Companies, in Questionnaires B which will be submitted to the IEA Secretariat by IEA countries.

4.3 The ISAG, but mainly the Supply Coordination Group, with its counterparts from the IEA Secretariat, will analyze Questionnaires A for errors, and ISAG, but mainly the Country Supply Group, with its counterparts from the IEA Secretariat, will do the same with Questionnaires B. Possible errors in the questionnaires, as well as discrepancies between Questionnaires A and B, then will be discussed with the appropriate Reporting Companies and NESOs.

4.4 The questionnaire data will be processed by the IEA Secretariat to obtain the supply right, and the allocation right or allocation obligation, of each IEA country for the allocation cycle, taking into account adjustments provided for in the EMM. The resulting allocation rights and allocation obligations together with the total supplies of crude oils and crude oil equivalents, by country of origin, for each IEA country are available to the Allocation Coordinator, the IEA Secretariat, the SEQ–EG and the ISAG, and are transmitted to NESOs and Reporting Companies and through NESOs to Non-Reporting Companies. The ISAG or the IEA Secretariat or both also may provide to Reporting Companies and NESOs, preliminary indications of the effect of the supply disruption on individual IEA countries, and other general comments and calculations as to the general type and direction of voluntary offers needed to balance allocation rights and allocation obligations.

4.5 Based on the information or data received from the ISAG or the IEA Secretariat as described in sections 4.1 and 4.4, each Reporting Company, each of its affiliates, and each Non-Reporting Company may ascertain whether its supplies can be reallocated or further reallocated in order to assist in balancing allocation rights and allocation obligations. Each of them may further explore with non-affilated companies whether this result can be

accomplished through sale or exchange with those companies. A Reporting Company may notify the ISAG of its potential voluntarily to meet IEA countries' allocation rights or allocation obligations, and may submit to the ISAG a number of voluntary offers to reallocate supplies. These may be "open-loop" voluntary offers ("open-supply" voluntary offers to supply a quantity of petroleum to any destination recommended by ISAG or chosen by the Allocation Coordinator or "open-receive" voluntary offers to receive oil from any available source). They also may be additional "closed-loop" voluntary offers, as described in section 4.1. ISAG may solicit such "open-loop" voluntary offers and additional "closed-loop" voluntary offers, and NESOs will seek to develop such voluntary offers from Non-Reporting Companies in their jursidiction and submit them to the ISAG.

4.6 The ISAG, but mainly the Supply Coordination Group, or the IEA Secretariat, or both, will analyze all of the voluntary offers received from Reporting Companies, and may contact the Reporting Companies for clarification of details, to suggest possible modifications, or to explore the possibility of additional voluntary offers. The ISAG and its Country Supply Group and its IEA Secretariat counterparts will do the same for voluntary offers to be submitted by NESOs.

4.7 In accordance with criteria set forth in sections 5.3(I) and 5.3(J), ISAG and IEA Secretariat personnel will undertake a balancing of allocation rights and allocation obligations, including a matching of "open-supply" and "open-receive" voluntary offers and a examination of "closed-loop" voluntary offers for suitability, for the periods covered under the current allocation cycle, for future allocation cycles where applicable, and to fulfill unsatisfied allocation rights or allocation obligations from prior allocation cycles.

4.8 In addition to notifying the appropriate Reporting Companies and NESOs of the Allocation Coordinator's action with respect to "closed-loop" voluntary offers, as decribed in Section 4.1, ISAG and the IEA Secretariat also will notify the appropriate Reporting Companies and NESOs of all "open-loop" voluntary offers matched or approved by the Allocation Coordinator. The notified entities will advise whether they are implementing approved "open-loop" and "closed-loop" Type 2 transactions. If appropriate, the Reporting Companies and NESOs also will confirm whether they have been able to develop any additional voluntary offers previously suggested to them by ISAG or the IEA Secretariat. All these results are to be reported by ISAG to the Allocation Coordinator, who in turn may report the information to the SEQ–EG.

4.9 If substantial unfulfilled allocation rights and allocation obligations remain among IEA countries, the SEQ–EG may request the ISAG and Allocation Coordinator to consult with the IAB, and with others, on ways to elicit further voluntary offers to balance these allocation rights and allocation obligations. If the imbalances remain after subsequent efforts by ISAG to implement the advice agreed on by the Allocation Coordinator and the IAB, and cannnot be resolved on a voluntary basis, the Allocation Coordinator will not inform the SEQ–EG.

4.10 The SEQ–EG then will undertake intergovernmental consultation and, after contacts by the Allocation Coordinator or his team with the Reporting Companies concerned, will determine whether corrective measures should be taken under the IEP by IEA country governments. As a last resort IEA countries having jurisdiction over the Reporting Companies and Non-Reporting Companies may order them to carry out Type 3 activities.

5.0 Specification of Substantive Actions.

5.1 *Voluntary Agreement Participants.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant and its employees are specified in this Plan of Action.

(A) Preliminary communications with the Emergency Management Organization to ensure that communication channels are working and to discuss schedules for submission of Questionnaires A and of other information required for IEA oil allocation.

(B) Preparation and submission to the IEA Secretariat of Questionnaires A, and subsequent discussion with ISAG or the IEA Secretariat of these and of other relevant information reasonably required to confirm Questionnaire A data, including provison of amplifying or collateral information.

(C) The receipt of preliminary calculations of IEA countries' supply rights and allocation rights and allocation obligations, of final supply rights and allocation rights and allocation obligations, of comments originated by the ISAG or the IEA Secretariat on the general type and direction of voluntary offers needed to balance preliminary or final allocation rights and allocation obligations, and of other information, data or suggestions regarding the development or modification of voluntary offers as described in section 4.1, 4.4, 4.5, 4.6 and 4.8; communications and other actions to develop voluntary offers to supply or received petroleum; and the submission, to the ISAG or the IEA Secretariat, at any time during an allocation cycle, of "closed-loop" voluntary offers and, at specified times, of "open-loop" voluntary offers. The voluntary offers may consist of sales or exchanges with other companies as well as intracompany and interaffiliate movements.

(D) Communications with other Reporting Companies or their affiliates or with Non-Reporting Companies, or with the ISAG, the IEA Secretariat, or NESOs, following receipt of preliminary or final allocation rights and allocation obligations or of other information or data as described in sections 4.1 and 4.4, and other actions to develop or modify voluntary offers for the current allocation cycle, or for a future cycle where applicable, even if a voluntary offer cannot be agreed on by the parties or subsequently is not approved by the Allocation Coordinator.

(E) Discussion with ISAG or the IEA Secretariat to clarify aspects of a voluntary offer submitted, to consider possible modification of a voluntary offer which is seen as needed by ISAG to balance supplies among IEA countries more effectively, or to explore and identify possible additional voluntary offers.

(F) The receipt of notification by ISAG or the IEA Secretariat regarding the Allocation Coordinator's approval, disapproval, or determination of insufficient information to act upon, "closed-loop" voluntary offers, and matching or approval of certain "open-loop" voluntary offers, and any communications and other actions to implement any Type 2 transaction.

(G) Communications with ISAG or the IEA Secretariat to report that Type 2 transactions are or are not being implemented and to confirm whether it has been possible to develop any additional voluntary offer previously suggested by ISAG or the IEA Secretariat.

(H) Any other communications or other actions taken to develop or implement Type 2 activities.

(I) Consultations with the SEQ–EG, interested NESOs and Reporting Companies about possible or actual mandatory shipments of petroleum to implement IEA oil allocation, and

communications and other actions regarding the development or implementation of Type 3 activities.

(J) Communications with ISAG or the IEA Secretariat dealing with study or appraisal of the allocation cycle.

(K) Communcations with the Allocation Coordinator in connection with his giving advice in a price dispute arising out of a Type 2 or Type 3 transaction specified in this section 5.1.

(L) Any other communications or other actions as may be necessary or appropriate to the carrying out of international emergency allocation as described in Section 4, elsewhere in this section 5.1, and sections 5.2 and 5.3.

(M) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to the Department of Justice and the Federal Trade Commission, and the recipient of such information or data shall not provide it to his company or to any other person, except as necessary in connection with providing written notice of such receipt to the Department of Justice and the Federal Trade Commission.

5.2 *IAD Members.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant member of the IAB and its employees are specified in this Plan of Action:

(A) Participation in meetings of the IAB or in communications with the SEQ-EG or other bodies of the IEA, the Allocation Coordinator, ISAG representatives or the IEA Secretariat, to develop and transmit advice on the substantive issues set forth in section 4.9 or on other issues on which the IAB may be consulted pursuant to Article 19.7 of the IEP.

(B) Participation in communications with the ISAG concerning ISAG organizational, administrative or personnel matters.

(C) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to the Department of Justice and the Federal Trade Commission, and the recipient of such information or data shall not provide it to his company or to any other person, except as necessary in connection with providing written notice of such receipt to the Department of Justice and the Federal Trade Commission

It is understood that during the course of an international energy supply emergency, other meetings of the IAB, or of other industry bodies created by the IEA, may be scheduled, possibly to advise on matters unrelated to, or only marginally related to, the emergency. Such meetings are not specified in this Plan of Action. The provisions of Section 5 of the Voluntary Agreement continue to apply to them as if no emergency had occurred.

5.3 *ISAG Members.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant's employees serving on the ISAG, and of a Voluntary Agreement participant, to the extent carried out through such employees, are specified in this Plan of Action:

(A) Communications with other offices or groups of the Emergency Management Organization, Reporting Companies and NESOs, to ensure that communication channels are working and to discuss schedules for submission of Questionnaries A or B and of other information required for IEA oil allocation, and with NESOs with respect to domestic policies, practices or issues which may affect IEA oil allocation.

(B) Receipt and analysis of Reporting Company Questionnaries A to assist in IEA oil allocation, including detection of possible errors, and subsequent communications with Reporting Companies and with NESOs to resolve them.

(C) Receipt and analysis of NESO Questionnaries B to assist in IEA oil allocation, including detection of possible errors, and subsequent communications with NESOs and Reporting Companies to resolve them.

(D) Receipt of preliminary and final allocation rights and allocation obligations and other allocation right/allocation obligation information from the IEA Secretariat, the transmission to Reporting Companies of preliminary and final allocation rights and allocation obligations and preliminary assessments of the impact of the crisis in terms of available supplies and supply rights and other information as described in section 4.1 and 4.4; and analytical discussions within ISAG and with Reporting Companies or NESOs, as well as study of ISAG work formats as required, in order to identify the types of actions which may be needed to correct the imbalances in available supplies among IEA countries.

(E) Communications with Reporting Companies or NESOs and with the IEA Secretariat on formulations of voluntary offers; the receipt and analysis of voluntary offers, and discussion of them within ISAG; and follow-up communications with Reporting Companies or NESOs to clarify aspects of voluntary offers submitted, to consider possible modification of a voluntary offer which is seen as needed by ISAG to balance supplies among IEA countries more effectively, or to explore and identify possible additional voluntary offers.

(F) Analytical work to develop a country supply/demand profile for any IEA country and to study general product imbalance problems within any IEA country in order to advise the IEA Secretariat or a NESO on possible resolution of these problems. To assist this study of product imbalance problems within a country, Voluntary Agreement participant employees serving on the ISAG may receive from the government of that IEA country, or from the IEA Secretariat, data on historical supply patterns for that country, including indigenous production, imports of crude and products by country or origin, exports of crude and products to country of destination, stocks at sea and crude and product inventory profiles. Data or information with respect to regions of a country may be provided as required.

(G) Other analytical work on country or company supply plans as requested by the Allocation Coordinator, including with respect to such plans, following, analyzing and forecasting shipping tonnage availability and requirements, during the course of an emergency, in addition to communications within ISAG or with outside persons in order to develop necessary information for such shipping analyses.

(H) Coordination, under the guidance of the Allocation Coordinator, of the voluntary offers of Reporting and Non-Reporting Companies, including independent efforts to encourage the development of voluntary offers in order better to direct supplies to meet IEA calculated supply rights. Participation in the ISAG/IEA Secretariat process of balancing allocation rights and allocation obligations of IEA countries for the periods covered in an allocation cycle, or for a future cycle where applicable, including matching available "open-supply" and "open-receive" voluntary offers and examining "closed-loop" voluntary offers for suitability.

(I) The ISAG in consultation with the IEA Secretariat will evaluate the voluntary offers by Reporting Companies and by NESOs for Non-Reporting Companies. In making its evaluation and recommendations to the Allocation Coordinator, it may be guided by technical factors including the

following, in addition to specific guidance from the Allocation Coordinator:

(i) The volumes of petroleum required to balance the allocation rights and allocation obligations of individual IEA countries;

(ii) The petroleum logistics system of each country, including port facilities, storage capacity, and barge/pipeline facilities;

(iii) The specifications of the crude oil being delivered in relation to the refining capability within the country to process that oil;

(iv) Product imbalance problems in IEA countries as compared with the supply mix scheduled for these countries;

(v) Insofar as possible and consistent with section 5.3(J), maintenance of normal supply patterns for various IEA countries and normal supply proportions between crude oil and products and among different categories of crude oil and products;

(vi) Minimization of transportation costs, for example, by avoidance to the greatest possible extent of logistical disadvantages arising from unduly long voyages; and by utilization of backhaul voyages for vessels; and

(vii) The need for priorities in considering offers, as among such voluntary offers.

If, after such an evaluation process, there remain alternative allocation possibilities for an IEA country or too many voluntary offers so that a selection must be made, such altenatives may be discussed with the relevant NESO and Reporting Companies as well as with the IEA Secretariat for the purpose of exchanging views on the choices to be made.

(J) In evaluating potential alternative actions to balance allocation rights and allocation obligations, ISAG is not to take into account the economic benefit or penalty to any Reporting Company or IEA country (but see section 5.3(I)(vi)), or the market share of any Reporting or Non-Reporting Company in any county. National oil reallocation of available supply is solely a matter for decision by each IEA country.

(K) Notification of appropriate Reporting Companies and NESOs of the Allocation Coordinator's approval, disapproval, or determination of insufficient information to act upon, specified voluntary offers, and communications with regard to the implementation of Type 2 transactions and, if appropriate, with regard to any additional voluntary offers previously suggested to them by the ISAG or the IEA Secretariat.

(L) Participation in consultations and meetings with the IAB on specific oil sharing and related questions, as described in section 4.9, and on ISAG organizational, administrative and personnel matters.

(M) Consultations with the SEQ–EG, interested NESOs and Reporting Companies about possible or actual mandatory shipments of petroleum to implement IEA oil allocation, and communications and other actions regarding the development or implementation of Type 3 activities.

(N) Participation in development of an ISAG appraisal of the allocation cycle.

(O) Participation in meetings of ISAG, of the ISAG Manager and Deputy Manager with subgroup heads, and of ISAG subgroups, as well as joint work sessions.

(P) Communications and other actions as contemplated in the ISOM.

(Q) Any other communications or other actions as may be necessary or appropriate to the carrying out of international emergency allocation as described in sections 4, 5.1, 5.2 and elsewhere in this section 5.3.

(R) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to representatives of the Department of Justice and the Federal Trade Commission at the allocation site, and such information or data shall be considered to be confidential or proprietary information or data for purposes of section 7.1.

5.4 *Other Actions.* Such additional communications or other actions as may be needed to meet specific problems as they arise in implementing IEA oil allocation, provided that such actions are approved by the U.S. Government representatives at the allocation site or in such other manner as may be provided for pursuant to section 10.

5.5 *Exclusion.* Except as otherwise provided in sections 5.1 (K) and (M), 5.2(C), and 5.3(R), specifically excluded from this Plan of Action are the communication by any Voluntary Agreement participant or its employees to ISAG or the IEA Secretariat, and the communication by any Voluntary Agreement participant employee serving on ISAG to any person, of prices, credit terms, or other information effectively disclosing prices or credit terms, relating to any proposed or actual transaction.

6.0 *Confidential or Proprietary Information or Data Which May Be Communicated by or to Voluntary Agreement Participants and Their Employees.*

The following types of information or data which may be or may reveal confidential or proprietary information or data may be communicated by or to Voluntary Agreement participants or their employees in carrying out the substantive actions specified in this Plan of Action:

6.1 Disaggregated Questionnaire A or B data submitted by Reporting Companies or NESOs, *i.e.*, data as required by the Questionnaire A and B reporting instructions specified in the EMM, and ISAG work formats derived from such data, including:

(A) Indigenous production of crude oil, natural gas liquids (NGLs) and feedstock;

(B) Imports and exports of crude oil, NGLs and feedstock;

(C) Petroleum product imports and exports (in crude oil equivalents);

(D) International marine bunkers;

(E) Inventory levels and changes; and

(F) Stocks at sea.

6.2 Capability of a refinery to process crude oil or specific crude oils, and the capability of a pipeline, dock or terminal or other storage or transit facility to receive, store, or throughput crude oil or specific crude oils or petroleum products or specific petroleum products.

6.3 Capability of a port, installation, or waterway to receive or move vessels of various sizes and configurations.

6.4 The availability of tankers and barges, including their location, routing, size, specifications and operating characteristics.

6.5 Main characteristics of crude grades and product specifications.

6.6 Actual and estimated historical production data on crude oils and NGLs for individual countries.

6.7 Historical country supply patterns for crude oil, NGLs and petroleum products, *e.g.*, imports by country of origin, exports to country of destination, and inventory profiles.

6.8 Specific refinery considerations that prevent acceptance or release of cerrtain crudes, *e.g.*, the inability of a refinery to process specific types of crude oil or to make certain specialty products for which the crude oil is particularly suited; the inability of a type of crude oil to meet certain product specifications; hazards to refinery operations which processing of a particular type of crude oil might cause; or the need for a refinery to operate at a minimum throughput level.

6.9 Identification of supply logistics problems relating to certain countries or regions of countries.

6.10 Identification, without disclosure of specific costs, prices or financial information, or other underlying facts, of the existence of certain individual company considerations which would preclude or make impracticable a proposed movement of oil, involving:

(A) Commercial policy;

(B) Supply or transportation factors;

(C) Affiliate, third-party, concessional or other contractual arrangements; or

(D) Constraints relating to actions or policies of governments.

6.11 Identification of differences between the crude oil and petroleum product supply mix and demand for products in certain countries or regions of countries.

6.12 Information or data, including (as limited by section 5.5) petroleum prices and other commercial terms, concerning: voluntary offers made by Reporting Companies or Non-Reporting Companies; or the implementation of Type 2 or Type 3 transactions.

6.13 Clarification, amplification, correction, explanation or supplementation of the types of information or data specified in sections 6.1–6.12, provided that this section 6.13 does not supersede any specific exclusion contained in this Plan of Action.

6.14 Such additional types of confidential or proprietary information or data as may be needed in implementing IEA oil allocation as guided by the EMM and the ISOM, (i) if a communication of such types of information or data is approved in advance by a representative of the Department of Energy, after consultations with the Departments of Justice and State and the Federal Trade Commission or (ii) if communication of such types of information or data is needed on a timely basis and receipt of such advance approval is not practicable, provided, in the latter case, that prompt written notice of such communication together with a description of the circumstances necessitating such communication without such advance approval must be given to representatives of the Departments of Energy and Justice and the Federal Trade Commission. Approval for the continued communication of such types of information or data can be terminated prospectively by a representative of the Department of Energy, after consultations with the Departments of Justice and State and the Federal Trade Commission.

6.15 *Exclusion.* Notwithstanding any other provision of this Plan of Action, specifically excluded from this Plan of Action is the communication (but see sections 5.1(M), 5.2(C) and 5.3(R) concerning unsolicited receipt of information or data) of the following types of information or data to the extent that they are or reveal confidential or proprietary information or data:

(A) Company costs or market shares of crude oil or petroleum products (other than those which can be derived from Questionnaire A or B data); or

(B) Individual company information or data regarding overall long-term programs for investment, divestment, refining, operating, transportation or marketing.

7.0 *Disposition of and Access to Confidential or Proprietary Information or Data.*

7.1 In no case shall an employee of a Voluntary Agreement participant provide to his company or to any other person, any confidential or proprietary information or data obtained as a consequence of his membership in the ISAG, except such information or data as is necessary to be supplied in the course of carrying out IEA oil allocation. No Voluntary Agreement participant employee serving on the ISAG may remove any documents from the IEA premises, except (when otherwise permitted by the IEA Secretariat) as authorized by the U.S. Government representatives at the allocation site or in such other manner as may be provided for pursuant to section 10.

7.2 Each Voluntary Agreement participant shall provide to the U.S. Government one copy of its Questionnaire A submitted to the IEA Secretariat in Questionnaire A format, as distinguished from telex format, in accordance with section 8.8(A), or in such other manner as may be provided pursuant to section 10.

8.0 *Requirements for Recordkeeping, Reporting and Monitoring.*

8.1 *Introduction.* Section 252 of EPCA provides that a U.S. Government representative shall be present at all meetings to carry out a plan of action and that a full and complete record (where practicable, a verbatim transcript) of such meetings shall be made. For purposes of this Plan of Action, meetings of the IAB herein specified and allocation meetings will be subject to the foregoing requirement. Section 252 also requires that a full and complete record be made of communications, including face-to-face communications other than in the context of a meeting. The following sections implement the existing U.S. recordkeeping, reporting and monitoring requirements in Section 252 of EPCA, 10 CFR Part 209, and 28 CFR Part 56, and apply such requirements to meetings, communications and other actions to carry out this Plan of Action. In addition, Annex I hereto contains special rules governing disposition and retention of computer documents which apply in lieu of certain specified provisions of this section 8, as indicated at the appropriate places herein. These requirements apply, *inter alia*, to Voluntary Agreement participants and to their employees serving on the ISAG who will be participating in the allocation activities at the allocation site. These requirements apply to actions of Covered Foreign Affiliates to the extent provided in sections 8.6, 8.7 and 8.8, except under the circumstances described in Annex II hereto, which concern the prevention of compliance by a foreign law prohibition, in which event the alternative requirements specified in Annex II will apply. Questions concerning the removal of records from the allocation site are outside of the scope of the following sections. If experience indicates the need, the U.S. Government observers at the allocation site will have discretion to allow alternative operating procedures and recordkeeping requirements consistent with section 252 of EPCA and existing regulations thereunder.

8.2 *Definitions.* For purposes of these requirements the following additional definitions apply:

(A) "Communication" and "document" exclude:

(i) The communication or documentation of administrative, procedural, or ministerial information or data such as scheduling of meetings, personnel assignments, arranging for support services, testing of communications links, and merely routine implementation of previously-agreed petroleum sale or exchange transactions (*e.g.*, supply and vessel slating, cargo inspection and oil loss reports, insurance, third-party financing, and the like) (but see section 8.8(C) (1) and (2));

(ii) Communications or documents which are subject to the attorney-client or attorney work product privileges (but see section 8.8(C)(3)); and

(iii) Communications with or the documentation of communications with U.S. Government observers at the allocation site.

(B) "Allocation site communication" means any unwritten face-to-face communication occurring on, or

telephonic communication received at or sent from, the allocation site, other than in an allocation meeting.

(C) "Off-site communication" means any unwritten face-to-face communication which does not occur on, or any telephonic communication which is neither received at nor sent from, the allocation site.

(D) "Allocation meeting" means the following group meetings held at the allocation site (with or without IEA Secretariat participation):

(i) Meetings of the entire ISAG;

(ii) Meetings of the ISAG's Country Supply, Supply Coordination or Supply Analysis subgroups; and

(iii) Meetings of the ISAG Manager or Deputy Manager and ISAG subgroup heads.

(E) "U.S. Voluntary Agreement participant" means any oil company whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) of the Voluntary Agreement, and also any affiliate (other than a Covered Foreign Affiliate) of that oil company that is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

(F) "Covered Foreign Affiliate" means any affiliate of a U.S. Voluntary Agreement participant that has its principal place of business outside the United States, that conducts the substantial majority of its activities outside the United States, and that is covered pursuant to section 9(b)(3) of the Voluntary Agreement. A Covered Foreign Affiliate's "parent company" means the oil company approved as a Voluntary Agreement participant under section 9(b)(1) thereof, which has designated the Covered Foreign Affiliate for coverage under section 9(b)(1) thereof.

(G) "Affiliate" means: (i) Any other company that receives Voluntary Agreement coverage through the approval of the participation of the same oil company pursuant to section 9(b)(1) of the Voluntary Agreement; and (ii) except as otherwise provided below in this paragraph, any other company that is eligible to be designated for coverage by the approved oil company pursuant to section 9(b)(3). Excluded from (ii) above is any company that is eligible to be designated for coverage pursuant to section 9(b)(3)(ii), and any company (other than a company described in section 9(b)(3)(i)) that is eligible to be designated for coverage pursuant to section 9(b)(3)(iii), which, independently of the said Voluntary Agreement participant, is an oil company as defined in section 3(a) of the Voluntary Agreement; provided, however, that this exclusion shall not apply if such oil company has its principal place of business within the United States and there is 100% ownership under section 9(b)(3)(ii). Upon the request of a Voluntary Agreement participant, the Department of Energy, with the approval of the Department of Justice, for purposes of section 8, at any time may stipulate that a company is or is not an oil company for purposes of the above exclusion, or may designate any company as an affiliate.

8.3 *U.S. Government Monitoring and Recordkeeping at the Allocation Site.*

(A) To the extent practicable, allocation activities of ISAG members shall be conducted at the allocation site, while a U.S. Government observer is in attendance at the allocation site. A U.S. Government observer must be present throughout all allocation meetings in which a Voluntary Agreement participant employee serving on the ISAG participates, and may elect to be present during any other allocation activities in which a Voluntary Agreement participant employee serving on the ISAG participates, including communications (except communications between an individual Voluntary Agreement participant employee and his legal counsel). It is intended that U.S. Government observers will be in attendance continuously at the allocation site to monitor allocation meetings and communications by Voluntary Agreement participant employees serving on the ISAG during such regular hours as ISAG adopts, and at any extraordinary hours if given reasonable notice. Voluntary Agreement participant employees serving on the ISAG shall provide advance notice whenever they anticipate that allocation meetings or allocation site communications will occur during extraordinary hours, or that communications (other than telephonic communications during extraordinary hours) will occur outside of the allocation site.

(B) A U.S. Government observer shall be responsible for keeping a written record of each allocation meeting, and of each communication held in the presence of such observer, in which a Voluntary Agreement participant employee serving on the ISAG participates, or for ensuring that a verbatim transcript of such meeting or communication is made. Failure of the U.S. Government to maintain a full and complete written record shall not vitiate the antitrust defense accorded by section 252 of EPCA for a Voluntary Agreement participant or it employees unless such failure is due to the willful act of the Voluntary Agreement participant employee serving on the ISAG or of the Voluntary Agreement participant.

(C) Unwritten communications of Voluntary Agreement participant employees serving on the ISAG which relate to allocation activities may occur outside of the allocation site only when circumstances make an off-site communication necessary, *i.e.*, when a need for an immediate communication arises unexpectedly or after normal working hours or otherwise makes a return to the allocation site impracticable or unreasonable, or when time zone differences involved in necessary communications otherwise would require early morning arrival or late night stay at the allocation site.

8.4 *Unwritten Communications, Outside of Allocation Meetings, Involving Voluntary Agreement Participant Employees Serving on the ISAG.*

(A) These recordkeeping requirements for unwritten communications apply to allocation site communications and off-site communications by or to Voluntary Agreement participant employees serving on the ISAG, including communications with the IAB, but excluding communications with members of the SEQ–EG, official observers from the European Communities, IEA Participating Country representatives authorized by the IEA to be at the allocation site, or the U.S. and other NESOs. They apply to such communications with the IEA Secretariat only when those communications relate to activities specified in section 5.1(K).

(B) Except when a U.S. Government observer is present, a Voluntary Agreement participant employee serving on the ISAG shall make a full and complete record of any allocation site communication or off-site communication, by means of: (1) Entering in a standardized log, the date, approximate time, identity of the parties (by name and organization) and a description of the communication in sufficient detail to convey adequately its substance, or (2) reporting at a subsequent meeting held no later than the next working day at which a verbatim transcript is kept, information sufficient to identify the parties and a description of the communication in sufficient detail to convey adequately its substance. The log entry also shall state the special circumstances which necessitated an off-site communication, or an allocation site communication despite the absence of a U.S. Government observer from the allocation site, if such absence was

known to such employee at the time of such communication.

(C) When more than one Voluntary Agreement participant employee serving on the ISAG is involved in a communication, the employees may designate who shall make and supply the record. Non-Voluntary Agreement participant employees serving on the ISAG may furnish the required records of communications with Voluntary Agreement participants and with Voluntary Agreement participant employees serving on the ISAG.

8.5 *Disposition of Records by Voluntary Agreement Participant Employees Serving on the ISAG.*

(A) Each Voluntary Agreement participant employee serving on the ISAG shall provide to the U.S. Government observers at the allocation site, within three working days of the first day it covers, a copy of any log kept pursuant to section 8.4(B), and within one working day of the occurrence, a copy of any other written communication which such employee prepares or receives that relates to allocation activities, except that any written communication which is prepared or received by such employee and which is expected to undergo one or more revisions (including incorporation in any other written communication), and each revision of any such communication, may be provided to the U.S. observers within one day of the close of the allocation cycle in which such communication is prepared or received by such employee. (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in this section 8.5(A).)

(B) The requirement imposed by paragraph (A) of this Section may be waived by the U.S. Government observers at the allocation site, to the extent that the IEA Secretariat will provide copies of such communications to the U.S. Government observers.

8.6 *U.S. Government Monitoring at Voluntary Agreement Participant Offices.*

(A)(1) U.S. Government observers shall be permitted to interview, for a period of five years after the termination of an international energy supply emergency, all U.S. Voluntary Agreement participant employees who are or have been engaged in carrying out this Plan of Action, by telephone, and at the offices of, and upon reasonable advance notice to, the U.S. Voluntary Agreement participant involved. Any interviewed employee may have counsel present.

(2) U.S. Government observers shall be permitted to interview, for a period of five years after the termination of an international energy supply emergency, all Covered Foreign Affiliate employees who are or have been engaged in carrying out this Plan of Action, by telephone, and at the offices of the parent company U.S. Voluntary Agreement participant of such Covered Foreign Affiliate, or at the election of such Covered Foreign Affiliate and such parent company, at the offices of such Covered Foreign Affiliate, upon reasonable advance notice to such parent company and to such Covered Foreign Affiliate. Any interviewed employee may have counsel present.

(B) U.S. Government observers shall be permitted to examine and copy, at U.S. Voluntary Agreement participant headquarters during normal business hours and upon reasonable notice to the U.S. Voluntary Agreement participant involved, any document or other information source which relates to carrying out this Plan of Action which is not subject to the attorney-client or attorney work product privileges, and which is in the possession or custody of such U.S. Voluntary Agreement participant, including any Covered Foreign Affiliate records forwarded to such U.S. Voluntary Agreement participant pursuant to section 8.8(C)(2).

8.7 *Recordkeeping Requirements for Voluntary Agreement Participants Other Than Employees Serving on the ISAG.*

(A)(1) Except as provided in section 8.7(B), each U.S. Voluntary Agreement participant and each Covered Foreign Affiliate promptly shall make a full and complete record of all of the following unwritten communications:

(i) Communications with individuals serving on the ISAG (including any of its own employees serving on the ISAG);

(ii) Communications with another company (not including any of its affiliates); and

(iii) Communications with the IEA Allocation Coordinator or IEA Secretariat which relate to activities specified by section 5.1(K).

(2) Records of such unwritten communications of a U.S. Voluntary Agreement participant should be made by the U.S. Voluntary Agreement participant by means of entering in a standardized log, the date, the approximate time, identity of the parties (by name and organization), and a description of the communication in sufficient detail to convey adequately its substance.

(3) Records of such unwritten communications of a Covered Foreign Affiliate may be made in the manner described in section 8.7(A)(2) or, at the election of the Covered Foreign Affiliate, may consist of a bi-weekly summary:

(i) Identifying (a) each individual serving on the ISAG with whom the Covered Foreign Affiliate has had an unwritten communication, (b) each nonaffiliated company with which the Covered Foreign Affiliate has had an unwritten communication, (c) each Secretariat official with whom the covered Foreign Affiliate has had an unwritten communication that is required to be recorded pursuant to section 8.7(a)(1)(iii), and (d) each affiliate with which the covered Foreign Affiliate has had an unwritten communication;

(ii) Describing with particularity each agreement entered into with any nonaffiliated company, and each agreement or other arrangement entered into with an affiliate, and each transaction performed, to carry out this Plan of Action, setting forth all significant terms, including volume, crude or product type, origin, destination, time of delivery and price; and

(iii) Describing in summary terms, for each category of unwritten communications listed in subparagraph (i) of this subsection, the substance thereof, to the extent not already disclosed pursuant to subparagraph (ii) of this subsection.

A bi-weekly summary may be made by the Covered Foreign Affiliate or, at the election of the Covered Foreign Affiliate and its parent company, by such parent company on behalf of the Covered Foreign Affiliate.

(B)(1) A Voluntary Agreement participant need not make a record pursuant to this section 8.7 of any communication with any individual serving on the ISAG, when such Voluntary Agreement participant has agreed with such individual that the record of the communication will be made by and provided to the U.S. Government by such individual in accordance with section 8.5(A), or provided by the IEA Secretariat in accordance with section 8.5(B).

(2) A Voluntary Agreement participant need not make a record pursuant to section 8.7 of a communication with any other Voluntary Agreement participant if the latter makes a record of the communication and provides it to the U.S. Government in accordance with section 8.8(B).

(C) To the extent that any information required to be set forth pursuant to section 8.7(A) can be derived readily

from a document deposited pursuant to section 8.8, a specific cross-reference to such document shall suffice.

8.8 *Disposition of Records by Voluntary Agreement Participants.*

(A)(1) Each U.S. Voluntary Agreement participant shall deposit with the U.S. Government, in accordance with this Section and with any further instructions that may be provided pursuant to section 10, a copy of each record required to be made by it under section 8.7(A)(1),and of:

(i) Each written communication with the ISAG (including any employee of the U.S. Voluntary Agreement participant serving on the ISAG);

(ii) Each written communication with another company (not including any of the U.S. Voluntary Agreement participant's affiliates), and each document setting forth any agreement between the U.S. Voluntary Agreement participant and any such nonaffiliated company with respect to any Type 2 transaction (with the voluntary offer number and the date of the vuluntary offer shown on the first page thereof) or Type 3 transaction; and

(iii) Each written communication with the IEA Allocation Coordinator or IEA Secretariat which relates to activities specified in section 5.1(K).

Any portions of such records which are believed not to be subject to public disclosure should be specified.

(2) Each covered Foreign Affiliate (or, at the election of the Covered Foreign Affiliate and of its parent company, such parent company) shall deposit with the U.S. Government, in accordance with this section and with any further instructions that may be provided pursuant to section 10, a copy of each record required to be made by the Covered Foreign Affiliate under Section 8.7(A)(1), and of:

(i) Each written communication with another company (not including any of the Covered Foreign Affiliate's affiliates), and each document setting forth any agreement between the Covered Foreign Affiliate and any such nonaffiliated company with respect to any Type 2 transaction (with the voluntary offer number and the date of the voluntary offer shown on the first page thereof) or Type 3 transaction; and

(ii) Each written communication with the IEA Allocation Coordinator or IEA Secretariat which relate to activities specified in section 5.1(K).

Any portions of such records which are believed not to be subject to public disclosure should be specified.

(B) Records of unwritten communications, and copies of written communications or documents, of U.S. Voluntary Agreement participants shall be deposited with the U.S. Government within seven days after the close of the week (ending Saturday) in which they occur. In the case of communications or documents of Covered Foreign Affiliates, this period shall be extended to fourteen days. Computer documents shall be deposited in hard copy (paper) form. If possible, copies of written communications of a U.S. Voluntary Agreement participant shall be sent to the U.S. Government by the U.S. Voluntary Agreement participant simultaneously with and by the same means of transmission used to send the original.

(C)(1) Each U.S. Voluntary Agreement participant shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each record required to be deposited pursuant to section 8.8(A)(1) and copies of all other documents (including intracorporate documents). (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in the preceding sentence.) If so requested by the U.S. Government observers in connection with an examination pursuant to section 8.6(B), such U.S. Voluntary Agreement participant, within two weeks of such request, shall forward a copy of each requested document to an appropriate office at company headquarters, where the documents shall be maintained separately from other company records until completion of such examination; notwithstanding section 8.2(A)(i), the U.S. Voluntary Agreement participant shall include among the documents forwarded to the appropriate company office pursuant to this section, a copy of each document which involves administrative, procedural or ministerial information or data and which is in the possession or custody of the U.S. Voluntary Agreement participant at the time of a U.S. Government examination request.

(2) Each Covered Foreign Affiliate shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each record required to be deposited pursuant to section 8.8(A)(2) and copies of all other documents (including intracorporate documents). (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in the preceding sentence.) If so requested by the U.S. Government observes in connection with an examination pursuant to section 8.6(B), such Covered Foreign Affiliate, within four weeks of such request, shall forward a copy of each requested document to an appropriate office at the headquarters of such Covered Foreign Affiliate's parent company, where the documents shall be maintained until completion of such examination; notwithstanding section 8.2(A)(i), the Covered Foreign Affiliate shall include among the document forwarded to the appropriate company office pursuant to this section, a copy of each document which involves administrative, procedural or ministerial information or data and which is in the possession or custody of the Covered Foreign Affiliate at the time of a U.S. Government examination request.

(3) Notwithstanding section 8.2(A)(ii), copies of all Voluntary Agreement participant documents which are subject to the attorney-client or attorney work product privileges shall be included among the documents forwarded to the appropriate company office pursuant to section 8.8(C)(1) and (2). Upon request, the Voluntary Agreement participant shall submit to the U.S. Government a list of the documents which the Voluntary Agreement participant claims are subject to the attorney-client or attorney work product privileges. The list shall specify for each document, the applicable privilege and all facts relied on in support thereof, the type of document (letter, telex, etc.), its date, author, addressee, title (unless the title vitiates the applicable privilege), a statement of the subject matter (but not including information that would vitiate the applicable privilege), and all recipients of the original and of any copies. Those documents which are not subject to the attorney-client or attorney work product privileges will be subject to U.S. Government examination during and after the allocation process, if so requested by U.S. Government observers, as provided elsewhere in this section 8.

9.0 *Meeting—Notice Requirements.*

9.1 Pursuant to the notice requirements of Section 5 of the Voluntary Agreement, the ISAG emergency activities at the allocation site will be conducted as a single ISAG meeting. Because it will be impracticable to notice all allocation meetings, or meetings of the IAB pursuant to section 5.2(A), during the course of a supply emergency, there may be only one **Federal Register** notice at the beginning of an international energy supply emergency.

9.2 U.S. Government observers shall be notified in advance of the time and place of each allocation meeting, or meeting of the IAB pursuant to section 5.2(A). If all or a portion of the allocation site is to be placed other than IEA headquarters, the Allocation

Coordinator and/or the ISAG Manager shall so notify the U.S. Government observers assigned to monitor activities of Voluntary Agreement participant employees serving on the ISAG during the allocation period, as much in advance as possible.

10.0 *U.S. Government Monitoring.* This Plan of Action shall be governed by monitoring guidelines that may be issued by the Secretary of Energy pursuant to the provisions of section 252 of EPCA, 10 CFR Part 209, and 28 CFR Part 56. Such monitoring guidelines may establish procedures for the approvals described in sections 5.4, and 6.14 or 7.1, for notice to or from U.S. Government observers, or for other matters pertaining to implementation of this Plan of Action, and also may modify the requirements contained in Annex I hereto applicable to computer documents. Subject to further guidance from the Secretary of Energy, where in this Plan of Action a record or a copy of a record or document is required to be deposited with the U.S. Government, such copy shall be sent to the following address: The General Counsel, U.S. Department of Energy, Forrestal Building, 1000 Independance Avenue SW., Washington, DC 20585.

Annex I to Second Plan of Action To Implement the International Energy Program: Requirements for the Disposition and Retention of Computer Documents

Requirements for the disposition and retention of computer documents are set out in this Annex in order to facilitate any modifications therein which may be indicated by experience with computer capabilities or changes in computer technology. The Departments of Energy, State and Justice and the Federal Trade Commission intend, in the context of the next IEA allocation systems test, to evaluate whether companies are capable of complying with these requirements without undue burden. Based on experience in the test, the Government will consider whether these requirements, including the provisions of paragraphs 3 and 4 of this Annex, should be modified.

1. "Computer document" means information or data relating to the carrying out of this Plan of Action in non-transitory storage on magnetic, optical, or other media or devices used by computers, including but not limited to computer diskettes, disks, and tapes, but excluding voice recordings and information or data on hard copy (paper) form. A communication by means of a computer document is considered to be a written communication. The exclusions in section 8.2(A)(i)–(iii) applicable to "communication" and "documents" are applicable to computer documents.

2. Subject to section 8.5(B), the following requirements apply to the disposition of computer documents by Voluntary Agreement participant employees serving on the ISAG, in lieu of the requirements contained in Section 8.5(A):

Each Voluntary Agreement participant employee serving on the ISAG shall (subject to the cooperation of the IEA Secretariat) provide to the U.S. Government observers at the allocation site, within one working day of its preparation, in hard copy (paper) form, of any computer document requested specifically or by category by the observers.

3. Subject to paragraph 4 of this Annex, the following requirements apply to the retention of computer documents by Voluntary Agreement participants, in lieu of the requirements contained in the first sentences of section 8.8(C) (1) and (2):

a. Each U.S. Voluntary Agreement participant and each Covered Foreign Affiliate shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each of the following computer documents:

i. in the case of a computer database or other ongoing computer document that is expected to be revised periodically in the ordinary course of business to update its contents, (A) the portions thereof relating to the carrying out of this Plan of Action that reflect the situation (1) at a time as close as practicable to the onset of the international energy supply emergency, and (2) at the end of each allocation cycle, and (B) the last verison of such portions of the document;

ii. in the case of a computer document that is sent to or received by a person other than its listed author(s) (other than a computer document maintained pursuant to (i)), each version that is sent to or received by a person other than the listed author(s); and

iii. in the case of a computer document other than those described in (i) or (ii), the last version of the document.

b. The obligation to maintain a computer document may be satisfied by maintaining it in any retrievable form, including hard copy (paper) form.

4. In the event that, following the onset of an international energy supply emergency, a Voluntary Agreement participant ascertains that compliance with the requirements of paragraph 3 of this Annex by it or by any of its covered affiliates would be unreasonably burdensome, the Voluntary Agreement participant, promptly after ascertaining that such burden would affect the ability of the Voluntary Agreement participant or (as applicable) the covered affiliate thereof to comply with said requirements, shall so notify the Department of Justice and the Federal Trade Commission in writing. The notification shall specify the requirements in question, the extent and nature of the burden, and the types of computer documents that it would be unreasonably burdensome to retain, and shall propose alternative requirements that will achieve to the maximum extent practicable the purposes of the recordkeeping requirements contained in paragraph 3 of this Annex. If such notification is promptly made, and if the Voluntary Agreement participant or (as applicable) the covered affiliate thereof, for the period prior to the notification and for the ten-day period thereafter, either (1) complies with the proposed alternative requirements or (2) complies with the requirements of paragraph 3 of this Annex to the maximum extent practicable, the availability to them of the defenses accorded under section 252 of EPCA shall be unaffected by the lack of full compliance with the requirements of paragraph 3 of this Annex, for the period preceding the notification and for the ten-day period thereafter. To the extent that, after the ten-day period from such notification, the Voluntary Agreement participant or (as applicable) the covered affiliate thereof does not comply with the requirements of paragraph 3 of this Annex, the Voluntary Agreement participant or (as applicable) the covered affiliate thereof will not be entitled to the defenses accorded under section 252 of EPCA for actions taken thereafter to carry out the Plan of Action, and may elect not to take such actions, unless the Voluntary Agreement participant has received and accepted, and there remains in effect, approval from the Department of Justice for compliance with alternative requirements.

Annex II to Second Plan of Action To Implement the International Energy Program: Suspension of Coverage Under Section 252 in the Event of Foreign Law Prohibition

In the event that a Covered Foreign Affiliate is prevented, as a result of a foreign law prohibition, from complying with any of the requirements of section 8, the following alternative requirements will apply for so long as such foreign law prohibition remains in effect:

1. The Covered Foreign Affiliate will not be entitled to the defenses accorded

under section 252 of EPCA for any actions taken by it after first learning of the foreign law prohibition that prevents compliance with the provisions of section 8 relating to such actions.

2. The Covered Foreign Affiliate will be entitled to the defenses accorded under section 252 for actions taken by it before first learning of the foreign law prohibition, provided that the following alternative requirements are met:

a. The Covered Foreign Affiliate will comply in timely fashion with all Section 8 requirements not affected by the foreign law prohibition. Promptly upon termination of the foreign law prohibition, the Covered Foreign Affiliate must comply with all other requirements of section 8 relating to the period prior to suspension of section 252 coverage pursuant to paragraph 1 of this Annex, to the extent not previously met, and with any supplemental U.S. Government request for production of documents (including intracorporate documents) relating to such period.

b. The Covered Foreign Affiliate or its parent company will inform the Department of Justice and the Federal Trade Commission of the existence of the foreign law prohibition as soon as possible or, in any event, on or before the due date for the first submission, following suspension of coverage pursuant to paragraph 1 of this Annex, that otherwise would have been required to be made to the U.S. Government by or on behalf of the Covered Foreign Affiliate pursuant to section 8.7.

c. No later than twenty-one days following suspension of coverage pursuant to paragraph 1 of this Annex, the parent company will submit to the Department of Justice and the Federal Trade Commission:

i. A report of the nature of the foreign law prohibition, giving full particulars, including a description of the efforts being made to obtain a waiver from the competent foreign authorities, a statement that the Covered Foreign Affiliate made no attempt to have the foreign law prohibition invoked, and, to the extent permissible under applicable law, a detailed account of all oral communications with any foreign government authority concerning the requirements of the foreign law prohibition and compliance or noncompliance with them (including a copy of each document consisting of or relating to such communications);

ii. A report setting forth all of the information listed in section 8.7(A)(3), to the extent known to such parent company, and describing in detail the efforts made by it to obtain any such information not set forth in such report;

iii. A report of all transactions to carry out the Plan of Action entered into by the Covered Foreign Affiliate during the period beginning as of the end of the period covered by the last report filed by or on behalf of the Covered Foreign Affiliate pursuant to section 8.7 and ending as of the date of suspension of coverage pursuant to paragraph 1 of this Annex (the "covered period");

iv. A report describing such parent company's unwritten communications with the Covered Foreign Affiliate during such covered period; and

v. A copy of each written communication between such parent company and the Covered Foreign Affiliate during such covered period.

d. Within fourteen days following receipt of a request from the Department of Justice or the Federal Trade Commission, the parent company shall forward to the Department of Justice and the Federal Trade Commission copies of any documents requested by them (other than documents subject to the attorney-client or attorney work product privilege, but including intracorporate documents) in the possession of the parent company relating to the period prior to suspension of coverage pursuant to paragraph 1 of this Annex.

e. The Covered Foreign Affiliate and its parent company shall make good faith efforts to obtain the information necessary for the preparation of the reports pursuant to subparagraph 2.c.

f. The Covered Foreign Affiliate shall, until termination of the foreign law prohibition, continue to make good faith efforts to obtain a waiver of such prohibition and the parent company shall keep the Department of Justice and the Federal Trade Commission informed in a timely fashion of such efforts.

3. The provisions of paragraph 2 will not apply in the event that the Department of Justice, bearing the burden of proof, shows that the Covered Foreign Affiliate knowingly encouraged or faciliated the creation of the foreign law prohibition or that the reports submitted by the parent company pursuant to subparagraphs 2.c or 2.f of this Annex were materally incomplete in light of the information that was available to, or could lawfully be obtained by, such parent company at the time of their submission.

4. The provisions of paragraph 2 will not apply unless, at least thirty days prior to suspension of coverage pursuant to paragraph 1 of this Annex (or contemporaneously with the onset of the international energy supply emergency, whichever is later), the Covered Foreign Affiliate shall have been instructed by its parent company:

a. to forward to such parent company a copy of all written communications, and of all written reports of oral communications, with other oil companies (not including any of the Covered Foreign Affiliate's affiliates);

b. to keep such parent company continuously infomed, at least in general terms, of its unwritten communications with other oil companies (not including the Covered Foreign Affiliate's affiliates); and

c. to forward to such parent company, at intervals of no more than three months, copies of the Covered Foreign Affiliate's other documents.

5. For purposes of this Annex, a "foreign law prohibition" shall be deemed to exist whenever compliance with any provision of section 8 would, to the extent such provision would otherwise be applicable to the Covered Foreign Affiliate, contravene (or, in the opinion of the competent foreign government authority, would contravene) the laws of the foreign country or political subdivision thereof having jurisdiction over such Covered Foreign Affiliate.

Appendix 2—Amendments to the Voluntary Agreement and Plan of Action to Implement the International Energy Program

Section 6(a)(1)(B) is amended to read: "The carrying out of the Second Plan of Action to Implement the International Energy Program, which is set out in Appendix B."

The second sentence of section 6(e)(1) is amended to read: "Except where an approved plan of action contains other provisions for recordkeeping and reporting to the U.S. Government with respect to actions taken to carry out the plan of action, each participant taking any joint or agreed action or agreeing to take any action pursuant to this subsection shall notify the Administrator and the Attorney General within 72 hours, or longer period as may be determined by the Administrator, after the end of the week in which such action is taken or agreed upon."

Section 9(b)(3) is amended to read: "Approval of any oil company's participation in this Agreement shall extend to actions of other companies which (i) are more than 50% owned, directly or indirectly, by the company to which approval is granted, (ii) own, directly or indirectly, more than 50% of the company to which approval is granted, or (iii) are more than 50% owned, directly or indirectly, by a person described in (ii), provided that the company to which approval is granted notifies the Administrator and

the Attorney General of each affiliate to be covered by this subsection, including the reasons for its inclusions and the nature of the company's ownership; and provided that neither the Administrator nor the Attorney General notifies the participant that he disapproves the coverage of such affiliate by this subsection."

Appendix 3—Correspondence Concerning Approval of the Second Plan of Action

(1) Letter of the Secretary of Energy to the Attorney General, dated October 14, 1987.

In accordance with section 252(d) of the Energy Policy and Conservation Act (EPCA) and sections 6(c)(1) and 9(a) of the "Voluntary Agreement and Plan of Action to Implement the International Energy Program," I herewith submit for your approval the "Second Plan of Action to Implement the International Energy Program," along with related implementing amendments to the Voluntary Agreement.

The Second Plan of Action and the implementing amendments were developed through consultations over a period of years among staffs of the Department of Energy, the Department of Justice, the Department of State, and the Federal Trade Commission, and representatives of the Secretariat of the International Energy Agency (IEA) and of U.S. oil companies participating in the Voluntary Agreement. The final drafts of these documents were considered by participating U.S. oil companies at a meeting of the IEA's Group of Reporting Companies in Washington, DC, on July 29, 1987. Upon the conclusion of that meeting the IEA Secretariat advised the Department of Energy that the U.S. companies favored proceeding with adoption of the Second Plan of Action. The Plan of Action was published in the **Federal Register** for public comment (52 FR 31704, August 21, 1987), and on September 22, 1987, we conducted a public hearing on the Plan.

Upon your approval, I intend to approve the Second Plan of Action in accordance with section 6(c)(1) of the Voluntary Agreement, and to have notice of my approval published in the **Federal Register**. We also will provide notice to the Voluntary Agreement participants of an intention to adopt the implementing amendments to the Voluntary Agreement, as required by section 11(b) of the Voluntary Agreement. We request that you adopt these amendments, pursuant to your authority under section 252(d)(1) of the EPCA, twenty days after our provision of such notice to the participating companies.

cc: Honorable George P. Shultz, Secretary of State
Honorable Daniel Oliver, Chairman, Federal Trade Commission
Mr. Charles F. Rule, Assistant Attorney General, Antitrust Division

(2) Letter of the Secretary of Energy to the Secretary of State, dated October 14, 1987.

I am writing to request your comments on the enclosed "Second Plan of Action to Implement the International Energy Program" and related implementing amendments to the "Voluntary Agreement and Plan of Action to Implement the International Energy Program." Simultaneously, I am forwarding these documents to the Attorney General for his approval; a copy of my letter to the Attorney General also is enclosed.

The Second Plan of Action and the implementing amendments were developed through consultations over a period of years among staffs of the Department of Energy, the Department of Justice, the Department of State, and the Federal Trade Commission, and representatives of the Secretariat of the International Energy Agency (IEA) and of U.S. oil companies participating in the Voluntary Agreement. The final drafts of these documents were considered by participating U.S. oil companies at a meeting of the IEA's Group of Reporting Companies in Washington, DC, on July 29, 1987. Upon the conclusion of that meeting the IEA Secretariat advised the Department of Energy that the U.S. companies favored proceeding with adoption of the Second Plan of Action. The Plan of Action was published in the **Federal Register** for public comment (52 FR 31704, August 21, 1987), and on September 22, 1987, we conducted a public hearing on the Plan.

Subject to the Attorney General's approval, I intend to approve the Second Plan of Action in accordance with section 6(c)(1) of the Voluntary Agreement, and to have notice of my approval published in the **Federal Register**. Thereafter, in accordance with section 252(d) of the Energy Policy and Conservation Act and section 11(b) of the Voluntary Agreement, the Voluntary Agreement would be formally amended to incorporate the Second Plan of Action.

It would be appreciated if you would address any comments which you may wish to make with respect to the Second Plan of Action or the implementing amendments to the Voluntary Agreement, both to the Attorney General and to me.

cc: Honorable Daniel Oliver, Chairman, Federal Trade Commission
Mr. Charles F. Rule, Assistant Attorney General, Antitrust Division

(3) Letter of the Secretary of Energy to the Chairman of the Federal Trade Commission, dated October 14, 1987.

In accordance with section 252(d) of the Energy Policy and Conservation Act (EPCA) and sections 6(c) (1) and (9) of the "Voluntary Agreement and Plan of Action to Implement the International Energy Program," I therewith submit for your comments the "Second Plan of Action to Implement the International Energy Program" along with related implementing amendments to the Voluntary Agreement. Simultaneously, I am forwarding these documents to the Attorney General for his approval; a copy of my letter to the Attorney General is enclosed.

The Second Plan of Action and the implementing amendments were developed through consultations over a period of years among staffs of the Department of Energy, the Department of Justice, the Department of State, and the Federal Trade Commission, and representatives of the Secretariat of the International Energy Agency (IEA) and of U.S. oil companies participating in the Voluntary Agreement. The final drafts of these documents were considered by participating oil companies at a meeting of the IEA's Group of Reporting Companies in Washington, DC, on July 29, 1987. Upon the conclusion of that meeting the IEA Secretariat advised the Department of Energy that the U.S. companies favored proceeding with adoption of the Second Plan of Action. The Plan of Action was published in the **Federal Register** for public comment (52 FR 31704, August 21, 1987), and on September 22, 1987, we conducted a public hearing on the Plan.

Subject to the Attorney Generals' approval, I intend to approve the Second Plan of Action in accordance with section 6(c)(1) of the Voluntary Agreement, and to have notice of my approval published in the **Federal Register**. Thereafter, in accordance with section 252(d) of the EPCA and section 11(b) of the Voluntary Agreement, the Voluntary Agreement would be formally amended to incorporate the Second Plan of Action.

It would be appreciated if you would address any comments which you may wish to make with respect to the Second Plan of Action or the implementing amendments to the Voluntary Agreement, both to the Attorney General and to me.

cc: Mr. Charles F. Rule, Assistant Attorney General, Antitrust Division

(4) Letter of the Secretary of State to the Secretary of Energy, dated November 13, 1987.

I am responding to your October 14 letter inviting comments on the "Second Plan of Action to Implement the International Energy Program". The Second Plan of Action, which represents the culmination of eight years of work by federal agencies, the IEA Secretariat, and representatives of the U.S. reporting companies, will update the original Voluntary Agreement and Plan of Action adopted in 1976. The Second Plan will establish a more secure and sound basis for implementing emergency international oil sharing as provided in the agreement on an International Energy Program.

Oil company participation in the IEA Sharing System would be essential for the effective and efficient operation of the system in the event of a major oil supply crisis. The Second Plan of Action represents a reasonable balance between the public interest in assuring competition and contract sanctity in the oil industry, and the public interest in safeguarding our economic, foreign policy, and national security objectives in the event of a major oil supply disruption. I therefore recommend its approval by you and the Attorney General as soon as possible. I am also sending a copy of this letter to Ed Meese.

(5) Letter of the Assistant Attorney General (Antitrust) to the Chairman of the Federal Trade Commission, dated November 9, 1987.

Secretary John S. Herrington of the Department of Energy sent a letter to the Attorney General on October 14 requesting his approval of the "Second Plan of Action to Implement the International Energy Program" and for related implementing amendments to the existing ""Voluntary Agreement and Plan of Action to Implement the International Energy Program." The request was submitted pursuant to section 252(d) of the Energy Policy and Conservation Act, which provides that before a plan of action can be made effective, it must be approved by the Attorney General, after consultation with the Federal Trade Commission. This letter constitutes a formal request for your agency's advice on this matter.

(6) Letter of the Assistant Attorney General (Antitrust) to the Secretary of Energy, dated December 18, 1987.

This letter is in response to your letter of October 14 by which you seek approval from the Department of Justice ("Department") of the "Voluntary Agreement and Plan of Action to Implement the International Energy Program" ("Second Plan of Action" or "Plan") and related implementing amendments. Section 252(d) of the Energy Policy and Conservation Act and sections 6(c)(1) and 9(a) of the Second Plan of Action require such approval before the Second Plan of Action can be put into effect. Those sections also preclude the Department from approving the Plan or any amendments to it until it seeks the advice of the Federal Trade Commission. The Department did seek such advice and, on December 7, 1987, the Federal Trade Commission advised the Department of its approval of the Second Plan of Action and the implementing amendments.

As you note in your letter, the Department participated in the development of the Second Plan of Action. Our role has been to insure that the emergency allocation system implemented under the Plan cannot be used by participating oil companies to collude on prices. The Second Plan of Action, which is the product of extensive, multi-year negotiations among U.S. oil companies, the Secretariat of the International Energy Agency, and four government agencies, provides the necessary assurances. The Plan minimizes the risks to competition by restricting the types of data that can be exchanged by participating oil companies and by mandating extensive recordkeeping of communications between them. Accordingly, the Plan contains within it sufficient safeguards, and the Department hereby approves it.

For the same reasons, the Department approves the implementing amendments to the Voluntary Agreement. We will not adopt the amendments, however, until twenty days after you publish a notice of our intention to adopt them. This procedure is in accordance with section 11(b) of the Voluntary Agreement.

(7) Letter of the Secretary, Federal Trade Commission, to the Assistant Attorney General (Antitrust), dated October 7, 1987.

We have received your letter requesting the Commission's advice on the adoption of the proposed Second Plan of Action and implementing amendments to the Voluntary Agreement. Section 252(d) of the Energy Policy and Conservation Act provides that plans of action may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission.

As required by section 252(d), the Commission, through its staff, has participated from the beginning in the preparation of the proposed Second Plan of Action. The plan, in final form, resulted from continuing consultations between the Department of Energy, the Department of Justice, the Department of State, and the Commission, at the staff level. It was, moreover, subject to comments from interested parties who cared to comment, and was the subject of a hearing open to the public, following publication in the **Federal Register** on August 21, 1987.

The Commission hereby advises that it has no objection to your approving the Second Plan of Action and implementing Voluntary Agreement amendments referred to in your letter of November 9, 1987. By registering no objection to the Plan, including Annex II, the Commission does not mean to suggest that it regards representations made by foreign governmental authorities as entitled to similar deference or legal treatment outside the Plan in the context of a foreign blocking statute, a foreign sovereign compulsion defense, or other circumstances.

In accordance with section 252(d), a copy of this letter will be published in the **Federal Register.**

By direction of the Commission,

(8) Letter of the Secretary, Federal Trade Commission, to the Secretary of Energy, dated December 7, 1987.

We have received your letter submitting the proposed Second Plan of Action to implement the International Energy Program and the implementing amendments to the Voluntary Agreement. Section 252(d) of the Energy Policy and Conservation Act provides that plans of action may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commisison.

As required by section 252(d), the Commission, through its staff, has participated from the beginning in the preparation of the proposed Second Plan of Action. The plan, in final form, resulted from continuing consultations between the Department of Energy, the Department of Justice, the Department of State, and the Commission, at the staff level. It was, moreover, subject to comments from interested parties who cared to comment, and was the subject of a hearing open to the public, following publication in the **Federal Register** on August 21, 1987.

The Commission has advised Assistant Attorney General Charles F. Rule that it has no objection to his approving the Second Plan of Action and implementing Voluntary Agreement amendments. In its letter to Mr. Rule, the Commission noted, however, that by registering no objection to approval or implementation of the Plan, including Annex II, the Commission does not necessarily mean to suggest that it believes representations made by foreign governmental authorities should be entitled to similar deference or legal treatment outside the Plan in the context of a foreign blocking statute, a foreign sovereign compulsion defense, or any other circumstances. A copy of the Commission's letter to Mr. Rule is enclosed.

By direction of the Commission,

[FR Doc. 88-2143 Filed 2-1-88; 8:45 am]
BILLING CODE 6450-01-M

Innovative Control Technology Advisory Panel; Public Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Innovative Control Technology Advisory Panel.

Date and Time: February 25, 1988—9:00 a.m.–5:00 p.m.

Place: Loews' L'Enfant Plaza Hotel, 408 L'Enfant Plaza SW., Washington, DC 20024.

Contact: Sandy Guill, Department of Energy, Environment, Safety and Health (EH-22), 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586-4628.

Purpose of the Panel: To advise the Secretary of Energy on how to best achieve DOE's expanded innovative clean coal technologies program's objectives of reducing costs and improving efficiency by expanding emissions control options beyond those now available.

Tentative Agenda: Briefings and discussions of:

- Panel report on Factors to be Considered in the First Innovative Clean Coal Technology Program (ICCTP) Solicitation
- Congressional Appropriation for First Innovative Clean Coal Technology Program (ICCTP) Solicitation
- Draft Program Opportunity Notice for the First ICCTP Solicitation
- Public Comment

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 27, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-2041 Filed 2-1-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA88-1-2-002]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

January 27, 1988.

Take notice that on January 22, 1988, East Tennessee Natural Gas Company (East Tennessee) filed Thirty-Fourth Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1988.

East Tennessee states that the purpose of these revisions is to track changes in the rates of Tennessee Gas Pipeline Company pursuant to the Commission's Order of December 31, 1987, accepting East Tennessee's previous Purchased Gas Adjustment (PGA) filing in this docket. East Tennessee states that the effect of these changes is to reduce its Demand Rates by 32 cents per dekatherm and increase its Gas Rates by 3.28 cents per dekatherm. East Tennessee further states that it has recomputed and restated its Unrecovered Gas Cost account as of September 30, 1987, by modifying its income tax adjustments to the carrying charges. East Tennessee further states that this recomputation has no effect on its rates.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 3, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2090 Filed 2-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-73-000 and CI88-91-000]

Shell Oil Co. and Shell Offshore Inc.; Applications for Permanent Abandonment and Permanent Blanket Certificate of Public Convenience and Necessity With Pregranted Abandonment

January 27, 1988.

Take notice that on October 29, 1987, as supplemented on December 7, 1987, Shell Oil Company (Shell) and Shell Offshore Inc. (SOI) (Applicants), P.O. Box 2463, Houston, Texas 77001, filed applications pursuant to section 7 of the Natural Gas Act and § 2.77[1] of the Commission's rules for permanent abandonment in Docket No. CI88-91-000 of nine sales of gas to Southern Natural Gas Company (Sonat), as shown on the appendix attached hereto, and requesting a permanent blanket certificate with pregranted abandonment in Docket No. CI88-73-000 authorizing the sale for resale in interstate commerce of the released gas together with waiver of Part 154 of the Commission's Regulations requiring the establishment of rate schedules.

Applicants state in support of their applications that on October 1, 1987, agreement was reached with Sonat with respect to both past and future take-or-pay obligations of Sonat. Applicants assert that the agreement provided for a payment by Sonat and for amending contracts, as contemplated in 18 CFR 2.76. Applicants state that there are matters covered by the settlement which are confidential. The request for abandonment is conditioned upon the Commission granting an application by Sonat pending in Docket No. CP88-54-000 for authority to transport gas for Applicants and others. Applicants request that the commission authorize abandonment of gas-well gas effective upon the date of issuance of the order and abandonment of oil-well gas effective on April 1, 1988. Applicants state that they are requesting separate effective dates because Article 7 of their April 1, 1987, release agreement with Sonat requires Sonat to purchase all oil-well gas during the period from November 1, 1987, through March 31, 1988. Inasmuch as the release agreement permits its cancellation if the requested authorizations have not been issued by March 1, 1988, Applicants request expeditious issuance not later than February 29, 1988. Applicants state that deliverability is approximately 91.9 MMcf/da of NGPA section 104 flowing gas (8%), recompletion or replacement contract gas (.2%), 1973-1974 biennium gas (26.1%), post-1974 gas (17.3%), 102(d) gas (34%) and 109 gas (14.4%).

Since Applicants have requested that their applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Comission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (40 FERC ¶ 61,172 (1987)). These interim regulations became effective on September 15, 1987.

APPENDIX

Shell Oil FERC gas rate schedule No.	Certificate docket No.	Field	County	State
352	CI68-531	Tallahalla Creek	Smith	Mississippi.

Shell Offshore Inc. FERC gas rate schedule No.	Certificate docket No.	Offshore Louisiana block
10	CI67-808	West Delta 105, *et al.*
15	CI69-242	Main Pass 152, *et al.*
32	CI76-3	Grand Isle 76.
41	CI78-389	Grand Isle 75.
49	CI78-1167	South Marsh Island 149.
52	CI79-546	Mississippi Canyon 194, *et al.*
53	CI79-114	Mississippi Canyon 311.
75	CI85-165-000	Main Pass 304.

[FR Doc. 88-2091 Filed 2-1-88; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3322-5]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method; Determination

Notice is hereby given that on December 17, 1987, the Environmental Protection Agency received an application from Monitor Labs, Incorporated, 10180 Scripps Ranch Boulevard, San Diego, California 92131, to determine if its Model 8830 CO Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR Part 53 (40 FR 7049, 41 FR 11255, 52 FR 24727). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88-2076 Filed 2-1-88; 8:45 am]
BILLING CODE 6560-50-M

[OW-FRL-3322-9]

Initial Guidance; State Water Pollution Control Revolving Fund; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the "Initial Guidance—State Water Pollution Control Revolving Fund." The purpose of the document is to provide States with the information necessary to apply for and receive capitalization grant awards as authorized by Title VI of the Clean Water Act.

ADDRESSES: Copies of the guidance can be obtained by contacting Richard Kuhlman, U.S. Environmental Protection Agency, Office of Municipal Pollution Control, Planning and Analysis Division (WH-546), 401 M Street, SW., Washington, DC 20460; (202) 382-7256.

FOR FURTHER INFORMATION CONTACT: H. William Kramer, Chief, Policy and Analysis Branch (202) 382-7256 or Alan Hais, Acting Director, Planning and Analysis Division (202) 382-5856.

SUPPLEMENTARY INFORMATION: The guidance represents the Environmental Protection Agency's approach to implementation of Title VI of the Clean Water Act, until interim final regulations on selected provisions in the guidance are issued later this year. The guidance will assist EPA Regions in their review of proposed State Water Pollution Control Revolving Fund programs and provide States with initial guidance on applying for Capitalization Grants.

Upon receipt of a copy of the guidance, State representatives should direct their questions to the Regional contacts identified in Appendix B of the guidance.

Dated: January 27, 1988.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 88-2084 Filed 2-1-88; 8:45 am]
BILLING CODE 6560-50-M

Science Advisory Board, Research Strategies Subcommittee Sources, Transport and Fate Work Group; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Sources, Transport and Fate Group of the Science Advisory Board's Research Strategies Subcommittee will meet from 9:00 a.m. to 5:00 p.m. on February 19-20, at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC in Room 1103 West Tower. The purpose of the Research Strategies Subcommittee is to advise the Administrator of the Environmental Protecton Agency on the development of research strategies needed to enhance the Agency's ability to acquire scientific and technical information to support regulatory decisionmaking, and to identify emerging environmental issues. The Sources, Transport and Fate Work Group will evaluate environmental contaminants from both a media-specific and a multi-media basis. The purpose of this specific meeting is to enable the Work Group to revise draft working papers and conduct additional planning to develop a final report.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Dr. Terry F. Yosie, Director, Science Advisory Board, at 202-382-4126 of Joanna Foellmer by February 12, 1988.

Dated: January 26, 1988.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 88-2077 Filed 2-1-88; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51700A; FRL-3322-3]

Certain Chemical; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review periods for an additional 90-days for premanufacture notices (PMNs) P–88–134 and 138, under the authority of section 5 (c) of the Toxic Substances Control Act (TSCA). The review periods will now expire on April 19, 1988.

FOR FURTHER INFORMATION CONTACT: James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202–382–3374).

SUPPLEMENTARY INFORMATION: On October 23, 1987, EPA received PMNs 88–134 and 88–138 for substances, generically identified as an acrylate polymer and a methacrylate polymer respectively. The submitter claimed the submitter identity, specific chemical identity, production volume, use information, process information, and other information to be confidential business information. Notice of receipt was published in the **Federal Register** of November 6, 1987 (52 FR 42721 and 42722). The 90-day review periods are scheduled to expire on January 20, 1988.

Based on its analysis, EPA finds that there is a possibility that the substances submitted for review in these PMNs may be regulated under TSCA. The Agency requires an extension of the review periods, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review periods for an additional 90 days, to April 19, 1988.

PMNs are available for public inspection in Rm. NE–G004, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: January 20, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–2078 Filed 2–1–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

January 22, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0041.

Title: Application for Authority to Operate a Broadcast Station by Remote Control or Make Changes in a Remote Control Authorization.

Form No.: FCC 301–A.

The approval on form FCC 301–A has been extended through 12/31/90. The July 1985 edition with a previous expiration date of 12/31/87 will remain in use until updated forms are available.

OMB No.: 3060–0048.

Title: Application for Consent to Transfer of Control of Corporation Holding Common Carrier or Non-Common Carrier Radio Station Construction Permit or License.

Form No.: FCC 704.

The approval on form FCC 704 has been extended through 11/30/90. The September 1985 edition with a previous expiration date of 11/30/87 will remain in use until updated forms are available.

OMB No.: 3060–0059.

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference.

Form No.: FCC 740.

A revised form FCC 740 has been approved for use through 10/31/90. The October 1984 edition with a previous expiration date of 10/31/87 will remain in use until revised forms are available.

OMB No.: 3060–0093.

Title: Application for Renewal of Radio Station License in Specified Services (FCC Rule Parts 5, 21, 22, 23, and 25).

Form No.: FCC 405.

The approval on form FCC 405 has been extended through 11/30/90. The November 1984 edition with a previous expiration date of 11/30/87 will remain in use until updated forms are available.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–2040 Filed 2–1–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–810–DR]

Territory of Guam; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of Guam (FEMA–810–DR), dated January 20, 1988, and related determinations.

DATED: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

Notice: Notice is hereby given that, in a letter dated January 20, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the Territory of Guam caused by Typhoon Roy on January 11–12, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288. I, therefore, declare that such a major disaster exists in Guam.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288 for Public Assistance will be cost shared. The final terms of this cost-sharing arrangement can include per capita cost-sharing.

You are authorized to provide Individual Assistance. Pursuant to section 408(b) of PL 93–288, you are authorized to advance to the Territory of Guam its share of the Individual and Family Grant program. This advance would have to be repaid to the United States by the Territory of Guam only to the extent the Governor's request for a waiver is denied.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. Roy Kite of the Federal Emergency Management Agency to act as the Federal

Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Territory of Guam to have been affected adversely by this declared major disaster:

The Territory of Guam for Individual Assistance and Public assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-2054 Filed 2-1-88; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-811-DR]

Commonwealth of the Northern Mariana Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA-811-DR), dated January 20, 1988, and related determinations.

DATED: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated January 20, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands caused by Typhoon Roy on January 11-12, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288 for Public Assistance will be cost shared. The final terms of this cost sharing arrangement can include per capita cost sharing.

You are authorized to provide Individual Assistance. Pursuant to section 408(b) of PL 93-288, you are authorized to advance to the Commonwealth of the Northern Mariana Islands its share of the Individual and Family Grant program. This advance would have to be repaid to the United States by the Commonwealth of the Northern Mariana Islands only to the extent a waiver is not appropriate.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of the Northern Mariana Islands to have been affected adversely by this declared major disaster:

The Island of Rota for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-2055 Filed 2-1-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011166

Title: Australia New Zealand Direct Line/Hoegh Line (U.S.A.) Inc. Reciprocal Space Charter Agreement

Parties: Australia New Zealand Direct Line/Hoegh Line (U.S.A.) Inc.

Synopsis: The proposed agreement would permit the parties to charter space aboard one another's vessels in the trade between ports on the Pacific Coast of North America and ports in Australia. It would also permit the interchange of containers and related equipment for use in the trade.

By Order of the Federal Maritime Commission.

Dated: January 27, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-2062 Filed 2-1-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Establishment of Drug Abuse AIDS Research Review Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 501(j), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the establishment, on January 25, 1988, of the following committee:

Drug Abuse AIDS Research Review Committee

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Date: January 26, 1988.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-2082 Filed 2-1-88; 8:45 am]

BILLING CODE 4160-20-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug and Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 50 FR 36678, September 9, 1985) is amended to reflect an organization change in the Food and Drug Administration (FDA).

FDA is retitling the Office of the Executive Assistant (OEA) as the Office

of Executive Operations (OEO). This new title will more accurately reflect the functions and activities of the office. OEO will remain in the Immediate Office of the Commissioner.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraph (a-1), Office of Executive Operations (HFA-D).

2. Insert new subparagraph (a-1), Office of Executive Operations (HFA-D).

(a-1) *Office of Executive Operations (HFA-D).* Coordinates identification of and expedites development and implementation of the agency's highest program priorities for the Commissioner.

Coordinates and facilities, for the Commissioner, program initiatives and resolution for program issues involving more than one component of the agency.

Advises the Commissioner, Deputy Commissioner, other Policy Board members and key agency officials on all activities that affect agencywide programs, projects and initiatives.

Performs special agencywide assignments involving complex problems and issues related to agency programs, strategies and activities.

Assures that materials in support of recommendations presented for the Commissioner's consideration are comprehensive, accurate, fully discussed and encompass the issues involved.

Reviews, analyzes and evaluates pertinent aspects of the agency's ongoing programs and consults with appropriate Policy Board members to insure a comprehensive approach toward identifying and resolving problems.

Provides direct support to the Commissioner and Deputy Commissioner, including briefing material, background information for meetings, and responses to outside inquiries.

Provides correspondence control for the Commissioner and controls and processes all agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warning and bottleneck problems with executive correspondence.

Tracks Federal Register documents and responses to executive communication memoranda directed, to, of interest to, the Commissioner and Deputy Commissioner.

Informs appropriate agency staff of the decisions and assignments made by the Commissioner and Deputy Commissioner, reviews and coordinates all of the Commissioner's agency communications and concurrences, and secures background data and revisions from appropriate agency components.

Coordinates the agency's communications with PHS and HHS, including correspondence for the Assistant Secretary for Health and Secretarial signatures.

Reviews Commissioner's correspondence for program issues, and monitors testimony with program implications.

Prepares speeches for the Commissioner and Deputy Commissioner, including drafting of texts and obtaining appropriate agency clearances.

Date: January 25, 1988.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 88-2132 Filed 2-1-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-11; C-28251]

Proposed Continuation of Withdrawals; Colorado

January 25, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that the orders which withdrew lands for an indefinite period of time for the Dolores Project, McPhee Dam and Reservoir, be modified and the withdrawals be continued for 100 years insofar as they affect 1,053.81 acres of public land 3,839.02 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before May 2, 1988.

ADDRESS: Comments should be addressed to State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Bureau of Reclamation proposes that the existing withdrawals made by two Secretarial Orders dated December 30, 1942, one Secretarial Order dated January 4, 1943, as amended, Public Land Order No. 2800, and Public Land Order No. 3608, for an indefinite period of time, be modified to expire in 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect the following described public and National Forest System lands:

New Mexico Principal Meridian

T. 37 N., R. 15 W.,
Sec. 7, a parcel of public land in E½NW¼ SE¼.
T. 38 N., R. 16 W.,
Sec. 1, lots 1, 2, 3, 4, S½N½ and N½SE¼;
Sec. 2, S½NE¼, SE¼NW¼, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 11, N½N½;
Sec. 12, N½N½ and SE¼NE¼.

The areas described aggregate 1,053.81 acres of public land in Montezuma County.

New Mexico Principal Meridian

San Juan National Forest

T. 38 N., R. 15 W.,
Sec. 2, lots 3 and 4, and NW¼SW¼NW¼;
Sec. 3, lots 1, 3, and 4, S½N½, SW¼, NW¼NE¼SE¼, and NW¼SE¼;
Sec. 4, S½SW¼ and SE¼;
Sec. 5, S½S½;
Sec. 6, lots 1 thru 6, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 3 and 4, N½NE¼, NE¼NW¼, and W½SE¼;
Sec. 8, N½N½;
Sec. 9, N½N½;
Sec. 10, N½NW¼;
Sec. 17, NW¼SW¼;
Sec. 18, lot 1, E½NE¼, SE¼NW¼, and W½SE¼;
Sec. 19, W½NE¼; N½SE¼, and SE¼SE¼;
Sec. 20, W½E½W½ and SE¼SE¼;
Sec. 21, E½SW¼; SW¼SW¼, and NW¼SE¼;
Sec. 28, W½NW¼;
Sec. 29, NE¼, E½W½, and N½SE¼.
T. 39 N., R. 15 W.,
Sec. 34, NE¼NW¼, S½NW¼, and SW¼;
Sec. 35, S½SW¼ and W½SW¼SE¼.

The areas described aggregate 3,839.02 acres of National Forest System land in Montezuma County.

The purpose of these withdrawals is for the administration and protection of the Dolores Project, McPhee Dam and Reservoir. No change is proposed in the purpose or segregative effect of the withdrawals. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and

continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88-2061 Filed 2-1-88; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-020-08-4212-13;A-23176]

Realty Action; Exchange of Public Lands, Maricopa, Pinal & Mohave Counties, AZ

All or part of the following described sections containing federal lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 2 N., R. 7 W.,
Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15, 16, 17, 18, 19, 20, 21, 30, 31 and 32.
T. 3 N., R. 7 W.,
Sec. 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35 and 36.
T. 2 N., 8 W.,
Sec. 1, 2, 4, 9, 10, 11, 12, 13, 14, 15, ,17, 18, 23, 24, 25 ad 34.
T. 3 N., R. 8 W.,
Sec. 36.
T. 5 N., R. 5 W.,
Sec. 6, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33.
T. 10 S., R. 11 E.,
Sec. 9.
T. 7 S., R. 12 E.,
Sec. 21, 22, 23, 25, 26, 27, 28, 29, 31, 33, 34 and 35.
T. 8 S., R. 12 E.,
Sec. 6, 18, 19, 26, 32 and 33.
T. 6 S., R. 13 E.,
Sec. 25.
T. 7 S., R. 13 E.,
Sec. 3, 4, 5, 8, 17, 22, 27 and 34.
T. 8 S., R. 14 E.,
Sec. 9 and 15.
T. 16 N., R. 19 W.,
Sec. 18.
T. 16 N., R., 20 W.,
Sec. 6, 15, 17 and 18.
T. 16 N., R. 20½ W.,
Sec. 1, 3, 10, 11, 12, 13, 14 and 15.
T. 16½ N., R. 20 W.,
Sec. 30 and 32.
T. 16½ N., R. 20½ W.,
Sec. 22, 23, 25, 26, 27, 34 and 35.

Comprising 52,958 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,

District Manager.

Date: January 25, 1988.

[FR Doc. 88-2134 Filed 2-1-88; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

[FES 88-3]

Availability of Final Environmental Impact Statement; Yukon Delta National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of a final environmental impact statement for the proposed Comprehensive Conservation Plan, Wilderness Review, and Wild River Plan for Yukon Delta National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared a Final Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Yukon Delta National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The Plan describes five alternatives for managing the refuge as well as the environmental consequences of implementing each alternative. In the document the suitability of all federal lands in the refuge is reviewed for possible wilderness designation and inclusion in the National Wilderness Preservation System.

DATES: A Record of Decision will be issued no sooner than March 18, 1988.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A summary of the Plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete Plan will be sent to all those who responded to the draft and to all federal and state agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Copies of the complete Plan are available at the office of the Regional Director, at the above address; at the Yukon Delta National Wildlife Refuge, 807 State Highway, Bethel, Alaska 99559; and for review, at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets NW., Washington, DC 20240;
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232;
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103;
U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;
U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303;
U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and
U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225.

Dated: January 21, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-2033 Filed 2-1-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Alaska Outer Continental Shelf; Availability of the Environmental Assessment for Oil and Gas Lease Sale 97, Beaufort Sea

The regulations, 40 CFR 1502.9(c)(1), for implementing the National Environmental Policy Act, as amended, require that a Federal Agency "shall

prepare supplements to either the draft or final Environmental Impact Statement (EIS) if: (i) The Agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

The final EIS for oil and gas lease Sale 97, Beaufort Sea, provided an analysis based on original mean conditional resource estimates. As a result of new data and new analysis that have become available, revised mean conditional resource estimates are now available. Also, there has been a change in the method used to analyze deferral alternatives. An Environmental Assessment (EA) has been prepared which analyzes these two factors.

The Minerals Management Service has reviewed the information in the EA and the information in the final EIS for this proposed sale and has determined that the given changes will not significantly affect (40 CFR 1508.27) the quality of the human environment and that a supplemental EIS is not required. Copies of the EA may be obtained by contacting the Regional Director, Alaska Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, telephone (907) 261–4080 or by telephone request to Richard H. Miller, Minerals Management Service, Washington, DC, (202) 343–6264.

Date: January 27, 1988.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–2031 Filed 2–1–88; 8:45 am]

BILLING CODE 4320–MR–M

Pacific Outer Continental Shelf Region; Extension of the Public Comment Period for the Draft Environmental Impact Statement for Proposed Lease Sale 91 in the Northern California Planning Area

On December 11, 1987, the Minerals Management Service made available to the public a draft Environmental Impact Statement (EIS) relating to proposed 1989 Outer Continental Shelf Oil and Gas Lease Sale 91 in the Northern California Planning Area (DES 87–37). A Notice of Availability of this draft EIS was published in the **Federal Register** on December 16, 1987 (52 FR 47764).

In response to a request from the Governor of California, the Department of the Interior decided that the public comment period on the draft EIS should be extended by 30 days. This notice extends the closing of the public comment period for the draft EIS on proposed lease Sale 91 from February 12, 1988, to March 14, 1988. Comments on the draft EIS should be addressed to: Regional Director, Minerals Management Service, Sale 91 Comments, 1340 West Sixth Street, Los Angeles, California 90017.

John B. Rigg,

Associate Director for Offshore Minerals Management.

January 28, 1988.

[FR Doc. 88–2095 Filed 2–1–88; 8:45 am]

BILLING CODE 4320–MR–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Mediterranean Fruitfly Eradication Program in Guatemala; Public Meeting

The U.S. Agency for International Development (A.I.D.) has been requested to approve the use of Pub. L. 480 Title I generated local currency to support a Mediterranean Fruitfly eradication program in Guatemala, Central America. This program would include aerial spraying with baited malathion, sterile fly release, methyl bromide fumigation commodity treatment and spraying of vehicles passing through quarantine lines with d-phenothrin.

Prior to approving the use of local currency funds for this program, A.I.D. has determined that it will undertake a detailed environmental impact assessment. This six-month study began January 5, 1988 and will be completed by July 5, 1988. While not a legal requirement, in order to respond to public interest and explain the environmental impact assessment process to the public, and to permit written comment, A.I.D., in conjunction with the Guatemalan Presidential Commission on Environment (CONAMA) announce a public meeting to be held in Guatemala City, Guatemala on February 18, 1988. Total participation in the meeting will be limited to 100 people and it will be in the format of a three hour briefing with no question and answer session. Written comments from either those attending or those unable to attend are invited and will be reviewed by the environmental impact assessment contractor (The Consortium for International Crop Protection), A.I.D. and the government of Guatemala. Comment format should include the commentor's name, organization, address, a brief statement of why the commentor is interested in the environmental assessment and/or the eradication program, and then any constructive information or comments which may be of use in the environmental impact assessment process. Those interested in attending should write by February 26, 1988 to James Hester, Chief Environmental Officer, Bureau for Latin America and the Caribbean, Room 2239–NS, U.S. Agency for International Development, Washington, DC 20523. Those interested in commenting should submit their written comments no later than February 29, 1988.

Dated: January 29, 1988.

James S. Hester,

Chief Environmental Officer, Bureau for Latin America and the Caribbean, U.S. Agency for International Development.

[FR Doc. 88–2164 Filed 2–1–88; 8:45 am]

BILLING CODE 6116–01–M

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty-Sixth Meeting of the Board for International Food and Agricultural Development (BIFAD) on February 10, 1988.

The purpose of the Meeting is to hear the presentation of a report from the BIFAD Environment and Natural Resources Task Force. The presentation will include an overview of development problems, a discussion of concepts and definitions, possible strategies for achieving sustainability, and conclusions and recommendations.

The February 10, 1988 Meeting will be held in the Pan American Health Organization building, 525 Twenty-Third Street, NW. Washington, DC 20037. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, Washington, DC 20523, or telephone him on (703) 235–8929.

This notice has been several days delayed in reaching the Office of the Federal Register because for the majority of the past two weeks the Senior BIFAD Staff has been out of town attending the BIFAD Title XII Seminars.

Date: January 29, 1988.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 88-2163 File 2-1-88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31215]

Railroad Operation; Chicago, Missouri & Western Railway Co.; Trackage Rights; Chicago South Shore and South Bend Railroad Co.; Exemption

Chicago South Shore and South Bend Railroad (South Shore) has agreed to grant trackage rights to Chicago, Missouri & Western Railway Company (CM&W), between milepost 69.5 at the Illinois/Indiana State line at Burnham Yard and milepost 75.5 at Kensington Station in Chicago, IL, a total distance of approximately 6 miles for the purpose of interchanging traffic at Burnham Yard with carriers other than South Shore. The trackage rights became effective on January 20, 1988. CM&W already had trackage rights over the involved line for the sole purpose of interchanging traffic with South Shore.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Tracking Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1920 Filed 2-1-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Johnson Matthey, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 4, 1988, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pethidine (meperidine) (9230)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 3, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 26, 1988.

[FR Doc. 88-2101 Filed 2-1-88; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1059-88]

Asylum Adjudications Procedure Change

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Change in procedure in Asylum adjudications.

SUMMARY: Beginning November 2, 1987, the Bureau of Human Rights and Humanitarian Affairs (BHRHA) in the Department of State will no longer issue an advisory opinion for each request submitted by the Immigration and Naturalization Service. They will, however, respond to each case notifying the Immigration Service of their disposition. For each request for an advisory opinion, Service officers will receive one of the following three responses: (1) BHRHA will not be able to provide information which would supplement that found in the "Country Conditions" Reports published by the Department of State; (2) a general opinion concerning the nationality or group in question which will supplement information found in the "Country Conditions"; or, (3) an actual individual advisory opinion as was previously issued on each case. This procedure modifies Operating Instruction 208.8(e) and District Directors of the Immigration Service have been instructed to proceed to a final determination on an asylum request when BHRHA has indicated that no opinion will be provided. Asylum adjudicators have been instructed that in cases where they are unable to make a final decision without input from the Department of State, they are to pose specific questions which will be addressed by BHRHA.

FOR FURTHER INFORMATION CONTACT: Ralph Thomas, Deputy Assistant Commissioner, Refugee, Asylum and Parole, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone (202) 633-5463.

SUPPLEMENTARY INFORMATION: By letter dated October 21, 1987, Mr. Edward Wilkinson, Director, Office of Asylum Affairs, Bureau of Human Rights and Humanitarian Affairs, advised that, due to budgetary constraints, BHRHA would no longer be able to provide an advisory opinion for each and every application for political asylum referred to that office. He further stated that, given these circumstances, it would be their goal to address only those cases where input from BHRHA would provide information not routinely available to the District Director. Therefore, the decision was made to screen incoming cases into three categories: (1) Cases where the "Country Conditions" Reports would provide adequate information; (2) cases where "Country Conditions" should be supplemented by a generic response, not specifically tailored to an individual application but which would be useful in understanding the human rights situation in the applicant's country of nationality; and (3) cases where an individually prepared advisory opinion would be essential. Mr. Wilkinson stated that the failure to respond individually to each case as they have done in the past, should not be taken to mean that BHRHA thought the case to be without merit. He stated that "(i)t would simply mean that we believe the current State Department *Country Conditions Reports on Human Rights Practices* to contain sufficient information to make an informed judgment on the matter.".

Upon receipt of the foregoing information, Ms. Delia B. Combs, Assistant Commissioner, Refugee,

Asylum and Parole in the Immigration Service, notified field offices of the new procedures. This was done by cable on October 30, 1987, as Mr. Wilkinson had advised that the new system of responding would begin November 2, 1987. This new procedure modifies Operating Instruction 208.8(e).

Dated: December 9, 1987.

Ronald A. Brooks,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88-2099 Filed 2-1-88; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Dance/Film/Video Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance/Film/Video Section) to the National Council on the Arts will be held on February 17 and 18, 1988, from 9:00 a.m.-7:00 p.m.; and on February 19, 1988, from 9:00 a.m.-5:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC. 20506.

If time permits, a portion of this meeting will be open to the public on February 19, 1988, from 3:00 p.m.-5:30 p.m. for a policy discussion.

The remaining sessions of this meeting on February 17 and 18, from 9:00 a.m.-7:00 p.m. and on February 19, 1988, from 9:00 a.m.-3:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-2028 Filed 2-1-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on February 18, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, February 18, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will review Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Material," and other matters.

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 identified below as far in advance as 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. Elpidio Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 28, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-2125 Filed 2-1-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Joint Subcommittees on Scram Systems Reliability and Core Performance; Meeting

The ACRS Subcommittees on Scram Systems Reliability and Core Performance will hold a joint meeting on February 19, 1988, Room 1046, 1717 H Street, NW. Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, February 19, 1988–8:30 a.m. until the conclusion of business

The Subcommittees will review the current status of LWR plant operations (core reload designs, etc.) as they impact on core reactivity control operational limits (e.g., moderator temperature coefficients) in general, and ATWS analyses in particular.

Oral statements may be presented by members of the public with 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 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 members, Mr. Paul Boehnert or Mr. Dean Houston (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated 28, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–2126 Filed 2–1–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–13435, ASLBP No. 88–559–01–SC]

Finlay Testing Laboratories, Inc.; Hearing

January 27, 1988.

Before Administrative Judges: Robert M. Lazo, Chairman; Glenn O. Bright, Richard F. Cole.

On September 21, 1987, the Deputy executive Director for Regional Operations issued against Finlay Testing Laboratories, Inc. ("Licensee") an Order Suspending Licensing (Effective Immediately) (published at 52 FR 36479, September 29, 1987). The order recited that on August 31, 1987, the NRC Staff commenced an investigation into the Licensee's activities based upon allegations received by the Staff. Relying upon the results of an initial investigation by the NRC's Office of Investigations ("OI"), the Staff determined that on the two occasions that were the subject of the allegations the Licensee had transported licensed material in violation of U.S. Department of Transportation ("DOT") and NRC regulations. The regulations in question (49 CFR 173.448(f) and 10 CFR § 71.5) prohibit the transportation of radioactive material, with execptions not relevant here, aboard passenger-carrying aircraft. The order also noted the failure on both of these occasions to use required shipping papers and labels. *See* 10 CFR § 71.5. While noting that the OI investigation was continuing, the Staff concluded on the basis of information from the initial investigation that the violations appeared to be deliberate, raising significant doubts as whether the Licensee is able or willing to comply with the Commission's requirements to protect the public health and safety. Therefore, the Deputy Executive Director for Regional Operations, pursuant to 10 CFR § 2.201(c) and 2.202(f), suspended on an immediately effective basis all activities authorized under the license.

The order further noted that, pursuant to 10 CFR 2.202(b), the Licensee might file an answer showing cause why license should not have been suspended and might also request a hearing on the order. If a hearing were requested by the Licensee (or any other person adversely affected[1]), the Commission would issue an order designating the time and place for any hearing. The issue to be considered at any such hearing would be whether the suspension order should be sustained.[2]

On October 5, 1987, the Licensee filed an "Answer; Request for Rescission or Relaxation of Order; Request for Hearing." Therein, the Licensee admitted that the improper shipments to and from the island of Hawaii in February 1987 occurred, as recited in the order. The Licensee also admitted that the DOT's labeling requirements were not met with respect to the August 18, 1987, shipment to Johnston Island, as recited in order, but denied that it violated DOT regulations by shipping the radiographic device on a military flight that also carried passengers. The Licensee denied that Gordon Finlay, President and owner of the Licensee, had any knowledge of: (1) The repackaging of the radiographic device involved in the Johnston Island shipment and the failure to have properly labelled the resulting package and (2) the improper shipment of a radiographic device to the island of Hawaii.

Wherefore, it is ordered in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, and please take notice that an evidentiary hearing in this proceeding shall convene at 10:00 a.m., local time, Wednesday, March 9, 1988, at: Room 3322, U.S. Coast Guard Legal Office, PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu, HI 96850.

The hearing shall be conducted continuously day to day until all evidence on matters outstanding has been received or until continued by further order of the Board.

Members of the public are invited to attend the hearing.

Dated at Bethesda, Maryland, this 27th day of January, 1988.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 88–2124 Filed 2–1–88; 8:45 am]

BILLING CODE 7590–01–M

[1] No other person requested a hearing on the order.

[2] The order further stated that an answer or request for hearing would not stay the immediate effectiveness of the order. Order at 5.

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company, for operation of the Haddam Neck Plant located in Haddam Connecticut.

The amendment would revise the provisions in the Technical Specifications relating to the degraded grid voltage protection system to be consistent with their degraded grid voltage procedures.

In addition, operability requirements on off-site and on-site power sources have been added.

Prior to 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.

By March 3, 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 that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 Garfield, Esquire, Day, Berry and Howard, City Place, Hartford, Connecticut 06103–3499, 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 presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 17, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Russel Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland, this 15th day of January 1988.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–2096 Filed 2–1–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co., Ohio Edison Co. and Pennsylvania Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66, issued to Duquesne Light Company, et al (the licensees), for operation of the Beaver Valley Power Station Unit 1 located in Shippingport, Beaver County, Pennsylvania.

The proposed amendment would revise the provisions in the Technical Specifications Section 4.2.1.4, relating to surveillance requirement of the target flux difference by interpolating to the design end-of-life value.

Prior to 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.

By March 3, 1988, the licensees 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States 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 or representative for 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., J. E. Silberg, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 22nd day of January 1988.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–2097 Filed 2–1–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25294; File No. SR–MSE–87–12]

Self-Regulatory Organizations; Order Approving Midwest Stock Exchange Proposed Rule Change Amending Its Auto Quote Parameters

On September 11, 1987, the Midwest Stock Exchange ("MSE") filed with the Securities and Exchange Commission a proposed rule change (File No. SR–MSE–87–12) pursuant to section 19(b) and Rule 19b–4 of the Securities Exchange Act of 1934 ("Act"). The proposal amends Article XX, Rule 8 of the MSE's Rules to establish a pilot program testing new quotation parameters for specialists using the MSE's Auto Quote facility.[1] The Commission published notice of the proposed rule change on October 13, 1987,[2] and received no comments.

The proposed rule change amends Rule 8 for the duration of the pilot program by adding a new Interpretation and Policy ("I&P") .03. For issues that have 50,000,000 or more shares outstanding and for which the price per share is less than $100.00, the proposal requires specialists who use Auto Quote to display a bid that is ⅜ point less than the primary market bid and an offer that is ⅜ point greater than the primary market offer. The MSE stated in its filing that this amendment to Rule 8 will encourage specialists to manually update quotes and to use the Auto Quote feature only when necessary. Thus, specialists who in the past may have relied on Auto Quote to track the market for a security now will find it more advantageous to actively participate in that market.

The proposal also amends I&P .02 by requiring specialists' Auto Quote bids and offers in all other Dual Trading System issues to be no more than ⅛ point away from the primary market quote, instead of the best ITS quote, as is now the requirement. The MSE stated that this proposal simply conforms the rule to the exchange's current practice. Very frequently the primary market quote is also the best ITS quote.

The rule change will be implemented on a trial basis during a three-month pilot program. The proposal also reserves to the MSE Committee on Floor Procedure the authority to terminate the pilot program earlier, if necessary.

The Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act. Because the proposal will encourage market makers to actively participate in the market for a security, it facilitates transactions in securities and thus removes impediments to and perfects the mechanism of a free and open market and a national market system.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that File No. SR–MSE–87–12 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 26, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–2058 Filed 2–1–88; 8:45 am]

BILLING CODE 8010-01-M

[1] The MSE's Auto Quote facility is a feature of the exchange's trading support system that automatically updates specialists' quotes in response to a change in the best ITS quote.

[2] Securities Exchange Act Release No. 25019 (October 13, 1987), 52 FR 39579.

[Rel. No. IC–16201; 812–6887]

The Drexel Burnham Fund and DBL Tax-Free Fund, Inc.; Application

January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Drexel Burnham Fund ("TDBF") and DBL Tax-Free Fund, Inc. ("Tax-Free").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35) and 22(c) of the 1940 Act and Rule 22c–1 thereunder.

Summary of Application: The Applicants seek an order to permit them to assess a contingent deferred sales load ("CDSL") on certain redemptions of their current and future portfolios of shares.

Filing Date: The application was filed on October 6, 1987, and amended on November 27, 1987. Another amendment will be filed during the notice period, the substance of which is contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 23, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send 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 Fifth Street, NW., Washington, DC 20549. Applicants, 60 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–2847 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Applicants are diversified, open-end management investment companies registered under the 1940 Act. TDBF primarily seeks long-term capital appreciation. Tax-Free, which presently consists of three portfolios (Money Market, Limited Term and Long Term), seeks a high level of income exempt from federal income taxes. Applicants' underwriter is Drexel Burnham Lambert ("DBL"). The investment adviser for TDBF is Drexel Burnham Lambert Management; the investment adviser for Tax-Free is Drexel Management Corporation.

2. TDBF and the Limited Term and Long Term Portfolios of Tax-Free (hereinafter referred to as the "Funds") impose traditional front-end sales loads on purchases of shares of the Funds, but waive such loads for purchases of Fund shares by or on behalf of any officer, director, account executive or full time employee (or a spouse or child of any such person) of the Fund, the Fund's investment adviser, DBL or any company affiliated with DBL (the "Waiver"). Shares of each Fund are offered at net asset value plus a sales load that declines, depending upon the amount invested, from 1.50% of the offering price to 0% in the case of the Limited Term Portfolio, from 4.25% to 0% in the case of the Long Term Portfolio and from 3.50% to 1.00% in the case of TDBF. No sales load is imposed upon purchases of Fund shares through reinvestment of dividends. The proceeds of the foregoing sales loads are paid to DBL, as distributor of the Funds.

3. The Funds propose to impose the CDSL on all redemptions of Fund shares purchased pursuant to the Waiver and held for less than 90 days. The shares of the Money Market Portfolio of Tax-Free are offered at net asset value, and no sales load, front-end or deferred, is contemplated with respect to such shares. The CDSL, which would be paid to DBL, would be the front-end sale load that would originally have been applicable to the purchase of such shares had the Waiver not been in effect. The proposed CDSL would be imposed upon any redemption causing the value of an investor's account to fall to an amount which is below the total dollar amount of purchase payments made pursuant to the Waiver during a period of 90 days prior to the redemption, but would not be imposed upon redemptions of amounts derived from: (1) Increases in the value of the account above the total dollar amount of purchase payments made subject to the Waiver during the prior 90 days (either through growth in net asset value per share or through reinvestment of dividends or capital gains distributions), (2) purchase payments made more than 90 days prior to the redemption or (3) purchase payments from which the Fund's sale load was deducted at the time of purchase. It would be assumed that shares on which a sales load was paid at the time of purchase are the first to be redeemed, followed by shares held the longest. In determining the rate of any applicable CDSL, it will be assumed that a redemption is made of shares not subject to the CDSL first. In instituting and applying the proposed CDSL, the Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

4. Shares of the Long-Term Portfolio of Tax-Free are sold under a plan of distribution adopted pursuant to Rule 12b–1 under the 1940 Act (the "Plan"). The Plan provides that DBL receives a distribution fee equal to .25% per annum of that portfolio's average daily net assets. Tax-Free's Board of Directors will consider receipts from the CDSL obtained by DBL in connection with its annual review of the Plan.

Applicants' Legal Anaysis

1. The requested exemptions and approval of the proposed CDSL described above are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. An intended effect of the Waiver is to encourage those individuals who may be involved in the management, administration or marketing of the Funds to acquire and maintain an equity position in one or more of the Funds. To further promote this objective, and because short-term trading in Fund shares would defeat the foregoing purpose of the Waiver, Applicants have proposed the imposition of the CDSL. The effect of the CDSL would merely be to impose a condition on the availability of the Waiver, namely, that shares purchased subject to the Waiver be held for 90 days.

2. The proposed CDSL would in no way restrict a shareholder from receiving his or her proportionate share of the current net assets of a Fund, but would merely defer the deduction of a sales charge and make it contingent upon an event which may never occur.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicants will comply with the provisions of Rule 12b–1 (or any successor rule) under the 1940 Act, as such rule may be amended from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–2120 Filed 2–1–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2308]

Territory of Guam; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 20, 1988, I find that the Territory of Guam constitutes a disaster loan area because of damages caused by Typhoon Roy occurring on January 11–12, 1988. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 21, 1988 and for economic injury until the close of

business on October 20, 1988 at: Disaster Area 4 Office, Small Business Adminsitration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, CA 95853.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 230806 for physical damage and for economic injury the number is 659900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: January 26, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-2121 Filed 2-1-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2309]

Commonwealth of the Northern Mariana Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 20, 1988, I find that the Island of Rota in the Commonwealth of the Northern Mariana Islands constitutes a disaster loan area because of damages caused by Typhoon Roy occurring on January 11-12, 1988. Eligible persons, firms, and organizations may file applications for physical damage under the close of business on March 21, 1988 and for economic injury until the close of business on October 20, 1988 at: Disaster Area 4 Office, Small Business Administrator, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, CA 95853.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 230906 for physical damage and for economic injury the number is 660000.

(Catalog of Federal Domestic Assistance Programs Nos 59002 and 59008).

Dated: January 26, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-2122 Filed 2-1-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 88-1-56]

Continuing Fitness Investigation of Galaxy Airlines, Inc., Order to Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposal to revoke air carrier certificate.

SUMMARY: The Department of Transportation is proposing to find Galaxy Airlines, Inc. has failed to meet the Department's continuing fitness requirements and that its certificate should be revoked under section 401(r) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative revocation determination should file their responses with the Documentary Services Division, Room 4107, Department of Transportation, 400 7th Street SW., Washington, DC 20590, in Docket 45023 and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Bernard F. Diederich, Office of the General Counsel, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-9154.

Dated: January 27, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-2034 Filed 2-1-88; 8:45 am]

BILLING CODE 4910-62-M

Privacy Act of 1974; Alterations to Notices of Systems of Records

The Department of Transportation (DOT) herewith publishes proposed alterations to the following four systems of records: Claimants under Federal Tort Claims Act, DOT/SLS 151, Data Automation Program Records, DOT/SLS 152, Employees' Compensation Records, DOT/SLS 153, and Emergency Operating Records (Vital Records), DOT/SLS 155.

Any person or agency may submit written comments on the proposed alterations to the Privacy Act Officer (M-34), Room 7109, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Comments must be received within 30 days to be considered.

If no comments are received, the proposed alterations will become effective 60 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the alterations.

Issued in Washington, DC on January 26, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement for the Department of Transportation Office of the Secretary To Alter Systems of Records

The Department of Transportation proposes to alter the four Saint Lawrence Seaway Development Corporation systems of records:

DOT/SLS 151	Claimants under Federal Tort Claims Act
DOT/SLS 152	Data Automation Program Records
DOT/SLS 153	Employees' Compensation Records
DOT/SLS 155	Emergency Operating Records (Vital Records)

The purpose of the altered systems of records is to: (1) Change the system location, (2) change the system manager and his/her address, (3) change General Counsel to Chief Counsel wherever referenced, (4) change the address for the record access procedure, and (5) change the address to the contesting record procedure. The system and the authorities under which it is maintained are described under the appropriate headings in the attached copy of the system notice prepared for publication in the **Federal Register.**

Access to these records is subject to strict guidelines governing their disclosure (42 U.S.C. 4541 *et. seq.*, 21 U.S.C. 1101 *et. seq.*, and 42 CFR Part 2) and participation in the programs is limited. As a result, the probable or potential effects of this proposal on the privacy of the general public is minimal.

A description of the steps taken by the Department to safeguard these records is given under the appropriate

heading of the attached **Federal Register** system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular A–130, Appendix I, 50 FR 52730 (1985).

DOT/SLS 151

SYSTEM NAME:

Claimants under Federal Tort Claims Act. DOT/SLS.

SYSTEM LOCATION:

Department of Transportation (DOT), Saint Lawrence Seaway Development Corporation (SLSDC), 180 Andrews Street, Massena, NY 13662–1763.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who make claims against the Corporation.

CATEGORIES OF RECORD IN THE SYSTEM:

Claims forms on which are recorded name, address, age and marital status of claimants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by Chief Counsel to determine allowability of claims.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by subject and name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible only to the Chief Counsel and his secretary.

RETENTION AND DISPOSAL:

Records are retained indefinitely since they are not extensive and are used for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Department of Transportation, Saint Lawrence Seaway Development Corporation, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the above System Manager whether this system of records applies to him/her.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to the: Department of Transportation, Director, Finance and Administration, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the Director, Finance and Administration, as under Record Access Procedure.

RECORD SOURCE CATEGORIES:

Claimants.

DOT/SLS 152

SYSTEM NAME:

Data Automation Program Records. DOT/SLS.

SYSTEM LOCATION:

Department of Transportation (DOT), Saint Lawrence Seaway Development Corporation (SLSDC), 180 Andrews Street, Massena, NY 13662–1763.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and leave records, work measurement records, travel vouchers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Payroll and voucher disbursement: GAO audits.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the U.S. Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape reels, punch cards, micro-film cassettes and supporting documents.

RETRIEVABILITY:

Indexed by social security number and name.

SAFEGUARDS:

Records are kept in locked file cabinets or locked rooms accessible to appropriate supervisor, his immediate assistants and secretary.

RETENTION AND DISPOSAL:

Records are retained in accordance with GAO and GSA schedules:

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance and Administration, Department of Transportation, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662–1763

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the System Manager whether this system of records applies to him/her.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by writen request to: Department of Transportation, Saint Lawrence Seaway Development Corporation, Director Finance and Administration, 180 Andrews Street, Massena, NY 13662–1763.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the Director, Finance and Administration, at the address given in Record Access Procedure.

DOT/SLS 153

SYSTEM NAME:

Employees' Compensation Records DOT/SLS.

SYSTEM LOCATION:

Department of Transportation (DOT), Saint Lawrence Seaway Development Corporation (SLSDC), 180 Andrews Street, Massena, NY 13662–1763.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim forms on which are recorded employee' personal statistics, medical record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

For determining allowability of claims.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and micro-film casette.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible to cognizant Personnel Officers.

RETENTION AND DISPOSAL:

Retained indefinitely for possible future use.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance and Administration, Department of Transportation, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the above System Manager whether this system of records applies to him/her.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to: Director, Finance and Administration, Department of Transportation, Saint Lawrence Seaway, Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the System Manager.

RECORD SOURCE CATEGORIES:

Injured employee, witnesses, supervisors, hospitals, physicians.

DOT/SLS 155

SYSTEM NAME:

Emergency Operations Records (Vital Records) DOT/SLS.

SYSTEM LOCATION:

Department of Transportation, Saint Lawrence Seaway, Development Corporation (SLSDC), Eisenhower Lock (Emergency Relocation Site), Massena, NY 13662.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Retirement records, payroll distribution records, leave records, employee roster and next of kin records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To insure continuity of operations during and after a national defense emergency.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the U.S. Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(1)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name and social security number.

SAFEGUARDS:

Locked metal file container.

RETENTION AND DISPOSAL:

Retained until updated annually; then old records destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance and Administration (Emergency Coordinator), Department of Transportation, Saint Lawrence Seaway, Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

NOTIFICATION PROCEDURE:

Individuals may inquire in writing to the System Manager whether this system of records applies to him/her.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to the: Department of Transportation, Saint Lawrence Seaway, Development Corporation, Director, Finance and Administration, 180 Andrews Street, Massena, NY 13662–1763.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the Director, Finance and Administration.

RECORD SOURCE CATEGORIES:

Personnel records, time cards, and related supporting documents.

[FR Doc. 88–2103 Filed 2–1–88; 8:45 am]
BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; City of Richmond, VA

AGENCY Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent issued on December 24, 1986, to prepare an environmental impact statement for a proposed highway project on Warwick Road in the City of Richmond between Route 60 (Midlothian Turnpike) and Bells Road.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2682.

SUPPLEMENTARY INFORMATION: When the Notice of Intent was published, Federal-aid funds were going to be used to build the proposed project; however, due to a lack of available funds, the Virginia Department of Transportation will now build the project solely with State funds.

Issued on: January 25, 1988.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 88–2060 Filed 2–1–88; 8:45 am]
BILLING CODE 4910–22–M

Maritime Administration

Values for War Risk Insurance

AGENCY: Maritime Administration, DOT.

ACTION: Determination of ship values for War Risk Insurance, effective July 1, 1987.

SUMMARY: Pursuant to the procedure stated at 46 CFR 309.1, the required biannual notice is hereby given of the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. The valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with sections 902(b) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA–184, prescribed by 46 CFR Part 308. In accordance with Pub. L. 99–59, authority to issue such war risk insurance will expire on June 30, 1990.

The interim binders listed below shall be deemed to have been amended as of July 1, 1987, by inserting in the space provided therefore, or in substitution for

any value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuations shall apply with respect to insurance attached during the period January 1, 1987 to December 31, 1987 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the right, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 U.S.C. 1289(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator.

Dated: January 27, 1988.

Joel C. Richard,

Assistant Secretary.

FEDERAL REGISTER LIST OF SHIP VALUATIONS

Official	Binder	Ship type	Vessel name	Valuation
680897	3721	CDS	1st Lt. Alex Bonnyman	$26,850,000
668348	3686	CDS	Adabelle Lykes	5,000,000
533270	3344	TKR	Admiralty Bay	8,540,000
513704	3537	SML	Alison C.	1,200,000
523846	2764	TKR	America Sun	8,540,000
529004	2812	CDS	American Apollo	4,285,000
530999	2869	CDS	American Aquarius	4,285,000
520694	2583	CDS	American Astronaut	4,285,000
577343	3360	TKR	American Heritage	3,750,000
514261	2446	CDS	American Lancer	4,000,000
518444	2550	CDS	American Lark	4,000,000
516464	2485	CDS	American Liberty	4,000,000
517450	2518	CDS	American Lynx	4,000,000
544303	3644	CDS	American Marketer	5,000,000
547288	3645	CDS	American Merchant	5,000,000
519937	3641	CDS	American Monarch	735,000
612715	3648	CDS	American Resolute	8,800,000
518434	3639	CDS	American Spitfire	735,000
515976	3640	CDS	American Titan	735,000
517617	3642	CDS	American Trojan	1,250,000
530142	3647	CDS	American Veteran	4,900,000
648470	3654	SML	Amoco Columbia	5,000,000
640014	3609	SML	Amoco Florida	10,000,000
643069	3610	SML	Amoco Georgia	8,610,000
644241	3607	SML	Amoco Richmond	5,000,000
3459	3509	TKR	Amoco Savannah	4,100,000
645759	3611	SML	Amoco South Carolina	9,800,000
3233	3505	TKR	Amoco Yorktown	4,100,000
614544	3495	TKR	Arco Alaska	30,000,000
548424	3048	TKR	Arco Anchorage	17,500,000
623291	3518	TKR	Arco California	30,000,000
559400	3194	TKR	Arco Fairbanks	17,500,000
586633	3604	TKR	Arco Independence	43,000,000
556666	3142	TKR	Arco Juneau	17,500,000
536496	2900	TKR	Arco Prudhoe Bay	8,350,000
539313	2948	TKR	Arco Sag River	8,350,000
601377	3469	CDS	Argonaut	8,800,000
292191	1716	CDS	Ashley Lykes	1,540,000
535357	3345	TKR	Aspen	8,540,000
586128	3385	TKR	Atigun Pass	26,000,000
646348	3608	SML	Atlanta Bay	5,000,000
530141	3337	CDS	Austral Rainbow	4,900,000
3234	3510	TKR	Baltimore Sea	4,100,000
600128	3464	TKR	Bay Ridge	35,400,000
572359	3357	TKR	Beaver State	3,750,000
582451	3315	SML	Biehl Trader	3,250,000
584627	3316	SML	Biehl Traveler	3,250,000
633428	3628	TKR	Blue Ridge	33,000,000
511485	3270	SPC	Boston	900,000
3046	3511	TKR	Brisbane Sea	3,600,000
586130	3408	TKR	Brooks Range	26,000,000
543461	3623	SML	CG-461	15,000
543481	3624	SML	CG-481	15,000
248095	3350	SPC	Charleston	900,000
668349	3685	CDS	Charlotte Lykes	5,000,000
562416	3215	TKR	Chelsea	3,250,000
557503	3144	TKR	Cherry Valley	3,250,000
689194	3724	CDS	Chesapeake Bay	30,000,000
577738	3286	TKR	Chestnut Hill	3,750,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Official	Binder	Ship type	Vessel name	Valuation
588320	3394	TKR	Chevron Arizona	9,800,000
541563	2985	TKR	Chevron California	8,500,000
577358	3308	TKR	Chevron Colorado	9,800,000
584696	3372	TKR	Chevron Louisiana	9,800,000
542850	2992	TKR	Chevron Mississippi	8,500,000
566080	3309	TKR	Chevron Oregon	9,800,000
570709	3310	TKR	Chevron Washington	9,800,000
638709	3626	TKR	Coast Range	33,000,000
590414	3528	TKR	Cornucopia	25,000,000
553623	3104	TKR	Coronado	3,250,000
279938	3704	TKR	Cove Leader	2,900,000
644295	3702	TKR	Cove Liberty	2,900,000
279438	370	TKR	Cove Trader	1,780,000
671969	3722	CDS	Cpl Louis J. Hauge	26,850,000
689193	3725	CDS	Delaware Bay	30,000,000
528567	2806	TKR	Edgar M. Queeny	4,000,000
500702	2086	CDS	Elizabeth Lykes	1,000,000
657540	3658	SPC	Energy Independence	51,750,000
541414	2980	CDS	Export Freedom	4,000,000
548442	3065	CDS	Export Patriot	4,000,000
282272	2593	TKR	Exxon Baltimore	1,620,000
524619	3056	TKR	Exxon Baton Rouge	7,800,000
658495	3683	TKR	Exxon Baytown	82,360,000
600478	3465	TKR	Exxon Benicia	26,000,000
283784	2595	TKR	Exxon Boston	1,700,000
658493	3668	TKR	Exxon Charleston	72,000,000
588443	3412	TKR	Exxon Galveston	3,000,000
297151	2601	TKR	Exxon Houston	3,180,000
275519	2603	TKR	Exxon Jamestown	2,000,000
276270	2610	TKR	Exxon Lexington	2,000,000
692967	3723	TKR	Exxon Long Beach	110,000,000
298216	2606	TKR	Exxon New Orleans	3,180,000
600477	3460	TKR	Exxon North Slope	26,000,000
526792	3057	TKR	Exxon Philadelphia	7,800,000
647470	3717	TKR	Exxon Princeton	39,000,000
523626	3058	TKR	Exxon San Francisco	7,800,000
692966	3716	TKR	Exxon Valdez	110,000,000
273896	2609	TKR	Exxon Washington	2,000,000
658494	3673	TKR	Exxon Wilmington	72,735,000
656742	3718	TKR	Exxon Yorktown	39,000,000
663105	3708	TKR	Falcon Champion	25,000,000
536850	3709	TKR	Falcon Countess	5,500,000
533611	3710	TKR	Falcon Duchess	5,500,000
658555	3712	TKR	Falcon Leader	25,000,000
538811	3713	TKR	Falcon Princess	5,500,000
514966	3540	SML	Freeport I	5,200,000
516720	3541	SML	Freeport II	5,200,000
292748	3538	SML	Gale B.	1,070,000
248242	2556	SPC	Galveston	900,000
513140	2421	CDS	Genevieve Lykes	1,000,000
526588	3346	TKR	Glacier Bay	8,855,000
561433	3729	TKR	Golden Endeavor	3,750,000
526972	2791	TKR	Golden Gate	7,150,000
566090	3512	TKR	Golden Monarch	3,750,000
650771	3739	SML	Great Lakes	7,800,000
684689	3745	TKR	Gus W. Darnell	40,000,000
531048	2861	TKR	IOS 3301 Martha R. Ingram	2,800,000
538231	2935	TKR	IOS 3302 Carol G. Ingram	2,800,000
292810	2108	SML	Islander	600,000
280564	387	CDS	James Lykes	1,500,000
287103	1304	CDS	Jean Lykes	1,500,000
500799	3366	SML	Joe Sevier	350,000
282772	389	CDS	John Lykes	1,500,000
281326	390	CDS	Joseph Lykes	1,500,000
621042	3491	SPC	Kauai	45,000,000
586127	3456	TKR	Kenai	20,350,000
586129	3398	TKR	Keystone Canyon	26,000,000
266730	598	TKR	Keystoner	835,000
579572	3287	TKR	Kittanning	3,750,000
684692	3746	TKR	Lawrence H. Gianella	40,000,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Official	Binder	Ship type	Vessel name	Valuation
550598	3622	SML	LB-726	15,000
550599	3623	SML	LB-727	15,000
287416	1352	CDS	Leslie Lykes	1,500,000
512187	2403	CDS	Letitia Lykes	1,000,000
248240	3256	SPC	Long Beach	1,440,000
299938	2062	CDS	Louise Lykes	1,000,000
2774	3730	TKR	M.P. Grace	1,400,000
655330	3701	CDS	Maj Stephen W. Pless	40,000,000
524219	2763	SPC	Manukai	14,600,000
528400	2803	SPC	Manulani	14,600,000
618705	3492	SML	Maoi	700,000
668347	3687	CDS	Margaret Lykes	5,000,000
529399	2814	TKR	Marine Chemist	4,400,000
245851	2777	TKR	Marine Duval	1,500,000
246836	2133	TKR	Marine Floridian	1,500,000
247563	1812	TKR	Marine Texan	1,230,000
289873	1513	CDS	Marjorie Lykes	1,540,000
299786	3539	SML	Martha B.	2,650,000
246343	2109	SPC	Maunalei	1,440,000
650770	3740	SML	Michigan	4,450,000
542026	3152	TKR	Mobil Arctic	17,500,000
286479	2442	TKR	Mobile Meridian	1,900,000
578288	3301	TKR	Mormacsky	3,410,000
569257	3302	TKR	Mormacstar	3,410,000
573770	3303	TKR	Mormacsun	3,410,000
284178	2799	TKR	Mount Vernon Victory	1,780,000
286650	1243	CDS	Nancy Lykes	1,500,000
569583	3348	TKA	New York	8,795,000
628783	3656	TKR	New York Sun	24,845,000
248076	3259	SPC	Oakland	1,440,000
5886	3508	TKR	Ocean Voyager	4,100,000
642151	3577	TKR	Ogden Hudson	40,300,000
547919	3515	TKR	Ogden Yukon	9,085,000
523341	2745	TKR	OMI Champion	4,000,000
522864	3470	TKR	OMI Charger	4,000,000
638899	3576	TKR	OMI Dynachem	40,300,000
520839	3471	TKR	OMI Leader	4,000,000
520728	2614	TKR	OMI Wabash	4,000,000
518738	2591	TKR	OMI Willamette	4,000,000
529795	2827	TKR	Overseas Alaska	7,210,000
514928	3672	TKR	Overseas Alice	3,240,000
530877	2862	TKR	Overseas Arctic	7,210,000
630050	3535	TK2	Overseas Boston	17,500,000
583412	3378	TKR	Overseas Chicago	15,000,000
590624	3409	SPC	Overseas Harriette	4,600,000
553137	3533	TKR	Overseas Juneau	17,500,000
590623	3406	SPC	Overseas Marilyn	4,600,000
287156	3377	TKR	Overseas Natalie	3,000,000
588001	3386	TKR	Overseas New York	15,000,000
586647	3383	TKR	Overseas Ohio	15,000,000
517186	3671	TKR	Overseas Valdez	3,240,000
518125	3480	TKR	Overseas Vivian	3,240,000
588955	3399	TKR	Overseas Washington	15,000,000
248241	3260	SPC	Panma	1,440,000
684688	3742	TKR	Paul Buck	40,000,000
291990	3472	TKR	Petersburg	1,785,000
641084	3700	CDS	PFC Eugene A. Obregon	40,000,000
679513	3719	CDS	PFC James Anderson, Jr	26,850,000
674269	3741	CDS	PFC William B. Baugh	26,850,000
516541	2560	SPC	Philadelphia	900,000
638073	3655	TKR	Philadelphia Sun	27,800,000
247275	2844	SPC	Pittsburgh	1,100,000
517120	2501	CDS	President Adams	3,000,000
521866	2740	CDS	President Cleveland	3,000,000
673003	3690	CDS	President Eisenhower	25,000,000
674310	3689	CDS	President F.D. Roosevelt	25,000,000
513860	2447	CDS	President Fillmore	3,400,000
530138	3483	CDS	President Grant	10,000,000
530139	3726	CDS	President Harrison	10,000,000
530137	3485	CDS	President Hoover	10,000,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Official	Binder	Ship type	Vessel name	Valuation
544900	3030	CDS	President Jefferson	6,370,000
552109	3121	CDS	President Johnson	6,370,000
296779	1947	CDS	President Kennedy	3,190,000
651627	3677	CDS	President Lincoln	29,500,000
546725	3041	CDS	President Madison	6,370,000
512593	2416	CDS	President McKinley	3,400,000
655397	3678	CDS	President Monroe	29,500,000
552108	3120	CDS	President Pierce	6,370,000
511653	2398	CDS	President Taft	3,400,000
518517	2565	CDS	President Taylor	3,000,000
530140	3484	CDS	President Tyler	10,000,000
509581	2359	CDS	President Van Buren	3,400,000
653424	3679	CDS	President Washington	29,500,000
520392	2622	CDS	President Wilson	3,000,000
570108	3396	TKR	Prince William Sound	17,915,000
684591	3720	CDS	PVT Harry Fisher	26,850,000
684691	3743	TKR	Richard G. Mathiesen	40,000,000
557033	3147	CDS	Robert E. Lee	7,500,000
502928	2162	CDS	Ruth Lykes	1,000,000
684690	3744	TKR	Samuel L. Cobb	40,000,000
248238	2846	SPC	San Pedro	1,100,000
535020	2918	TKR	Sansinena II	8,255,000
504015	3423	CSD	Santa Adela	1,000,000
502726	2752	CDS	Santa Juana	1,000,000
1876	3731	TKR	Sasstown	1,350,000
594073	3453	SPC	Sea-Land Adventure	9,750,000
552818	3100	CDS	Sea-Land Consumer	7,350,000
604246	3488	SPC	Sea-Land Defender	24,500,000
604247	3513	SPC	Sea-Land Developer	24,500,000
532410	2868	SPC	Sea-Land Economy	6,000,000
606062	3534	SPC	Sea-Land Endurance	24,500,000
604248	3489	SPC	Sea-Land Explorer	24,500,000
604249	3514	SPC	Sea-Land Express	24,500,000
606065	3527	SPC	Sea-Land Freedom	24,500,000
606061	3516	SPC	Sea-Land Independence	24,500,000
606064	3529	SPC	Sea-Land Innovator	24,500,000
594374	3451	SPC	Sea-Land Leader	9,750,000
604245	3487	SPC	Sea-Land Liberator	24,500,000
606066	3526	SPC	Sea-Land Mariner	24,500,000
593980	3450	SPC	Sea-Land Pacer	9,750,000
604244	3486	SPC	Sea-Land Patriot	24,500,000
594375	3452	SPC	Sea-Land Pioneer	9,750,000
552819	3131	CDS	Sea-Land Producer	7,350,000
531478	2867	SPC	Sea-Land Venture	6,000,000
606063	3517	SPC	Sea-Land Voyager	24,500,000
641083	3699	CDS	Sgt. Matej Kocak	40,000,000
668350	3688	CDS	Sheldon Lykes	5,000,000
641804	3627	TKR	Sierra Madre	33,000,000
653210	3707	CDS	Spirit of Texas	8,000,000
591709	3415	SPC	SS Maui	36,565,000
515620	2755	SPC	St. Louis	1,100,000
642934	3706	CDS	Star of Texas	8,000,000
557034	3148	CDS	Stonewall Jackson	7,500,000
584459	3413	TKR	Stuyvesant	35,400,000
277623	233	TKR	Syosset	1,400,000
640635	3606	SML	Tallahassee Bay	5,000,000
3460	3507	TKR	Texas City Sea	4,100,000
283897	2927	TKR	Texas Sun	1,780,000
516158	3536	SML	Theresa F.	1,200,000
283413	405	CDS	Thompson Lykes	1,500,000
586131	3431	TKR	Thompson Pass	26,000,000
1778	3732	TKR	Timbo	1,350,000
585629	3391	TKR	Tonsina	20,700,000
275583	3657	TKR	Tropic Sun	1,740,000
550200	3727	TKR	Ultramar	5,000,000
555146	3728	TKR	Ultrasea	5,000,000
505786	2270	TKR	Valley Forge	3,100,000
642492	3652	SML	Virginia Bay	10,000,000
551001	3361	SML	Wa-1-0001	15,000
567451	3362	SML	Wa-2-0451	20,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Official	Binder	Ship type	Vessel name	Valuation
608713	3621	SML	Wa-3-0576	25,000
608714	3622	SML	Wa-3-0577	25,000
268798	2928	TKR	Western Sun	1,400,000
282126	411	CDS	Zoella Lykes	1,500,000

[FR Doc 88-2133 Filed 2-1-88; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Customs Service

A Significant New Information Dissemination Product Pursuant to OMB Circular A-130; Customs Automated Commercial System; Republication

[Editorial Note: The following document was originally published at page 1097 in the issue of Friday, January 15, 1988. In that publication, a large portion of the document was omitted. The corrected document is reprinted below in its entirety.]

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: This document gives the public notice of a proposed new information dissemination product. The Customs Service, through its Automated Commercial System (ACS), has been developing a module called the Automated Manifest System (AMS). Through the AMS, carriers, port authorities (PAs) and service centers electronically transmit data from inward vessel manifests to Customs. Customs uses this information concerning the nature and origin of the cargo to make decisions with respect to inspection and examination. Customs thereafter electronically informs the senders, their agents and others of this information. An underlying purpose for this exchange is to expedite the release of cargo from Customs custody.

In June, 1988, Customs intends to make available for sale to the public a *magnetic tape* which will contain data from all the manifests being transmitted electronically to Customs. At that time, Customs intends to provide to eligible PAs *on line access* to this manifest data, and to other data concerning the status of cargo moving within their port limits. This information will enable the PAs to more efficiently monitor the movement of cargo through their facilities, as well as perform their cargo release responsibilities.

Information from inward manifests is presently available to the public in hard copy, pursuant to section 431, Tariff Act of 1930, as amended, (19 U.S.C. 1431). The statute also requires that Customs safeguard the confidentiality of the names and addresses of importers, consignees and their shippers upon request. Accordingly, the names and addresses of those who have requested confidentiality will be deleted from the manifest data to be provided.

While not all of the manifests filed with Customs are filed in an automated fashion via AMS, it is envisioned that AMS will eventually contain all vessel manifest data and replace the paper manifest. Because of the amount of data involved, the increased access that the automated format provides, and the anticipated growth of automated systems in all phases of the processing of Customs commercial transactions, Customs believes it appropriate to give notice and an opportunity to comment to those who may be interested in obtaining the information as well as those importers and consignees who may wish to request confidentiality, or are otherwise affected by release to the PAs of data pertaining to all importations arriving at their ports.

DATES: Comments must be received on or before March 15, 1988.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Chief, Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229 (202) 566-8237.

FOR FURTHER INFORMATION CONTACT:
Legal Aspects: B. James Fritz, Chief, Regulations Control and Disclosure Law Branch, (202) 566-8681.
Operational Aspects: Eula D. Walden, Office of Automated Commercial System Operations (202) 566-6012.

SUPPLEMENTARY INFORMATION:

Background

OMB Circular A-130, dated December 12, 1985, 50 FR 52730, directs Federal agencies to inform the public of significant new proposed information dissemination products. Such notice is intended to allow agencies to gauge the impact of such products upon affected segments of the public. Two such products are proposed. The first is automated vessel manifest and cargo release data to PAs via on line access. The second is automated vessel manifest data to the public via magnetic tape.

For more than three years, Customs has been developing the Automated Commercial System. The ultimate goal of the ACS is to automate all phases of the commercial processing of imported merchandise and create a single automated system.

Customs has developed an Automated Manifest System (AMS) as an integral module of the ACS. The manifest module is, in essence, both an imported merchandise inventory control system and a cargo release notification system. By comparing information provided in the manifest with automated Customs entry data and inspection guidelines, Customs is able to make informed decisions with respect to the allocation of resources for the inspection of merchandise.

Automated manifest data may be transmitted to Customs by one of two methods. Carriers may transmit data directly to the AMS with their own compatible automated system. Alternatively, carriers may use the computer facilities of PAs or service centers which have established interface capability with Customs. After receiving and analyzing the data, Customs makes its decision with respect to inspection and release of the merchandise.

Once the merchandise is authorized for release, the carrier, service center or PA which transmitted the data receives a message from the system informing it of that fact. Thus each user will be able to track the status of cargo for which it transmitted data. A more detailed explanation of the data provided is set forth below.

Section 431, Tariff Act of 1930, as amended, (19 U.S.C. 1431), requires that the master of every vessel arriving in the U.S. have on board a manifest which contains, among other things, certain information with respect to the nature of the merchandise on board the vessel. Subsection (c)(1) of section 431 provides that the following information when contained on the manifest shall be made available for public disclosure:

1. The general character of the cargo,

2. The number of packages and gross weight,
3. The name of the vessel or carrier,
4. The port of loading,
5. The port of discharge,
6. The country or origin of the shipment
7. The name and address of each importer or consignee and the name and address of the shipper unless the importer or consignee has requested confidential treatment of such information.

Section 103.14(d), Customs Regulations, (19 CFR 103.14(d)) sets forth the procedures pursuant to which an importer or consignee may request confidential treatment of its name and address and that of its shippers. To date, Customs Headquarters has on file approximately 1,100 requests for confidential treatment.

Section 103.14(c), Customs Regulations, provides that accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel manifests and to copy therefrom manifest information made public by statute. Members of the general public are not given direct access to the documents but may obtain information from manifests upon request. Importers or agents are permitted to examine manifests in which they have an interest as principal or agent.

At present, Customs compiles a list of those importers and consignees who have requested confidentiality. The list is updated on a weekly basis, and is provided to all Customs offices nationwide. The list is also provided to certain commercial trade publications such as King Publishing Co., the Journal of Commerce and others. These trade publications publish the manifest data, taking steps to make certain that the names and addresses of those who have requested confidentiality are deleted.

Dissemination of Manifest Data to Port Authorities

Background

When ACS was in the planning stages, Customs encouraged various sectors of the international trade community to participate in its development in order to share in the benefits that could accrue through the more efficient processing of commercial transactions. Among those who expressed a significant interest in ACS (particularly in AMS) were PAs. PAs viewed AMS as a means of streamlining their involvement in the processing of cargo as well as attracting new business to their ports.

Customs viewed PAs as a potential conduit for the transmission of AMS data for non-automated carriers who were interested but otherwise lacked the capability to electronically transmit their manifest data. PAs were informed that if they were willing to assume this role they would be eligible to receive all *automated manifest data* for those manifests which Customs receives for vessels calling in their ports regardless of whether the carrier used the PA to transmit its data. The data elements that comprise the manifest file are set forth in Appendix 1 to this document.

In addition to receiving manifest data, eligible PAs would be entitled to receive release data which conveys the status of the cargo which is being processed through their ports. Release data would be provided from the manifest where an automated manifest is filed at the port. In addition, where no automated manifest is filed, PAs would receive release data obtained from entry documents for all formal entries made in the port provided that the entry filer has given his written consent. The data elements pertaining to this release data are set forth in Appendix 2.

Finally, eligible PAs would receive manifest data which is transmitted through AMS with respect to all cargo which moves master in bond to their ports. For example, when a carrier files an automated manifest for cargo from a vessel which calls at Seattle but will move via master in bond procedures to Boston, the Massachusetts Port Authority will receive an extract of the manifest filed at Seattle. This will enable Massport to have a more acurate account of cargo in transit to it.

It is emphasized that the above data to be provided to PAs is to be provided via on-line access. Customs recognizes that the value of the data to the PAs as a basis for cargo release services is tied to its being provided in an expeditious manner. Accordingly, Customs intends to provide this data directly to the PA's automated system as soon as is operationally feasible.

Eligibility Criteria

In order to be eligible to receive automated manifest data, release data, and the master in bond data, a PA must develop the *full technical capacity* to transmit as well as receive AMS data. This means that the PA must demonstrate to Customs satisfaction that it possesses all the necessary facilities to be capable of immediately providing full AMS services for any interested carrier.

Customs recognizes that the development of this capacity does not guarantee that carriers will choose to avail themselves of the PAs services. One difficulty has been the fact that many carriers do not use a unique bill of lading number in their business operations. Such a unique identifier is necessary in order for AMS to operate. It is hoped, however, that a proposed amendment to the Customs Regulations mandating the use of a unique bill of lading identifier will eliminate this obstacle to participation in AMS by carriers. See 52 FR at 46602, dated December 9, 1987.

Customs has not established a minimum number of manifests to be transmitted in order for a PA to be eligible to receive this data. Customs will, however, condition continued access to the information on efforts by the PAs to acquire customers for this service. Should Customs learn that a PA has declined to provide AMS services when requested by a carrier, or has not made efforts to obtain participation by carriers, Customs will reevaluate its decision to provide access.

Providing Automated Manifest Data to the Public

Separate and apart from its decision to provide manifest data to PAs as described above, Customs intends to make available to the public, in the form of a magnetic tape, certain data with respect to all the manifests captured by AMS nationwide. This tape would be available at a price which would reflect the cost of producing it, and would contain the same data elements that are in the manifest file to be provided to the PAs. See Appendix 1 for the precise data elements involved. It is contemplated that the tape will be available on a weekly basis. Persons interested in receiving this tape or in obtaining further information about it may contact the Office of Automated Commercial System Operations at (202) 566–5492.

Confidentiality of Manifest Data

As noted above, the manifest data to be provided to the PAs and to the public will be sanitized by removing the names and addresses of those importers/consignees and that of their shippers when confidentiality has been requested. Customs has developed a computer program which will automatically delete the name and address of these requesters when manifests containing their name are transmitted through AMS. In determining the precise automated system to be employed, Customs was faced with a choice between using an "alpha" system or a "soundex" system. Each system has certain limitations. The

alpha system will only delete the name of the importer/consignee when there is an exact match as to spelling and formulation between the way the name has been transmitted by the carrier or service center and the name that the importer has provided to Customs. Thus where abbreviations and incorrect spellings of names are transmitted, the data would not be deleted from the system.

The soundex approach would eliminate from the system not only the exact formulation of the name in question, but also a variety of sound alike names. This approach would be overinclusive, resulting in the deletion of many names and addresses where no request for confidentiality had been made.

In addition, the soundex approach requires a significantly more complex programming effort.

Customs intends to use the alpha approach. In order to safeguard the names and addresses of companies which have requested confidentiality, however, Customs advised each of the requesters of the limitations of the system and invited them to enumerate variations of their name which they believe may be transmitted into AMS. Many importers have responded with these variations and Customs has added them to its database so that confidentiality will be protected whenever a match is made between any of the versions of the name submitted and the version transmitted by the carrier. A copy of the letter to the requesters is provided as Appendix 3 to this document. Customs remains willing to program these additional variations as they are received, as well as new requests for confidentiality. Such requests should be directed to the Regulations Control and Disclosure Law Branch, Customs Headquarters: Attention: Mr. Crowley.

Dissemination of the Entry Number

Among the data elements which will be provided to the port authorities as part of the bill of lading status report is the entry number assigned to the goods once entry has been filed. See Appendix 2 to this document. Providing this entry number is an essential link between the data in the manifest file and entry process.

Customs has identified two potential issues with respect to providing the entry number to the PAs. Each of these issues relates to Customs obligation to protect the identity of the importer or consignee of the merchandise when confidentiality has been requested.

The Bulletin Notice of Liquidation, Customs Form 4333, lists the entry number together with the name of the entry filer. By matching this data with the manifest data being provided, one may determine the identity of the entry filer and the nature of the goods being imported despite the importer's request for confidentiality. In order to resolve this issue, Customs has decided to amend the Bulletin Notice of Liquidation so as to remove any reference to the name of the entry filer. Importers and brokers will be able to identify their entires through the entry number.

The second issue that is presented with dissemination of the entry number arises because the first three digits of the entry number (the National Filer Code) identify the broker or importer filing the entry. Knowing an importer's filer code together with the manifest data would clearly enable a person to link the importer to the particular goods being imported. Even where the filer code pertains to a broker, in some instances, knowledge of the broker and the port involved is tantamount to knowledge of the identity of the importer. In each case, confidentiality would be breached. In order to protect against this unintended effect, Customs has decided to offer any importer or broker who has a presently assigned filer code an opportunity to apply for a new filer code. This code will not be revealed by Customs to any third party without the authorization of the entry filer so that the filer code will not be a means by which the filer's identity may be ascertained. Persons interested in obtaining a new filer code should write to the Office of Automated Commercial Systems, Customs Headquarters, Attention: Dick Bonner.

Comments

Customs invites comments on any aspect of this proposed information dissemination product. Commenters might particularly address the impact, if any, of Customs proposed actions on their conduct of Customs business.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4 Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control and Disclosure Law Branch, Room 2324, U.S. Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Dated: January 12, 1988.

E.H. Mach,

Assistant Commissioner, Office of Commercial Operations.

Appendix 1—Data Elements From the Manifest to be Provided to Eligible Port Authorities Via On-Line Access and to the Public Via Magnetic Tape

1. Carrier code.
2. Vessel country code.
3. Vessel Name.
4. Voyage Number.
5. District/Port of Unlading.
6. Estimated Arrival Date.
7. Bill of Lading Number.
8. Foreign Port of Lading.
9. Manifest Quantity.
10. Manifest Units.
11. Weight.
12. Weight Unit.
13. Shipper Name.[1]
14. Shipper Address.[1]
15. Consignee Name.[1]
16. Consignee Address.[1]
17. Piece Count.
18. Description of Goods.
19. Container Number.
20. Seal number.

Appendix 2—Cargo Release Data Elements Derived From the Manifest or from Entry Documents [2] To Be Provided to Eligible Port Authorities Via On Line Access.

1. Carrier code.
2. District/port of unlading
3. Vessel Name.[3]
4. Voyage Number.[3]
5. Bill of Lading Number.
6. Disposition code.
7. Quantity.
8. Entry Type.
9. Entry Number.
10. Action date and time.

Appendix 3—Department of the Treasury

U.S. Customs Service, Washington, DC

October 19, 1987.

[DIS–3:CO:R:R:D; 575949 MBH]

Dear Sir or Madame:

This is in reference to previous correspondence from your company to the Customs Service in which you requested confidentiality for your name and address and that of your shippers on inward vessel cargo manifests.

The Customs Service wishes to inform you that it is in the process of changing

[1] Data element will be deleted where confidentiality has been requested.

[2] Where the source is entry documents, data relating to formal entries will be furnished, provided that the written consent of the entry filer is obtained.

[3] This element will only be provided where an automated manifest or an ABI entry has been filed.

the method by which it collects and disseminates inward cargo manifest data. Customs is developing an Automated Manifest System which will process vessel manifest data transmitted electronically by carriers, port authorities and others. In return, Customs will provide certain manifest data and information concerning the release of the goods electronically to these parties. The system is designed to improve efficiency in the inspection and cargo release process.

As you know, Customs is required by law to make certain manifest information available to the public except for the names and addresses of importers/consignees and that of their shippers when confidentiality is requested. In the near future, this manifest data will be available to any requester in the form of a magnetic computer tape. Requests for confidentiality will continue to be honored. The limitations of the automated system are such, however, that it will only safeguard the precise spelling of the company's name that is provided to it. *Therefore, in order to safeguard your data, it is essential that you provide within 10 working days of your receipt of this letter all spellings or formulations* (such as abbreviations) of the name of your company that appear or could appear on the manifest or related shipping documents. These spellings or formulations will be entered into the computer data base so as to protect any transactions on which the formulation appears.

A more detailed explanation of the Automated Manifest System and the release of vessel manifest information will appear in the **Federal Register** shortly. Your comments on that notice would be appreciated. If you have any questions concerning this matter, you may contact Gerald Crowley at (202) 566–8681.

Sincerely,

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 88–781 Filed 2–1–88; 8:45 am]

BILLING CODE 1501-01-D

Sunshine Act Meetings

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 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 RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, February 8, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–2212 Filed 1–29–88; 2:43 pm]

BILLING CODE 6210–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 27, 1988.

TIME AND DATE: 10:00 a.m., February 4, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Danny Johnson* v. *Lamar Mining Company* et al., Docket No. KENT 87–68–D (Issues include Danny Johnson's motion to reopen.)
2. *Secretary of Labor on behalf of Joseph Gabossi* v. *Western Fuels-Utah, Inc.*, Docket No. WEST 86–24–D (Issues include consideration of the Secretary of Labor's motion for oral argument.)
3. Consideration of possible revisions to Commission procedural Rules 50–55. 29 CFR 2700.50 through 2700.55.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Sandra G. Farrow, Acting Agenda Clerk, (202) 653–5629/(202) 566–2673 for TDD Relay.

Sandra G. Farrow,

Acting Agenda Clerk.

[FR Doc. 88–2232 Filed 1–29–88; 4:00 pm]

BILLING CODE 6735–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, February 2, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Recombinant Erythropoietin (Docket Number 1429).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth Mason,

Secretary.

January 27, 1988.

[FR Doc. 88–2223 Filed 1–29–88; 3:37 pm]

BILLING CODE 7020–02–M

NATIONAL SCIENCE BOARD

DATE AND TIME: February 12, 1988.

8:30 a.m.—Closed Session
8:55 a.m.—Open Session

PLACE: National Science Foundation Washington, DC.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED FEBRUARY 12:

Closed Sesson (8:30 a.m. to 8:55 a.m.)

1. Minutes—October 1987 Meeting
2. NSB and NSF Staff Nominees
3. Vannevar Bush Award
4. Grants, Contracts, and Programs

Open Session (8:55 a.m.—11:00 a.m.)

5. Grants, Contracts, and Programs
6. Chairman's Report
7. Minutes—October 1987 Meeting
8. Director's Report
9. Report on Funding Trends and Balance of Activities
10. Draft Report of the Committee on Centers and Individual Investigator Awards
11. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 88–2086 Filed 1–28–88; 4:01 pm]

BILLING CODE 7555–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Special Board Meeting

TIME AND DATE: 4:30 P.M.—Tuesday, February 2, 1988.

PLACE: Federal Deposit Insurance Corporation, 550 17th Street, NW., Sixth Floor Conference Room, Washington, DC 20429.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Director of Communications 376–2623.

AGENDA:

I. Call to Order and Remarks of Chairman
II. Housing Policy Proposals

Carol J. McCabe,

Secretary.

[FR Doc. 88–2156 Filed 1–29–88; 10:46 am]

BILLING CODE 7570–01–M

Corrections

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 70109-7242]

Reaffirmation of Federal Information Processing Standard 46, Data Encryption Standard

Correction

In notice document 88-1201 appearing on page 1813 in the issue of Friday, January 22, 1988, make the following correction:

In the second column, in the third complete paragraph, in the sixth line, after "devices", insert "certified".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3251-2]

Standards of Performance for New Stationary Sources; Reference Method 16A Revisions; Addition of Method 16B for the Determination of Total Reduced Sulfur Emissions

Correction

Editorial note: For a correction to FR Doc. 87–22291 published Tuesday, September 29, 1987, See Part II of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

A Significant New Information Dissemination Product Pursuant to OMB Circular A-130; Customs Automated Commercial System

Correction

FR Doc. 88-781 which was originally published in the issue of Friday, January 15, 1988, at page 1097, is being republished in its entirety in the Notices section of today's issue because of omissions.

BILLING CODE 1505-01-D

federal register

Tuesday
February 2, 1988

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Reference Method 16A Revisions; Addition of Method 16B for the Determination of Total Reduced Sulfur Emissions; Correction

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3251-2]

Standards of Performance for New Stationary Sources; Reference Method 16A Revisions; Addition of Method 16B for the Determination of Total Reduced Sulfur Emissions

Correction

In rule document 87-22291 beginning on page 36408 in the issue of Tuesday, September 29, 1987, make the following corrections:

1. On page 36409, in the first column, in the sixth line from the bottom, remove the parenthesis before the word "have".

Appendix A, Method 16A—[Corrected]

2. On page 36413, in the first column, section 7.1.4.6, in the third paragraph, in the 10th line, "know" should have read "known".

3. In the same column, in section 7.1.5, in the fifth line, "HCL" should read "HCl".

4. On the same page, in the third column, in section 7.1.9.1, in the third line, "H_2S" should be a subscript to C.

5. In the same section, on page 36414, in the first column, in all the entries of nomenclature for Q_{std}, the words "average", "before", and "after" should be subscripts.

6. On the same page, in section 7.1.9.4, in Eq. 16A-7, there should be a bar above the "Q".

Appendix A, Method 16B—[Corrected]

7. On page 36415, in the second column, in section 1.3, in the first line, "*Range Sensitivity*" should read "*Range and Sensitivity.*"

8. In the same paragraph, in the third line, "FRD" should read "FPD".

9. On page 36417, in the first column, in section 8, in the first line of nomenclature, "SO^{2*}" should read "SO_2".

Appendix A, Method 16A—[Corrected]

10. Because of confusing page layout, the text of page 36414 (incorporating the corrections above) is republished as follows:

$$= \frac{17.03\ g}{g\text{–eq}} \frac{24.05\ \text{liters } H_2S}{\text{mole } H_2S} \frac{1\ \text{mole } H_2S}{34.06\ g\ H_2S} \frac{10^3\ ml}{\text{liter}}$$

M_a = Molecular weight of ambient air saturated at impinger temperature, g/g-mole.
M_s = Molecular weight of sample gas (nitrogen) saturated at impinger temperature, g/g-mole. (For tests carried out in a laboratory where the impinger temperature is 25 °C, M_a = 28.5 g/g-mole and M_s = 27.7 g/g-mole.)
N_I = Normality of standard iodine solution (0.01 N), g-eq/liter.
N_T = Normality of standard $Na_2S_2O_3$ solution (0.01 N), g-eq/liter.
P_{bar} = Barometric pressure, mm Hg.
P_{std} = Standard absolute pressure, 760 mm Hg.
Q_{std} = Volumetric flow rate through critical orifice, liters/min.

Date _____
Critical orifice ID _____
Soap bubble meter volume, V_{sb} _____ liters
Time, Θ_{sb}
Run no. 1 _____ min _____ sec
Run no. 2 _____ min _____ sec
Run no. 3 _____ min _____ sec
Average _____ min _____ sec
Convert the seconds to fraction of minute:
Time
= _____ min + _____ Sec/60
= _____ min
Barometric pressure, P_{bar} = _____ mm Hg
Ambient temperature, t_{amb} = 273 + _____ °C
= _____ °K
Pump vacuum, = _____ mm Hg. (This should be approximately 0.4 times barometric pressure.)

$$V_{sb(std)} = \frac{(V_{sb})(T_{std})(P_{bar})(10^{-3})}{(T_{amb})(P_{std})}$$

= ---------- liters

$$Q_{std} = \frac{V_{sb(std)}}{\Theta_{sb}}$$

= ---------- liters/min

Table 1. Critical orifice calibration data.

$Q_{std,\ average}$ = Average standard flow rate through critical orifice, liters/min.
$Q_{std,\ before}$ = Average standard flow rate through critical orifice determined before H_2S sampling (Section 7.1.4.4), liters/min.
$Q_{std,\ after}$ = Average standard flow rate through critical orifice determined after H_2S sampling (Section 7.1.7), liters/min.
T_{amb} = Absolute ambient temperature, °K.
T_{std} = Standard absolute temperature, 293 °K.
Θ_s = Sampling time, min.
Θ_{sb} = Time for soap bubble meter flow rate measurement, min.
$V_{m(std)}$ = Sample gas volume measured by the critical orifice, corrected to standard conditions, liters.
V_{sb} = Volume of gas as measured by the soap bubble meter, ml.
$V_{sb(std)}$ = Volume of gas as measured by the soap bubble meter, corrected to standard conditions, liters.
V_I = Volume of standard iodine solution (0.01 N) used, ml.
V_T = Volume of standard $Na_2S_2O_3$ solution (0.01 N) used, ml.
V_{TB} = Volume of standard $Na_2S_2O_3$ solution (0.01 N) used for the blank, ml.

7.1.9.2 Normality of Standard $Na_2S_2O_3$ Solution (0.1. N).

$$N_T = \frac{1}{\text{ml } Na_2S_2O_3 \text{ Consumed}}$$

Eq. 16A–5

7.1.9.3 Normality of Standard Iodine Solution (0.01 N).

$$N_I = \frac{N_T V_T}{V_I}$$

Eq. 16A–6

7.1.9.4 Sample Gas Volume.

$$V_{m(std)} = (\bar{Q}_{std})(\Theta_s)(1-B_{wa})\frac{M_a}{M_b}$$

Eq. 16A–7

7.1.9.5 Concentration of H_2S in the Gas Cylinder.

$$C_{H2S} = \frac{K N_T (V_{TB} - V_T)}{V_{m(std)}}$$

Eq. 16A–8

8. Bibliography

1. American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Standard Methods for the Examination of Water and

BILLING CODE 1505–01–D

federal register

Tuesday
February 2, 1988

Part III

Department of Education

34 CFR Part 669

Language Resource Center Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 669

Language Resource Center Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to govern the Language Resource Center Program which is authorized by section 603 of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99–498. The Language Resource Center Program is intended to provide assistance to centers which serve as resources for improving the nations' capacity for teaching and learning foreign languages.

DATES: Comments must be received on or before March 18, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Joseph F. Belmonte, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3054, ROB–3), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte; Telephone: (202) 732–3304.

SUPPLEMENTARY INFORMATION: The Language Resource Center Program was added to the foreign language and international studies programs authorized under Title VI of the HEA by the Higher Education Amendments of 1986. The goal of this program is to improve the effectiveness of language teaching and learning, through research, training, and outreach activities. The Secretary is authorized to award grants to institutions of higher education for the specific activities set forth in § 669.3.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Most institutions that would be interested in this program are expected to be major higher education institutions with enrollments of well over 500. They are not defined as small entities.

Paperwork Reduction Act of 1980

Section 669.21 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, Regional Office Building No. 3, 7th and D Streets, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 669

Colleges and universities, Education, Foreign languages, Reporting and recordkeeping requirements, Research, Teacher training.

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: December 14, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 669 to read as follows:

PART 669—LANGUAGE RESOURCE CENTER PROGRAM

Subpart A—General

Sec.

669.1 What is the Language Resource Center Program?
669.2 Who is eligible to receive assistance under this program?
669.3 What activities may the Secretary fund?
669.4 What regulations apply?
669.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

669.20 How does the Secretary evaluate an application?
669.21 What selection criteria does the Secretary use?
669.22 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met by a Grantee?

669.30 What are allowable equipment costs?

Authority: 20 U.S.C. 1123, unless otherwise noted.

Subpart A—General

§ 669.1 What is the Language Resource Center Program?

The Language Resource Center Program makes awards, through grants or contracts, for establishing, strengthening, and operating centers that serve as resources for improving the nation's capacity for teaching and learning foreign languages effectively.

(Authority: 20 U.S.C. 1123)

§ 669.2 Who is eligible to receive assistance under this program?

An institution of higher education or a combination of institutions of higher education is eligible to receive an award under this part.

(Authority: 20 U.S.C. 1123)

§ 669.3 What activities may the Secretary fund?

Centers funded under this part must carry out activities to improve the teaching and learning of foreign languages. These activities may include—

(a) The conduct of research on new and improved methods for teaching foreign languages, including the use of advanced educational technology;

(b) The development of new materials for teaching foreign languages to reflect the results of research on effective teaching strategies;

(c) The development and application of proficiency testing that is appropriate for use in an educational setting to be used as a standard measurement of skill levels in all foreign languages;

(d) The training of teachers in the administration and interpretation of foreign language proficiency tests, the use of effective teaching strategies and the use of new technologies;

(e) The publication of instructional materials in the less commonly taught foreign languages; and

(f) The widespread dissemination of research results, teaching materials, and improved pedagogical strategies to the postsecondary education community.

(Authority: 20 U.S.C. 1123)

§ 669.4 What regulations apply?

The following regulations apply to this program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 669.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions that Apply to Department Regulations) and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1123)

§ 669.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) "Language Resource Center" means a coordinated concentration of educational research and training resources for improving the nation's capacity to teach and learn foreign languages.

(Authority: 20 U.S.C. 1123)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 669.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for an award on the basis of the criteria contained in § 669.21.

(b) The Secretary awards up to 100 possible points for these criteria. However, if the Secretary establishes one or more priorities under § 669.22, the Secretary awards up to 120 possible points.

(c) The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1123)

§ 669.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating applications under this part:

(a) *Plan of operation.* (15) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (20) (See 34 CFR 655.31(b))

(c) *Budget and cost-effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (5) (See 34 CFR 655.31(e))

(f) *Need and potential impact.* (30) The Secretary reviews each application to determine—

(1) The extent to which the proposed materials or activities are needed in the foreign languages on which the project focuses;

(2) The extent to which the proposed materials may be used throughout the United States; and

(3) The extent to which the proposed work or activity may contribute significantly to strengthening, expanding, or improving programs of foreign language study in the United States.

(g) *Likelihood of achieving results.* (10) The Secretary reviews each application to determine—

(1) The quality of the outlined methods and procedures for preparing the materials; and

(2) The extent to which plans for carrying out activities are practicable and can be expected to produce the anticipated results.

(h) *Description of final form of results.* (5) The Secretary reviews each application to determine the degree of specificity and the appropriateness of the description of the expected results from the project.

(i) *Priorities.* (20) If, under the provisions of § 669.22, the application notice specifies priorities for this program, the Secretary determines the degree to which the priorities are served.

(Authority: 20 U.S.C. 1123)

§ 669.22 What priorities may the Secretary establish?

(a) The Secretary may each year select funding priorities from among the following:

(1) Categories of allowable activities described in § 669.3.

(2) Specific foreign languages for study or materials development.

(3) Levels of education, for example, elementary, secondary, postsecondary, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1123)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 669.30 What are allowable equipment costs?

Equipment costs may not exceed fifteen percent of the grant amount.

(Authority: 20 U.S.C. 1123)

[FR Doc. 88–1996 Filed 2–1–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
February 2, 1988

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 59

Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects

AGENCY: Public Health Service, HHS.

ACTION: Final rules.

SUMMARY: The Public Health Service (PHS) amends the regulations governing the use of funds for family planning services under Title X of the Public Health Service Act in order to set specific standards for compliance with the statutory requirement that none of the funds appropriated under Title X may be used in programs where abortion is a method of family planning. It is expected that the amendments will improve compliance by grantees with the statute and facilitate monitoring of compliance by PHS.

DATE: The rules are effective March 3, 1988, except for 42 CFR 59.9, which will be effective April 4, 1988.

ADDRESS: Nabers Cabaniss, Deputy Assistant Secretary for Population Affairs, Room 736E, 200 Independence Ave. SW., Washington, DC 20201

FOR FURTHER INFORMATION CONTACT: Nabers Cabaniss at 202-245-0152.

SUPPLEMENTARY INFORMATION: On July 30, 1987, President Reagan announced that the Department of Health and Human Services would, within 30 days, publish proposed regulations applicable to grants under Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, to give effect to the statutory prohibition on the use of Title X appropriated funds in programs include abortion as a method of family planning. On September 1, 1987, a Notice of Proposed Rulemaking was accordingly published in the **Federal Register.** 52 FR 33210. The September 1 notice proposed rules which would prohibit Title X projects from counseling or referring project clients for abortion as a method of family planning. The proposed rules also required grantees to separate their Title X project—physically and financially—from any abortion activities. Finally, the rules proposed compliance standards for family planning projects funded under Title X to specifically prohibit certain actions that promote or encourage abortion as a method of family planning, such as the use of project funds for lobbying for abortion, developing and disseminating materials advocating abortion, or taking legal action to make abortion available as a method of family planning. Proposed 42 CFR 59.8–59.10.

The Department requested public comment on the proposed provisions. Approximately 75,000 comments were received during the 60-day comment period. Of these comments, a majority favored the proposed policies. The Department has carefully considered the issues raised by the public. A description and dicussion of these issues precedes the final rules set out below.

Background

Few issues facing our society today are more divisive than that of abortion. Those who oppose abortion do so on the ground that it is nothing less than the killing of an innocent human life and, as such, is not only the unconscionable destruction of an individual life but also sets the stage for the devaluation of life on a much broader scale. Those who favor the choice of abortion view it as an immediate and positive option for pregnant women in crisis and consider any governmental regulation of abortion to be a wrongful intrusion by the State into a very personal decision.

Indeed, the volume and highly charged nature of the public comments received on this regulatory proposal emphasize the polar divisions of national opinion on this issue. Because the rules below address such a controversial issue, it is imperative that these final rules be precisely understood. The extended discusssion of the legal framework circumscribing the Department's regulatory authority and the detailed explanation of the Department's actions below are provided for this reason.

Title X of the Public Health Service Act was enacted in 1970 by Pub. L. 91–572. It authorizes the Secretary of Health and Human Services to, among other things, make grants to public and private nonprofit entities to establish and operate family planning projects. Section 1001(a) of the Public Health Service Act, 42 U.S.C. 300(a). Section 1008 of Title X, 42 U.S.C. 300a–6, contains the following prohibition, which has not been altered since enacted in 1970:

> None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

This language clearly creates a wall of separation between Title X programs and abortion as a method of family planning. It embodies a view that abortion is inappropriate as a method of family planning. Indeed as the Supreme Court has recognized abortion is "inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life." *Harris* v. *McRae,* 448 U.S.297, 325 (1980). In *McRae,* the Supreme Court stated that because there is a "legitimate congressional interest in protecting potential life," Congress may decline to subsidize abortions, even though it may not erect legal obstacles to the exercise of that choice. *Id.* Section 1008 and the rule below express just such a decision and thus fall squarely within the range of choices that the Supreme Court has recognized that the government may legitimately make.

It is important to recognize that section 1008 extends to all activities conducted by the federally funded project, not just the use of federal funds for abortions within the project. When a statute focuses only on the acutal use of federal funds, mere allocation of costs through appropriate bookkeeping entries may be appropriate. In section 1008, however, Congress crafted a broader prohibition, and that prohibition should be given effect.

Moreover, it is clear that Congress designed the Title X program to provided preventive family planning and infertility services, not to provide all possible medical services, including services for the care of pregnant women. (Compare section 1001 of the Act, 42 U.S.C. 300 and section 330 of the Act, 42 U.S.C. 254c.) This design is consistent with the statutory prohibition of section 1008.

The legislative history of Title X bears out this interpretation. The most significant expression of congressional intent in this connection is contained in the Conference Report accompanying S. 2108, which contains the following statement:

> It is, and has been, the intent of both Houses that the funds authorized under this legislation be used only to support *preventive* family planning services, population research, infertility services,[1] and other related medical, information and education activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion in order to make clear this intent.[2]

In addition, Congressman John D. Dingell, the principal sponsor of section 1008, made the following statement on the floor of the House:

---

[1] The statutory requirements for infertility services was not added until the 1978 amendments.

[2] Conf. Rep. No. 91–1667, 97th Cong., 2nd Sess. 8–9 (1970).

Mr. Speaker, I support the legislation before this body. I set forth in my extended remarks the reasons why I offered to the amendment which prohibited abortion as a method of family planning * * *. With the "prohibition of abortion" the committee members clearly intended that *abortion is not to be encouraged or promoted in any way* through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this Act.[3]

Thus, as clearly contemplated by Title X and its legislative history, "family planning" as circumscribed by section 1008, permits only activities related to facilitating or preventing pregnancy, not for terminating it.

Initital Implementation Through Advisory Opinions

Critical to an understanding of the rules below is an understanding of the past history of the Title X program. The Department has, since 1972, interpreted section 1008 not only as prohibiting the provision of abortion but also as prohibiting Title X projects from in any way promoting or encouraging abortion as a method of family planning. Further, based on the legislative history, the Department has also, since 1972, interpreted section 1008 as requiring that the Title X program be "separate and distinct" from any abortion activities of a grantee.

Initially, the Department's interpretation of the language of section 1008 was limited to opinions of its Office of General Counsel (OGC). After quoting the passage from the Conference Report and the statement of Congressman Dingell, cited above, the first such OGC opinion concluded that "it is apparent that the Congressional intent was to prohibit a broader scope of activity than a literal reading of section 1008 would require." [4] In these opinions, however, the Department generally took the view that activity which did not have the immediate effect of promoting abortion or which did not have the principal purpose or effect of promoting abortion was permitted.

The 1981 Guidelines

In 1981, the Department issued revised Title X program guidelines, "Program Guidelines for Project Grants for Family Planning Services." As with previous editions of the guidelines, they did not incorporate prior OGC opinions providing guidance on abortion counseling, referral and program separation. However, while the pre-1981 OGC opinions had been directed to provision of guidance on which abortion related activities were *permissible* within the section 1008 prohibition, the guidelines went a step further and *required* Title X projects to engage in abortion-related activities under certain circumstances. These guidelines for the first time required nondirective "options counsleling" on pregnancy termination (abortion), prenatal care, and adoption and foster care when a woman with an unintended pregnancy requests information on her options, followed by referral for these services if she so requests. These guidelines were premised on a view that "non-directive" counseling and referral for abortion were not inconsistent with the statute and were justified as a matter of policy in that such activities did not have the effect of promoting or encouraging abortion. It should be noted that although OGC opinions continued to interpret section 1008 as prohibiting any abortion referrals beyond "mere referral," that is, providing a list of names and addresses without in any further way assisting the woman in obtaining an abortion (such as by providing transportation or arranging appointments), this policy was not reflected in the 1981 program guidelines, thereby creating an appearance of treating each option identically.

Upon review of the guidelines, however, the Department for serveral reasons no longer believes that these approaches were correct. First, with regard to the consistency of the guidelines with the statute, counseling and referral for abortion are prohibited by section 1008. The Department does not believe that the current guidelines can be viewed as consistent with section 1008 on the ground that they only involve counseling and referral, not the actual performance of abortions. Counseling and other informational services are some of the principal family planning services provided by Title X programs, and section 1008 is applicable to all aspects of the program. Because counseling and referral activities are integral parts of the provision of any method of family planning, to interpret section 1008 as applicable only to the performance of abortion would be inconsistent with the broad prohibition against use of abortion as a method of family planning. As discussed above, "family planning," as clearly contemplated by Title X and its legislative history, refers to activities relating to facilitating or preventing pregnancy, not to terminating it. The current guidelines, however, require grantees to involve themselves in activities specifically related to the termination of pregnancies. This creates a conflict between the guidelines and the statutory prohibition on Title X programs using abortion as a method of family planning.

In addition, the Department does not believe that the requirement that the counseling must be "nondirective" is sufficient to render the guidelines consistent with the statute. Counseling in a Title X program, whether directive or nondirective, which results in abortion as a method of family planning simply cannot be squared with the language of section 1008, regardless of whether the actual abortion occurs in another program operated by the grantee or in an unrelated program.

Finally, the 1981 guidelines are highly questionable simply as a matter of statutory policy. The policy that section 1008 reflects is that abortion is not to be encouraged or promoted in any way; nowhere in the statute is any countervailing policy reflected. Nonetheless, the current guidelines require Title X programs to counsel and refer regarding abortion. Whether or not such a requirement is consistent with the express prohibition is section 1008, it is less sound as a matter of policy than the rules being promulgated today. In sum, upon reexamination of the issue, the Department is unable to conclude that the current guidelines are consistent with the statute. Thus, one basis for the regulations being promulgated today is to bring program practices into conformity with the language of the statute.

Rational Basis for the New Regulation

Even if the abortion counseling and referral provided for by the current guidelines were not prohibited by the express language of section 1008, the Department has concluded, as a matter of its experience with Title X, its responsibility to administer the program as provided by Congress, and its general administrative discretion, that the provisions of the current guidelines do not faithfully and effectively maintain the prohibition contained in section 1008. In the first place, the language of the guidelines pertaining to section 1008 is so brief and so broadly worded that it fails to offer "clear and operational guidance" to grantees about how to preserve the distinction between Title X programs and abortion as a method of family planning. Second, in 1982, both the Department's Office of the Inspector General (OIG) and the General Accounting Office (GAO) urged the Department to give more specific, formalized direction to programs about

[3] 116 Cong. Rec. 37375 (1970).

[4] "Abortions as a Method of Family Planning—Section 1008 of the Public Health Services Act" (April 20, 1971).

the extent of prohibition on abortion as a method of family planning.

The OIG, after auditing thirty-two Title X clinics, found that the Department's failure to provide specific program guidance regarding the scope of section 1008 had created confusion about precisely which activities were proscribed by the section, and had resulted in variations in practice by grantees. In particular, the GAO, in a report based on an audit of fourteen Title X clinics, found that the clinics were relying on the Department's policy of permitting both Title X family planning services and separately funded, abortion-related activities to be provided at a single site.[5] In the report, GAO found that some of these providers had engaged in a number of practices that were questionable in light of section 1008. These included clinic counseling practices which did not present alternatives to abortion,[6] clinic referral practices which went beyond HHS referral policy,[7] and clinic literature promoting abortion as a back-up method of family planning.[8] Further, the GAO found "questionable" lobbying expenses, including some instances where clinics had used Title X funds to pay dues to organizations that lobbied and two instances where small amounts of programs funds has been used directly for lobbying. GAO observed that the specifics of the Department's abortion policy were contained only in legal opinions issued by its Office of General Counsel:

> In effect, HHS' regulations that spell out overall policy and implement provisions of the law and corresponding program guidelines that elaborate on the law and regulations in operational terms do not contain the specific policy guidance concerning section 1008 needed by title X recipients.[9]

Accordingly, GAO stated that,

> We recommend that the Secretary establish clear operational guidance by incorporating into the title X program regulations and guidelines HHS' position on the scope of the restriction in section 1008.[10]

Public comments received by the Department on the proposed regulations further demonstrate the problems inherent in "nondirective counseling" and lend weight to concerns raised by the OIG audit and GAO report. Many comments argued that the practice or nondirective counseling has been the subject of widespread abuse, with many providers foregoing any balanced discussion of options in favor of pressuring women, particularly teenagers, into obtaining abortions. Numerous comments were received from women who said that they were never presented with any favorable or neutral information on any other option. Many of these commenters specifically mentioned experiences with particular Title X grantees or projects. A typical complaint was that the counseling that they had received was one-sided, with the fetus dehumanized as a "lump of tissue," "fetal tissue," or "uterine contents," and with no information presented as to gestational characteristics and stage of development, so that they were not given adequate information on which to make an informed choice regarding abortion. These commenters typically stated that they had experienced severe and long-lasting regret over the decision to abort, and also stated that they were given no counseling at the time they made their decision to abort as to the remorse and guilt they might later feel:

> I have experienced the one-sidedness of * * *'s "counseling" and have seen the consciences of friend's (sic) shattered by what they now know was the wrong choice. Too many people are literally encouraged to use abortion as a birth control device because of its availability. * * * has never discussed the alternative side with anyone I know. I don't feel guilty or presumptive calling their efforts exploitive.
>
> These clinics do not provide adequate information to pregnant women. There is no "choice" involved in regard to abortion. It is the *only* solution offered. I know this from experience and have spoken to many women who have shared that experience.
>
> Please indulge me a little longer to say this, *they lied to me.* My third abortion required hospitalization and this was not done for the others. So I pointedly asked *why?* Her response, "No—well, yes—it's the same." Now I have learned I submitted to a *dilitation* (sic) and *evacuation—second trimester abortion.* I never knew this until three years ago. *But I asked and she lied to me.* * * * The family planners holler about—(and I quote from their Action Alert here in * * * N.Y.) "Medical professionals have an *obligation* to give patients information and referrals on *all* options, and patients have a right to make an informed decision. (fully informed)" *Where was mine?*
>
> Since Planned Parenthood is the foremost abortion provider in the U.S., they have a responsibility to tell women the truth about fetal development and subsequent risks involved in pursuing abortion as an option. I know for a fact that they do not. The baby is dehumanized as much as possible by being termed a "blob," "products of conception," or "uterine contents." Not even the term fetus is used by the counselors. The very risky surgery is then passed over as safe [and] harmless [and] there is no mention of emotional or physical after affects. The counselors are told that any information on fetal development is distasteful [and] should not be used to avoid making the woman feel guilty. * * * Since my abortion, I have had 2 miscarriages.
>
> If I had been given proper information as to the development of my 12 week old child and if I had been presented with options to abortion rather than just abortion (given by the *F.P. clinic*) I would have had my baby.
>
> I had an abortion at the age of 16 years with the full encouragement of * * * in * * *, CA. They even called and made my first appt. to see the Dr. who would perform my abortion. There was no encouragement to consider adoption or to keep my baby. They helped me to get rid of my baby as quickly as possible.
>
> I was not given a complete picture of my situation. Therefore the decision I made for abortion was no decision at all. It was a coercion. Sixteen year old girls do not have the where-with-all to make such a life threatening, life changing decision *especially* when the choices given are so deceitfully incomplete. If I had known the reality of what I chose I would not have chosen an abortion. I killed my baby! How would *you* feel/react if someday several years after abortion you saw pictures of a 12 week old fetus and learned this was the picture of a perfectly formed human being. Hmmm—* * * [they] told me it was a "blob!" I was devastated beyond all description.
>
> I was a seventeen year old who had just found out I was pregnant. * * * I couldn't get out of school to visit * * *, so they sent a nurse to see me. She blew my spirit down so much. * * * I expected her to help me and she wanted to destroy a little, innocent baby for convenience. She said, "There's no way you can bring a child into this world and take

[5] Comp. Gen. Rep. No. GAO/HRD-82-106, "Restrictions on Abortion and Lobbying Activities in Family Planning Programs Need Clarification," p. 22 (1982) (hereafter referred to as "the GAO Report".)

[6] At one clinic discussed in the report, women were required to complete paperwork before their pregnancy tests and preselect how they intended to deal with their pregnancy. If they chose to continue the pregnancy, they were counseled on that option. If they checked abortion, they were counseled only on that choice. Six other clinics, which did not require prepregnancy test decisions, did not routinely counsel women on other alternatives if they had decided on abortion.

[7] Four clinics provided clients with brochures prepared by abortion clinics. At two clinics, clients seeking abortions were allowed to use the telephone to make appointments for abortions. At one clinic, appointments for abortion were made for clients who did not speak English. At one clinic, the Title X recipients provided women loans for abortions for nonprogram funds; however, administrative costs associated with the referral and loans were charged to Title X program costs. The GAO Report also noted OIG's discovery that several Title X clinics in Indiana had provided and witnessed the signing of consent forms required by an abortion clinic.

[8] One Texas clinic showed all clients a film about birth control methods and sterilization that included a section that presented abortion as a legal alternative in the event of an unwanted pregnancy. Four clinics provided or made available to all clients entering the family planning program handout material that discussed abortion. Typically this material listed various birth control methods with the barrier method and early abortion in the event of a failure as an alternative method.

[9] The GAO Report, p. 14–15.

[10] The GAO Report, p. 22.

care of it on your own. It isn't fair to the baby. People will speak badly of you. How can you let a baby be born with no father and no name? What about school? You can't finish 12th grade walking around pregnant. What kind of life would that be? * * *" Then she suggested an abortion. I started crying. All I could feel was why would anyone want to kill * * * her own flesh and blood * * * and why was she urging me to do this?

The Department, accordingly, concludes that there is an adequate basis for this rule since it is reasonable in light of all the circumstances. See *Chevron, U.S.A., Inc.*, v. *Natural Resources Defense Council, Inc.*, 476 U.S. 837 (1984).

The New Regulation

The rules below, which are issued pursuant to the Secretary's rulemaking authority at 42 U.S.C. 300a–4(a), establish far more specific and clearer standards for compliance with section 1008. They focus the emphasis of the Title X program on its traditional mission: The provision of preventive family planning services specifically designed to enable individuals to determine the number and spacing of their children, while clarifying that pregnant women must be referred to appropriate prenatal care services. H. Rep. No. 91–1472, 91st Cong., 2nd Sess. (1970), reprinted at 3 U.S. Code Cong. & Adm. News 5071 (1970). In addition, they require that grantees maintain program integrity and separation. The regulations, however, do not restrict the use of funds outside the Title X program or impose restrictions on funds provided under other federal programs. Nor do they prevent a woman from seeking and obtaining an abortion outside the Title X program. They thus make no attempt to establish abortion restrictions beyond the parameters of a Title X project.

Although the rules below thus adhere to the broad policies laid out in the proposed rules, a number of changes in particular provisions have been made in response to concerns raised by the public comments. A summary of these comments, an explanation of the changes to the final rules, and the Department's responses to the remainder of the comments are set out below.

Discussion

I. Definitions

The proposed rules set out a series of definitions to be added to the regulatory definitions at 42 CFR 59.2. The additional definitions proposed were of the terms "family planning", "grantee", "organization", "program" and "project", and "Title X". While the suggested definitions of the terms "grantee," "organization," and "Title X" elicited very little comment, the remaining definitions were the subject of extensive debate. In addition, a few comments suggested that other terms be defined to clarify the proposed rules.

A. Comments.

1. "*Family planning*": As proposed, this term was defined as—

the process of establishing objectives for the number and spacing of a family's children, and selecting the means (including natural family planning methods, adoption, infertility services and general reproductive health care, abstinence and contraception) by which those objectives may be achieved. As such, family planning does not include medical services or counseling after pregnancy is diagnosed (including prenatal or postpartum care or counseling), or abortion-related services. As it relates to the statutory prohibition on the inclusion of abortion as a method of family planning, proper family planning should reduce the incidence of abortion.

Numerous providers and provider organizations objected to this definition. A large number of comments took issue with the first sentence of the definition. First, some commenters pointed out that by limiting the definition of "family planning" to services provided to "families," the Department would be excluding from coverage single individuals, whom Congress intended to be served. Other comments objected to the items included in the parenthetical expression in the first sentence of the definition. Many providers argued that listing "contraception" at the end of the list of family planning methods de-emphasizes its importance in Title X, and converts Title X into a program that is principally designed to encourage abstinence and promote adoption, contrary to Congress's intent. The inclusion of "adoption" as a method of family planning elicited a mix of comments. Some providers thought its inclusion inappropriate and inconsistent with the overall mission of Title X, while others favored its inclusion. A few comments pointed out that adoption and infertility services do not fit in conceptually with preventive methods of family planning. A few commenters were concerned that the reference to infertility services in the parenthetical expression not be construed as connoting approval of *in vitro* fertilization, surrogate motherhood, and the like. Finally, concern was expressed that the definition in general and the first sentence in particular would preclude Title X projects from continuing to provide the range of health services— such as physical examinations, gynecological services, screening and treatment for sexually transmitted diseases, screening for breast cancer— that they have traditionally provided.

A common objection was to the exclusion of prenatal care from the range of services offered by Title X clinics. Citing the 1970 Senate committee report, they argued that Title X projects were intended to be providers of comprehensive family planning services and that family planning involves more than birth control. Many providers argued that the time at which pregnancy is diagnosed is the optimal time to educate pregnant clients as to proper nutrition and the importance of avoiding high-risk behavior—such as smoking, consumption of alcohol, drug abuse, and management of weight gain—as early pregnancy is when organogenesis is proceeding most rapidly. These comments asserted that terminating the Title X project's involvement with the client at this point would have significant adverse public health consequences (such as an increase in low birth weight, maternal and infant health complications, and infant mortality), as the disadvantaged status (*i.e.*, youth, poverty, low education) of most of the program's clientele makes it unlikely that they will obtain adequate prenatal care from other sources in a timely fashion. A number of providers argued that for many Title X clients, the Title X project constitutes their only source of health care due to factors such as geographic isolation, unwillingness of other providers to accept non-paying clients, or the inability of the clients to arrange for care themselves. It was argued that the effect of the definition will be to create a dual system of health care in which the poor served by Title X clinics are relegated to inferior health care, while the population that can afford to pay for care will continue to obtain prenatal care.

Similar concerns were noted with respect to the exclusion of postpartum care from the definition of family planning. In addition, some commenters contended that the exclusion of postpartum care is inconsistent with the statute. First, many health professionals and providers argued that proper medical practice dictates that family planning counseling and selection of a family planning method be done postpartum, as that is when it is most likely to be effective; exclusion of services at that point, they argued, would be thus inconsistent with the statutory emphasis on the provision of "comprehensive * * * and effective family planning services * * *". Second, several comments argued that the legislative history itself indicates

that projects are supposed to provide family planning services to women "shortly after childbirth," quoting the 1970 House and Conference Reports.

Numerous comments objected to the use of the phrase "abortion-related services" in the exclusionary portion of the definition of "family planning" on the ground that the former term was vague and overbroad. In addition, it was argued that the exclusion of "abortion-related services" makes the definition inconsistent in that abortion is excluded as a method of family planning, while there are repeated references in the remainder of the regulation to "abortion as a method of family planning."

Supporters of the regulations generally favored adoption of the definition as proposed. However, a few reservations were expressed concerning its coverage. It was suggested that the limitation on the provision of abortion-related services and prenatal and adoption services for pregnant women be explained to clarify that although prenatal and adoption services are not preventive family planning services, they are not subject to the same stigma as abortion services, which are specifically prohibited by the statute. It was therefore suggested that the regulations should permit and support efficient and formalized referral processes to assure access to prenatal and adoption services. It was also suggested that the proposed definition was still inadequate, in that it would not permit crisis pregnancy centers to be funded as Title X grantees, since abortion counseling which discourages abortion is not within the definition.

2. *"Program" and "project":* This proposed definition elicited a number of comments, primarily from supporters of the proposed rules. In general, these comments objected to equating the terms program and project, contending that the definition of "program" as applied to receipt of Title X funds was not consistent with the ordinary usage and meaning of the term and allowed grantees artificially to manipulate compliance. The commenters argued that the Department's longstanding interpretation of the terms as being interchangeable for the purposes of administration of section 1008 is wrong and permits projects funded under Title X to evade the restrictions of section 1008 by simple bookkeeping maneuvers. Proponents wanted to strengthen the regulation to prevent grantees from simply omitting certain items from their grant proposal while in fact including prohibited activities within the program.

3. *Other definitions:* In addition, a few comments suggested that other terms used in the proposed regulations should be defined in order to clarify the scope of the regulatory policies. Among the terms that were suggested for definition were "abortion," "abortion-related services," "prenatal services," "low-income family," and "medically indicated." With respect to the term "abortion," questions were raised about its meaning, and it was suggested that procedures such as "menstrual regulation," "menstrual extraction," and "endometrial aspiration" be included in any definition of abortion since these are euphemisms for proecedures which are actually abortions. The term "abortion-related services" was widely criticized as vague; comments asserted that it could include services such as housekeeping or laundry if shared by the abortion component of a medical facility. With respect to the term "prenatal services," it was suggested that the term be defined to include services to protect both maternal and fetal health and that referrals not be allowed where the provider is primarily a provider of abortion services. It was suggested that the current regulatory definition of "low-income family" be changed to delete the provision which requires that unemancipated minors who wish to receive services on a confidential basis be considered on the basis of their own resources. It was suggested that the term "medically indicated" be clearly defined to prohibit referral for abortion or abortion-related services except where the life of the mother is in imminent danger as in the case of an ectopic pregnancy, or defined to prohibit any referral for abortion. With respect to the term "organization," proponents of the regulation argued that it was unclear and appeared to treat as separate organizations an organization's activities in several States, creating a cumbersome situation for the grantee. They suggested that the definition be clarified to cover a legal entity chartered in one State and authorized to do business in several States.

B. Response

1. *"Family planning":* The Department acknowledges that the definition has caused misunderstanding in several respects and has revised the proposed definition of this term accordingly. First, it was never the Department's intention to suggest that contraception is to be deemphasized in the Title X program; to make that perfectly clear, it has placed the term "contraception" at the beginning of the list of services to be provided in the second sentence of the definition. In addition, it agrees that exclusion of postpartum services was inappropriate to the extent that it appeared to exclude provision of preventive methods of family planning in the postpartum period, and has accordingly eliminated the exclusion from the definition. With respect to the comments criticizing the use of the word "families," the definition has been conformed more closely to the language of Title X, clarifying that the eligibility of individuals will not be affected by the regulation. Finally, with respect to the argument that the definition of family planning was logically inconsistent with the rest of the regulation because of the exclusion of "abortion-related services," it has modified the definition of the term to make clear that while abortion may, in a statutory sense, constitute "a method of family planning," it is an impermissible method in programs supported by funds appropriated under the title.

Although the Department has not accepted the suggestions that it delete the references to "adoption" and "infertility services" in their entirety from the definition of "family planning," it has modified the definition in response to the concerns raised. Both approaches constitute legitimate means of determining family size and spacing, but adoption is simply one means of addressing the broader problem of infertility. Thus, the term "infertility services" in the definition has been changed to make this relationship clear. With respect to the criticism that the definition should be limited to preventive methods of family planning only, it is clear that Congress intended the term "family planning" to be broader in scope than simply contraception, as infertility services are included as one of the mandatory services listed in section 1001(a) of the Act. With respect to the comments suggesting that inclusion of infertility services should not permit funding of in vitro fertilization, surrogate motherhood and similar methods of providing children to childless couples, the Department continues to construe the term, as it has in the past, as requiring only the provision by the Title X project of what are known as "Level I" services (*i.e.*, initial infertility interview, education, examination, appropriate laboratory testing, counseling and appropriate referral).

The Department notes that a number of the objections to the proposed definition were premised on a misinterpretation of its scope. The Department agrees that family planning is broader than just the provision of contraceptive services, but it disagrees that either the proposed definition or the definition below so restrict the term; see, in particular, the inclusion of "general reproductive health care" and

"infertility services" in the definition. Moreover, it is not correct that the proposed definition would exclude physical examinations, screening for breast cancer or treatment of gynecological problems. All of these services continue to be authorized under the definition, either concomitant to providing contraceptive services or as "general reproductive health care." In addition, services not related to pregnancy which are necessary to general reproductive health care, such as treatment for sexually transmitted diseases, continue to be authorized under the definition.

While the Department concurs in comments regarding the importance of early access to high quality prenatal care, it does not believe that Title X was intended to provide prenatal care, and therefore does not accept the suggestion that the exclusion of prenatal care from the definition of "family planning" be dropped. It disagrees with the argument that the exclusion is inconsistent with the statute. The 1970 Conference Report to Pub. L. 91–572 makes it abundantly clear that while medical services are clearly permitted under Title X, they are authorized only when related to population research, infertility services of preventive family planning services. The exclusion of prenatal care is consistent with this concept.

In addition, provision of prenatal services, like the requirement for pregnancy options counseling, was not included in program guidelines prior to 1981. Moreover, under the 1981 program guidelines, prenatal services (other than initial diagnosis and counseling) may only be provided by Title X projects in very specific and limited circumstances and with prior approval from the relevant regional office of the Department. Since 1981, very few Title X projects have requested or received this authority. At the present time, for instance, we are aware of only two grantees in one region that have received approval to provide extended prenatal services as part of their Title X projects. Thus, it is not correct, as contended by some commenters, that prenatal services have traditionally been a major component of the Title X program. Nor does the Department agree with the commenters that the exclusion represents unsound public health policy, so long as it is clear that the Title X project must facilitate obtaining the prenatal care necessary for a healthy pregnancy. Because Title X has never funded substantial amounts of prenatal care and thus availability of prenatal services would be unaffected by these provisions, the Department does not agree that low income clients will receive inferior care to what they are now receiving. Indeed, the provisions emphasize the importance of helping clients to receive appropriate prenatal care through referral.

The Department concurs in comments that the regulations should clarify that, although beyond the scope of Title X, prenatal services and adoption services for pregnant clients do not fall under the same statutory prohibition that abortion services do. The regulation thus clarifies that, while Title X does not fund prenatal care, Title X projects are required to facilitate access to prenatal care and social services, including adoption services, that might be needed by the pregnant client to promote her well-being and that of her child, while making it abundantly clear that the project is not permitted to promote abortion by facilitating access to abortion through the referral process. See the definition of "prenatal care" at §§ 59.2 and 59.8 below.

Finally, the Department rejects the argument that these regulations are objectionable because they create a "two-tier" system of health care, *i.e.*, clients of Title X programs, many of whom are low-income, are prohibited from receiving abortion counseling and referral, while wealthy women can obtain these services from their own physicians. In section 1008 Congress chose to prohibit the provision of abortion services by Title X programs. This choice—like any choice to impose restrictions on the use of federal funds—necessarily creates a "two-tier" system to the extent that any legally obtainable service is available in the marketplace and unavailable in the federal program where such services are prohibited by law. Commenters may believe that this is unsound as a matter of social policy because they believe the federal government should fund all medical care. If so, however, their remedy lies with Congress, not with the Department which manifestly lacks the legal authority to implement such a social policy.

2. *"Program" or "project"*: The Department believes that it is not supportable, in light of the legislative history in the 1970 Conference Report, to read the term "program" in section 1008 as relating to the funded organization as a whole, as urged by some comments. The Department agrees that a Title X project must be separate and distinct from abortion activity and that "simply omitting offending items from their grant proposals" does not constitute sufficient compliance with this precept. Indeed, this is the rationale for promulgation of § 59.9 below.

However, in response to the confusion expressed by many commenters on this issue, the Department has changed the rules below to provide a separate definition of the term "program" and "project" that recognizes the generic meaning of those terms as use in the statute and their commonly understood usage in the grantee community. Two new terms, "Title X program" and "Title X project," have been added corresponding to the original definition of program and project in the proposed rules. These latter terms, as defined below, carry substantially the same meaning as originally proposed and clarify the scope of the regulatory requirements. However, to clarify a point that apparently confused many commenters, a sentence has been added in the latter definition relating to what constitutes Title X project funds. The Department's concern is that all funds allocated to the Title X program or project—whether they are direct Title X grant funds, program or grant-related income, or matching fund—be spent in compliance with section 1008 and that the program be separate and distinct from prohibited abortion activities. The definition in the final regulation accomplishes this statutory mandate.

The above definitional changes necessitated minor conforming changes to the existing regulations. These changes are set out at items 4 and 6 in the rules below.

3. *Other definitions:* The Department has defined the term "prenatal care" in response to the public comments on this issue. It has not included any other definitions as it does not agree that they are needed or appropriate here. It has deleted the definition of the term "organization" because it believes the definition is self-evident and unnecessary. The Department has not defined the term "medically indicated" because, as used in § 59.5(b)(1), it refers to an infinite variety of physical conditions aside from pregnancy, making further definition infeasible. As the proposed rules did not address the issue of defining the term "low income family," the definition remains unchanged. The term "abortion-related services" has not been defined because it is no longer employed in the text of the rules below. The Department has not defined the term "abortion" because it believes the meaning is clear.

II. Standards of Compliance

The proposed rules provided that a project may not receive funds unless it provides assurances satisfactory to the

Secretary that it does not include abortion as a method of family planning. Such assurances must include representations (supported by documentary evidence where the Secretary requests) as to compliance with each of the requirements of the proposed regulations.

A. Comments

Some commenters suggested that provisions be added which would prohibit the funding of a program where there are special risks that Title X funds will be used for abortion-related activities due to abortion advocacy activities of the organization. They maintained that recognition of organizations having special risks, and denial of funding where such risks exist, will facilitate the implementation of the Title X program as Congress originally intended. Commenters then went on to list serveral examples of special risks associated with grants to advocacy organizations, including situations which would place an abortion advocacy organization in a government-sponsored position of great influence with persons of special vulnerability, facilitate abortion in conflict with the purpose of the Title X program, or make personnel choices for reasons foreign to the purpose of the grant.

B. *Response*

The Department notes that the suggested provisions relating to advocacy organizations were derived from the Public Health Service's (PHS) Grants Administration Manual policy relating to "Exceptional Organizations," a policy which has recently been revised by the Department. While the Department agrees with the concept behind the proposed provision, it believes that it is more appropriate to deal with the issue on a broader PHS-wide level. Furthermore, the Department believes that the risks associated with funding advocacy organizations will be substantially mitigated through implementation of the requirement of separation between Title X programs and activities prohibited under section 1008 and the rules pursuant thereto.

III. Counseling

Section 59.8 of the proposed rules provided, among other things, that a project which

> provides counseling * * * for abortion services as a method of family planning is not eligible to receive funds under this subpart. In addition, because Title X funds are intended only for family planning, services related to pregnancy care after pregnancy is diagnosed may not be provided with Title X funds.

Proposed § 59.8(a). In addition, proposed § 59.8(b) set out three examples interpreting the regulatory language relating to counseling: proposed § 59.8(b)(1) related to the provision of prenatal services by the Title X project, which was termed impermissible; proposed § 59.8(b)(3) related to counseling for infertility and adoption for an infertile couple, which was termed permissible; and proposed § 59.8(b)(4) related to the provision by the project of a brochure and a film that include sections on abortion, which was deemed to render the project ineligible for Title X funds.

A. *Comments*

These provisions elicited the most extensive comments of any provisions of the proposed rules. Thousands of comments were received in opposition to the proposed provisions, while thousands likewise were received supporting the proposed policies. The main issues addressed by opponents and proponents are summarized below.

Opponents of the counseling provisions advanced the following objections: (1) They would require providers to engage in unethical and unprofessional counduct; (2) they would require providers to treat Title X patients, both for contraceptive services and at the point of pregnancy diagnosis, without informed consent; (3) because of the two preceding factors, Title X projects would be exposed to increased risk of tort liability, an increase in insurance costs or inability to obtain insurance, and a decreased ability to hire or retain competent family planning professionals; (4) these factors would in turn mean that, as a practical matter, present Title X projects would be forced to relinquish their title X funds, resulting in a net loss of services to the Title X client population; (5) there is no evidence to show that the proposed provisions are needed; (6) the proposed provisions are inconsistent with Title X; (7) the proposed provisions violate the First Amendment rights of providers and health professionals in that they constitute viewpoint discrimination and restriction of free speech; and (8) the proposed provisions impermissibly burden women's exercise of their right to an abortion and violate the due process rights of physicians and other health professionals to practice their profession.

Proponents of the regulations, on the other hand, argued that the proposed provisions are needed to strengthen the implementation of section 1008. They contended that Title X is in effect promoting abortion through current guidelines and practice, and the provisions would substantially correct this. They also contended that the counseling requirements in current guidelines wrongfully require organizations to engage in abortion-related activities in order to become a Title X grantee. Further, they maintained that such guideline requirements have been abused by Title X providers, who have in fact pressured pregnant women, particularly teenagers, to choose abortion. They maintained that the consequent loss of life involved, together with the emotional and physical effects on the women who aborted, are unacceptable in a program which was intended to have no connection with abortion at all, much less with the promotion or facilitation of abortion.

1. *Medical ethics:* Numerous providers, provider organizations, and health professionals argued that the proposed restriction of abortion counseling is countrary to sound medical practice and the canons of medical ethics. Basically, they contended that medical ethics require that a physician provide his patient with a full discussion of his view of her medical circumstances in order to enable her to make an informed choice as to treatment; nurses and social workers stated similar concerns. In this regard, a number of comments quoted the following statement from the 1982 Report of the President's Commission for the Study of Ethical Problems in Medicine and in Biomedical and Behavioral Research;

> a physician is obligated to mention all alternative treatments, including those he or she does not provide or favor, so long as they are supported by respectable medical opinion.

Also cited were the American Medical Association's (AMA) principles of medical ethics, which state that patients "are entitled to accept or reject a health care intervention on the basis of their own personal values," and the *Standards for Obstetric-Gynecologic Service,* Sixth Edition, (*Standards*) of the American College of Obstetricians and Gynecologists, which state:

> It is the physician's responsibility to inform the patient of the surgical or medical procedure being recommended. In most cases, the explanation should include the necessity of the treatment, the management alternatives, the reasonably foreseeable risks and hazards involved, the chances of recovery and the likelihood of desired outcome. Adequate opportunity should be provided to encourage and answer questions.

It was asserted that the proposed provisions would require providers to violate the canons of ethics governing

their professions and thereby expose them to liability for malpractice. In this regard, opponents of the provisions stated that the provisions would require them to treat women differently depending on their medical circumstances. For example, the provision was commonly interpreted as meaning that a nonpregnant woman who has a severe diabetic or hypertensive condition could, under the provision, be counseled with respect to management of the condition, while a pregnant woman could not be.

It was also argued that the provision would require physicians to remain silent when confronted with a pregnant patient with medical conditions which may be exacerbated by pregnancy, such as diabetes, multiple sclerosis, lupus, or AIDS. These commenters apparently interpreted the provision as precluding any further discussion of medical symptoms or any other matter once pregnancy is diagnosed. Other commenters maintained that since the risks associated with both pregnancy and abortion increase substantially once the eighth week of pregnancy has passed, it is unethical to withhold information about both at the time pregnancy is diagnosed.

Proponents of the provisions, however, disputed that prohibiting discussion of abortion is unethical and instead contended that the requirements for "options counseling" in current guidelines are the ethical problem. It was noted, for example, that the House of Delegates of the AMA has consistently confirmed the right of practitioners to abstain from involvement in abortions. In this regard, it was argued that the ethical standard inherent in the AMA standards and elsewhere is not that a physician must counsel or refer, but rather that the physician *need not* counsel or refer for abortion. It was noted that laws in approximately 40 states protect the right of medical personnel not to participate in medical procedures such as abortion on the basis of conscience. Some maintained that as providers in a preventive family planning program, Title X providers are not qualified to provide services after pregnancy is confirmed.

Numerous commenters argued that the policy of requiring Title X providers to perform nondirective counseling that has been applicable in the past violates medical ethics by excluding from the program organizations which, for moral or religious reasons, refuse to counsel or refer women for abortions. In addition, many comments argued that the practice of nondirective counseling has been subject to widespread abuse, with many providers foregoing any balanced discussion of options in favor of pressuring women, particularly teenagers, to obtain abortions.

Other comments argued that by requiring "options counseling," the Title X guidelines promote a moral relativism which holds that all options are equally valid morally, without providing for the expression of moral arguments opposed to abortion or discussion of potential psychological consequences of abortion. This, it is argued, results in abortion being presented as the easiest, quickest, and least harmful solution when in fact it may not be, and when it should in any event not be so presented in a program that has a statutory bias against abortion as a method of family planning.

2. *Informed consent*: Opponents of the proposed provisions expressed similar concerns relating to the issue of obtaining informed consent so as to minimize the likelihood of malpractice claims. While most of the comments relating to the issue of informed consent raised the liability concerns discussed in the preceding section, a number of additional concerns were also raised. A number of grantees and provider organizations argued that prohibiting provision of information relating to abortion precludes obtaining an informed consent from the patient, either with respect to continuation of pregnancy or with respect to selection of a method of birth control. This, it was argued, would place grantees in the position of violating laws relating to informed consent of over 40 states; specifically mentioned were California, Maryland, Michigan, Massachusetts, New York, and Wisconsin.

Proponents of the regulations, on the other hand, argued that the requirement of informed consent, in jurisdictions where it applies, applies only to medical treatment, not to counseling which leads to referral. Since the proposed rules provided that pregnant women would not receive treatment for pregnancy in the Title X project, the requirement to obtain informed consent for services relating to pregnancy does not arise. They also argued that the informed consent laws of various states would not present a problem for Title X providers, as they would be superseded, pursuant to the Supremacy Clause of the Constitution, to the extent they imposed requirements inconsistent with Federal regulation. Those who stated that they had an abortion and had not been counseled about its effects argued that they could not have informed consent because they had not been given complete information.

3. *Liability and licensure risks*: Because of the foregoing factors, many providers and provider organizations argued that the proposed provisions present unacceptable risks for providers. Specifically, they argued that failure to disclose relevant risks and considerations to individuals, either in the process of counseling regarding the selection of a method of birth control or concerning pregnancy once pregnancy is diagnosed, would subject them to liability for malpractice on several possible tort grounds: defective consent, abandonment, negligent failure to disclose, "wrongful birth"/"wrongful life". Cases such as *Canterbury* v. *Spence*, 464 F. 2d 772 (D.C. Cir., 1972), *Scott* v. *Bradford*, 606 P. 2d 554 (Okla., 1979), *Betesh* v. *U.S.*, 400 F. Supp. 238 (D.D.C., 1974) were cited as examples of the types of tort liability to which the proposed provisions would expose providers.

Accordingly, some commenters asserted that they would probably face suit if they complied with the proposed provisions, and, moreover, might find that they were uninsurable. It was also argued that compliance with the proposed provisions would place health professionals (particularly physicians) in many jurisdictions at risk of losing their licenses. For example, the Attorney General for the State of Massachusetts stated that physicians could lose their licenses in Massachusetts if they complied with the regulations. It was argued that health professionals would find these risks unacceptable. Thus, it was claimed that the regulations would mean that Title X providers would be unable to attract or retain competent professional staff.

Proponents of the regulations, on the other hand, argued that the same Supremacy Clause considerations described in the preceding section would protect providers from successful suit. They accordingly argued that the proposed regulations should not increase providers' liability and licensure risks.

4. *Impact on Title X client population*: Opponents of the proposed provisions thus argued, based on the above reasons, that the net effect of the proposed provisions relating to counseling would be to force current Title X providers to reject Title X funds entirely. A number of comments argued that the proposed provisions are inconsistent with requirements applicable under other State and federal programs (such as the programs of grants to migrant and community health centers under sections 329 and 330 of the Public Health Service Act and block

grants to States for maternal and child health programs under Title V of the Social Security Act). Commenters making this point contended that they would have to elect between sources of funding; they typically stated that they would reject Title X funds. Thus, it was argued, a net loss of services to the population currently served by Title X would result. Planned Parenthood of Pierce County, Washington, for instance, said that if it rejected Title X funds, approximately 5,000 low income women in that county would be placed at risk of unwanted pregnancies; Planned Parenthood of Chicago said that if it rejected Title X funds, "tens of thousands" of teenage and low income women would be placed at risk. Proponents, however, asserted that the regulations would have a positive impact on Title X clients and their babies by helping protect pregnant clients, particularly adolescents, from receiving incomplete counseling that in effect promoted abortion and facilitated obtaining an abortion, to the client's (and, obviously, the unborn child's) long-term emotional and physical detriment. Some commenters noted that privacy and confidentiality requirements surrounding counseling make it difficult, if not impossible, to reflect the substance of counseling in auditable records in order to discern whether or not in fact clients, especially highly vulnerable and impressionable teens, are being coerced into abortion decisions. Other proponents argued that the regulations would protect women from pregnancy counseling by unqualified personnel since most Title X programs do not have the time to provide the intense support required during the early stages of a problem pregnancy. Proponents noted that decisions about families involve more than just medical counseling and that given the potentially serious consequences of abortion, women are best served by providers outside the Title X program who may counsel in greater depth about pregnancy.

5. *Rational basis for regulations:* Related to the above concerns was the criticism articulated in many comments that the proposed provisions are irrational or are simply not needed. Some comments contended that the theory advanced to justify the proposed prohibition of counseling—that counseling and referral "encourage or promote" abortion—is incorrect. In particular, many of these comments took issue with the statement that the provision of information on abortion is pointless absent the expectation that some of those informed will act upon the information and that the purpose of counseling programs is to provide information upon which a course of action will be based on the ground that it equated the provision of information on mutually exclusive choices with promotion of a particular choice. It was argued that, under the theory advanced in the proposed rules, counseling teenagers about contraceptive methods or suicide would never be appropriate. Furthermore, with respect to the issue of evidence, numerous grantees stated that they have always been and are presently in compliance with the requirement to separate their Title X projects from their abortion-related projects. A number of these comments challenged the evidentiary basis for the Department's action, arguing that the 1982 GAO and Inspector General reports cited in support of the proposed rules in fact established that the audited grantees had not spent Title X funds in contravention of section 1008.

Proponents of the proposed rules, on the other hand, overwhelmingly thought that the proposed restrictions were needed. As noted in the Rational Basis Section and in section IIIA1 above, many individuals wrote in relating personal experience of abuse of the counseling process. Numerous other individuals and groups argued that nondirective counseling is inappropriate in a program in which abortion is a prohibited method of family planning and in which it is clearly viewed as an undesirable alternative to childbirth. Others argued that these counseling practices promote the use of abortion as a method of family planning by helping a pregnant woman obtain an abortion. They expressed the opinion that safeguards were needed to ensure that pregnant women are not pressured into having abortions by Title X-funded projects. Others argued that Title X projects should actively discourage women from obtaining abortions by providing full information describing the abortion procedure and its potential physical, emotional and psychological effects, as well as providing full information on fetal development.

6. *Statutory authority:* Hundreds of comments questioned the statutory authority for the proposed prohibition of abortion counseling. Numerous comments suggested that the provisions would prevent informed consent and are, therefore, inconsistent with the requirement of sections 1001 and 1007 of the Act that services be "voluntary." It was also argued that section 1008 itself defines abortion as a method of family planning (albeit one for which funds under the title are not available) and that therefore the statement in the legislative history of the 1970 act that "information would be provided on the full range of family planning methods," means that abortion counseling must be provided notwithstanding the prohibition. Representative Dingell criticized the use of his 1970 floor statements as support for the proposed restrictions on counseling and referral. His comments focused in particular on what he saw as the failure of the Department to take account of the evolution of the law, that is, the Supreme Court's decision in *Row* v. *Wade*, 410 U.S. 113 (1973), and its progeny. It was also argued that the proposed provision is inconsistent with the Department's own regulations in the food and drug area, which the comments contend require manufacturers of oral contraceptives and intrauterine devices to provide patient package inserts explaining the risks of the respective contraceptive methods, including some information on abortion. Numerous providers contended that, under the regulations, they would be prohibited from prescribing or dispensing contraceptives containing such inserts which would, as a practical matter, have the effect of restricting the methods available under Title X to barrier methods, foams, and natural family planning. Therefore, it was argued, such a restriction is contrary to the mandate of Title X that projects offer a "broad range" of family planning methods. Finally, it was argued that there is no legal authority for changing the current Title X guidelines, which require that counseling on abortion, prenatal care, adoption and foster care be provided to pregnant women.

These comments maintained that the guidelines are clearly known by Congress, which has implicitly approved of them in successive reauthorizations of the program and explicitly approved them in language in the Conference Report on Departmental appropriation for FY 1987, Pub. L. 99–1005.

Proponents, on the other hand, generally argued that the policies embodied in the present Title X guidelines contravene section 1008, and that the proposed restrictions on counseling are statutorily required or at a minimum would better effectuate the section 1008 prohibition. As noted above, they expressed the view that abortion or options counseling results in the promotion of abortion, and is therefore inappropriate in a preventive family planning program which its authors clearly intended to have no connection with abortion other than to reduce the incidence thereof. The

guidelines, it was argued, had converted Title X from a program in which abortion was supposed to be prohibited into a program which in fact promotes abortion as a method of family planning. It was also noted that, during the 1978 reauthorization of the program, an amendment to prohibit abortion counseling and referral was rejected as unnecessary given the prohibition of section 1008. Further, the primary purpose of Title X as being a preventive family planning program was reiterated.

7. *First Amendment:* A common argument against the proposed provisions were that they constitute unconstitutional viewpoint-based discrimination. According to the comments, under cases such as *F.C.C.* v. *League of Women Voters*, 468 U.S. 364 (1984), *Perry* v. *Sindermann*, 408 U.S. 593 (1972), and *Speiser* v. *Randall*, 357 U.S. 513, 518 (1958), the government may not interfere with the exercise of the right of free speech. The comments argued that this principle applies not only to direct interference, but also to indirect interference, such as attaching unconstitutional conditions to a governmental benefit, penalizing advocacy of a certain viewpoint, or selectively granting benefits only to those advocating particular viewpoints. The comments contended that the proposed provisions contravene this principle by prohibiting Title X funds from going to organizations that seek to provide all viewpoints about potential options, including the abortion option, while permitting funding under Title X of organizations that have or express solely the viewpoint that abortion is not an option in the management of pregnancy.

A related argument was that the proposed provisions violate the First Amendment rights of Title X health care professionals to express their views and the rights of their clients to obtain information from their doctors. *Perry* v. *Sindermann, supra; Lamont* v. *Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring). Citing *Board of Education (Island Trees)* v. *Pico*, 457 U.S. 853 (1982) and *Griswold* v. *Connecticut*, 381 U.S. 479 (1965), some comments took the position that the proposed provisions represent an impermissible attempt by the government to "restrict the spectrum of available knowledge" about family planning and abortion.

Proponents of the proposed restrictions generally argued that they were fully constitutional and in no way violated the First Amendment as interpreted by the Supreme Court's decision in *Regan* v. *Taxation Without Representation*, 461 U.S. 540 (1983). In *Regan* the Court upheld as constitutional an internal revenue statute granting tax exemption for certain nonprofit organizations that do not engage in substantial lobbying activities. It was argued that the *Regan* decision establishes the principle that a governmental decision not to subsidize the exercise of a fundamental right does not infringe upon the right and that the government may adopt classifications with respect to subsidizing the exercise of First Amendment rights, so long as the classifications bear a rational relationship to a legitimate governmental purpose. Since the decision in *Harris* v. *McRae, supra*, establishes that the government may choose to promote childbirth, the proposed policies are constitutional.

8. *Unconstitutional interference with right to abortion, right to practice medicine:* A number of comments argued that the proposed provisions prohibiting counseling regarding abortion are unconstitutional in that they impermissibly burden a woman's right to obtain abortion and interfere with the doctor-patient relationship safeguarded by *Roe* v. *Wade, supra.* It was argued that the proposed provisions are invalid on the same basis as the Akron, Ohio ordinance struck down in *City of Akron* v. *Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983), in that both limit the presentation of information to pregnant women relative to the abortion decision so as to discourage them from choosing abortion. Thus, under the rationale of *City of Akron*, it was claimed that the proposed provisions both impermissibly interfere with the woman's right to make an informed choice and impermissibly intrude upon her physician's right to provide medical advice and treatment. It was asserted, in connection with this line of reasoning, that the Supreme Court's decision in *Harris* v. *McRae* does not insulate counseling restrictions from constitutional attack, as that decision only relates to a governmental decision to subsidize the operation itself; restrictions on counseling, by contrast, were said to directly interfere with the freedom of choice protected under *Roe* v. *Wade*. The decision in *Planned Parenthood Ass'n.) Chicago Area* v. *Kempiners*, 531 F. Supp. 320, 326 (N.D. Ill. 1981), vacated and remanded on other grounds, 700 F.2d 115 (7 Cir. 1983), *aff'd on rehearing*, 568 F. Supp. 1490 (N.D. Ill. 1983) was cited in support of this proposition. Many comments noted, in this regard, the recent decision in *Reproductive Health Services* v. *Webster*, 662 F. Supp. 407 (W.D. Mo., March 17, 1987), in which a Federal district court concluded that restrictions on a state-supported clinic counseling and referring for abortion were unconstitutional insofar as they applied to women who paid the full cost of their treatment:

> Patients who fully pay for their services would be denied access to medical information which may affect their decision whether to continue the pregnancy, perhaps enduring health risks. Here the State is not asked to subsidize abortions or the exercise of First Amendment rights. 662 F. Supp. at 427.

These comments contended that this reasoning applies to Title X clinics, as a significant percentage of the clients served by Title X projects are full-pay.

Proponents of the regulations took the position that the proposed provisions on counseling are constitutional. According to the proponents, the Supreme Court ruled in *Harris* v. *McRae, supra*, that the government may constitutionally decide to subsidize childbirth over abortion, and the mere denial of government subsidy for abortion does not constitute a constitutionally impermissible obstacle to the exercise of the right to abortion. Thus, they argued, this necessarily means that the government may likewise subsidize speech and actions designed to further childbirth and decline to subsidize speech and actions that facilitate abortion. Such remedies are necessary to end the confusion which exists where clients, especially adolescents, may see the interaction between federally funded projects and abortion services. Proponents wanted to sever the "symbolic union" between the federal program and private programs which promote or provide abortions.

B. Response

The Department recognizes the problems created by the proposed provision with respect to patient package inserts for contraceptives and otherwise limiting the provision of information which is medically necessary to understanding the relative risks of different methods of contraception in the course of selecting a method of family planning; it has therefore modified the requirements and examples accordingly. See 42 CFR 59.8(a)(4) and 59.8(b)(6) below. However, it disagrees with the remaining comments opposing the proposed restrictions on counseling and therefore the provisions otherwise remain substantially as proposed. The Department notes that many of the objections stated appear to be based on a misinterpretation of the scope and

application of the counseling restriction. It has accordingly clarified the provisions. The explanation below likewise attempts to clarify the provisions, and also sets out the Department's reasons for rejecting the remaining comments opposing the provisions.

1. *Medical ethics:* The Department believes that much of the opposition to the proposed restriction on counseling proceeds from a misunderstanding as to what is prohibited by the provision and what is not. It was not the intent of the provision to restrict the ability of health professionals to communicate to a patient any information they discover in the course of physical examination or otherwise about her medical condition. Contrary to the assumption of most commenters, doctors would not be precluded by the provision from informing a woman, pregnant or nonpregnant, that she has a tumor, AIDS, a diabetic or hypertensive condition, lupus, and so on. The provision thus does not preclude a health professional from disclosing to the woman any physical findings he or she has made regarding her condition and communicating his or her assessment of the urgency of the need for treatment, consistent with the exercise of his or her professional judgment. By the same token, however, there would appear to be no ethical imperative for a health professional at a Title X clinic which will, by definition, not be providing treatment services to counsel a woman who displays a medical condition unrelated to family planning as to the medical management of that condition. Nor, it should be noted, is Title X money available for the treatment of medical conditions unrelated to family planning. The same considerations apply where pregnancy is diagnosed. See §§ 59.8(a)(2) and 59.8(a)(3) below. Rather, as has traditionally been the case in the Title X program and as is required by 42 CFR 59.5(b)(1) and 59.8(a)(2) below, the medically responsible course is to ensure that the woman is referred to the appropriate specialist for treatment of the condition, with adequate followup provided.

In the Department's view, the foregoing considerations address the ethical objections to the proposed provisions. The Department notes that if any requirement is established with regard to abortion counseling, it will conflict with someone's ethical beliefs. The approach of the proposed regulations, however, is more consistent with section 1008. Moreover, it is apparent that there is no absolute ethical imperative upon physicians to counsel or refer for abortion, as evidenced by the "conscience" exceptions cited by proponents of the provision. Opponents contend that the proposed rules are contrary to the findings of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. However, the Commission also found that:

> Patients are not entitled to insist that health care practitioners furnish them services when to do so would breach the bounds of acceptable practice or violate a professional's own deeply held moral beliefs or would draw on a limited resource to which the patient has no binding claim. (*Making Health Care Decisions*, Vol. 1, p. 3.)

Although abortion may be considered to be within the bounds of acceptable medical practice, it may potentially conflict with the professional's deeply held moral beliefs. Moreover, since Title X resources are clearly limited, the patient has no claim to the services relating to the provisions of abortion. The Commission went on the say that:

> Similarly, a professional who has been flexible about possible avenues of treatment as his/her standards allow is not generally obligated to accede to the patient in a way that violates the bounds of acceptable medical practice or the provider's own deeply held moral beliefs. *id.* (Vol. 1, p. 38.)

Similarly, the American College of Obstetricians and Gynecologists support the physician is right "[t]o refuse to render treatment which is inconsistent with the Fellow's own moral code." (*Standards*, p. 99.)

2. *Informed consent*: The Department disagrees with the numerous comments objecting to the proposed restriction on counseling for abortion as restricting a pregnant woman's ability to give informed consent. As a general matter, a requirement for informed consent only arises where a course of treatment is proposed. See, *Canterbury* v. *Spence*, *supra*. Section 59.8(a) below makes clear that where a woman is diagnosed as pregnant, the only appropriate action is a referral for appropriate treatment (which, as noted above, would include treatment for other conditions unrelated to pregnancy). Since the Title X project is not providing treatment related to pregnancy (or, indeed, for other conditions unrelated to family planning), it has no need to obtain consent to such treatment. Rather, it becomes the responsibility of the provider to whom the woman is referred to obtain appropriate consent to services: as the *Standards* of the American College of Obstetricians and Gynecologists state, "[i]t is the physician's responsibility to inform the patient of the nature of the surgical or medical procedure being recommended. In most cases, the explanation should include the *necessity* of the *treatment* * * *" (emphasis added) (*Standards*, p. 84). This situation is in essence no different than the situation that currently exists in the Title X program with respect to services that are not offered by the project. In the Department's view, this issue is thus not a problem, and the concerns expressed by providers regarding violating State laws requiring informed consent with respect to their treatment of pregnant women are therefore misplaced.

A conceptually different issue is presented with respect to the issue of informed consent to family planning services, since in the context the Title X project is the provider of treatment services. However, as noted above, the Department has modified the rule to make it clear that projects are not prohibited from providing the factual information necessary to assess the risks and benefits of various methods of family planning which is provided by means of the patient package inserts accompanying various forms of contraception. Thus, the projects remain in substantially the same posture they have always been in with respect to the provision of information at this stage: they may provide the factual information necessary to assess risks of a particular contraceptive method as set out in the patient package inserts, but may not promote or encourage abortion as a method of family planning. Indeed, the Department notes and concurs in Congressman Dingell's floor statement of November 16, 1970, in which he stated, "the prevalence of abortion as a substitute or backup method of family planning can reduce the effectiveness of family planning programs." Cong. Rec., daily ed., p 37375 (Nov. 16, 1970). This clarification thus responds to the concerns raised regarding provision of complete information on the risks of various forms of contraception. At the same time, it ensures that the project in no way promotes abortion and that, at the point at which abortion becomes more than a hypothetical issue (pregnancy), the project refers the woman for prenatal pregnancy care rather than providing "options counseling," which could violate section 1008 by influencing her choice toward abortion.

3. *Liability and licensure risks*: For the reasons stated in the preceding sections, the Department is of the view that the "parade of horribles" depicted in many of the comments with respect to

the risk of tort liability and loss of licensure is invalid. In fact, physicians are excepted from disclosing common, known or usual information or risks to treatment. See, *Bly* v. *Rhoads*, 222 S.E. 2d 783 (Va. 1976). Abortion is clearly a common and known procedure, and Title X is not the sole source of information about it. Indeed, since Title X projects are already prohibited under the present regulations and guidelines from taking any affirmative action to facilitate abortion, many of the "risks" attributed to the asserted failure of the provisions to make abortion available have already been assumed. Moreover, the *Canterbury* case cited by many of the opponents does not presuade the Department that the rules below significantly increase the risk of liability: the court in *Canterbury* held that liability will not lie unless a plaintiff can establish that a reasonable person would have taken a different course of action had full disclosure been made, an extremely difficult burden under the rules below, given the referral requirements. In addition, to the extent these regulations are inconsistent with the provisions of State law regarding counseling and informed consent, they may, in some circumstances, supersede State law under the Supremacy Clause of the Constitution. See, for example, *Leslie Miller, Inc.* v. *State of Arkansas*, 352 U.S. 187 (1956); *Planned Parenthood of Billings, Inc.* v. *The State of Montana*, 648 F. Supp. 47 (D. Mont. 1986). Thus, provider preceptions notwithstanding, the Department does not anticipate that the regulations below will place Title X providers at risk.

4. *Impact on Title X client population:* The Department recognizes that the regulations below may result in some realignment of Title X providers, as providers who disagree with the regulations drop out of the program and other providers enter it. However, it notes that most of the comments taking this position appeared to be concerned principally with what was perceived to be a prohibition on providing patient package inserts for oral contraceptives and IUDs, a policy which, as explained both above and below, is not contained in the rules below. The Department is thus unpersuaded that such a realignment will occur, or if any realignment in fact occurs, that it will have a significant negative impact on the Title X client population. Indeed, the Department intends that the rules have a positive impact on the Title X population by helping to assure that scarce resources are allocated to preventive family planning and infertility services, not to assisting pregnant clients to obtain an abortion.

5. *Rational basis for regulations:* With respect to the comments criticizing the theoretical basis for the restriction on counseling, the Department thinks they are misplaced. Indeed, the comments concerning contraceptive counseling support the Department's point, as both the purpose of and the demonstrated effect of contraceptive counseling is to promote the use of contraception. Some commenters attempted to apply the Department's analysis on counseling to a hypothetical example of preventing teen suicides. The hypothetical example in fact reveals the flaw in the critics' arguments. Given the state's interest in protecting life, Congress might well establish programs to provide teenagers or others with "directive" counseling on suicide—that is, counseling that encourages teenagers not to commit suicide. However, if Congress enacted a statutory grant program to provide mental health services to reduce the incidence of mental illness, including suicide, and included a provision that "none of the funds appropriated under this title shall be used in programs where suicide is a method of alleviating mental illness," the Department assumes that no one would argue that such a statute permitted—much less required—that the provision of "nondirective" counseling to the depressed adolescent would include suicide as one of the options followed by "mere referral" to organizations such as the Hemlock Society for those who indicated that they wanted to choose the suicide option. If the Department is correct as to the interpretation that would be given such a hypothetical statutory prohibition on suicide, it cannot see why the same statutory language acquires a different meaning when "abortion" is substituted for "suicide."

It may well be that, based on differing assessments of the relative morality of abortion and suicide, some might find nondirective options counseling concerning abortion morally acceptable while they would find nondirective options counseling concerning suicide unacceptable. Such a distinction, however, would reflect their moral choice, not their interpretation of statutory language—it certainly would not be based on any belief that nondirective options counseling would be any less likely to promote or encourage abortion that it would be to promote or encourage suicide.

The Department's responsibility, however, is not to make moral choices of this sort—it is to implement the choice that Congress made in enacting section 1008. As indicated earlier, upon reexamination of the statutory language, the Department is simply unable to conclude that the type of counseling and referral that has been required by the program guidelines has not had the effect of promoting or encouraging abortion in violation of the statutory prohibition in section 1008.

In addition, the Department disagrees with the contention that the 1982 GAO Report does not substantiate the need for the provisions below. As noted above, GAO found that grantees were engaging in questionable activities relating to counseling and referral and ascribed this in major part to the lack of concrete guidance from the Department. The comments from women who have received abortions quoted above embody the concern articulated by GAO and indicate that the policy of the present guidelines requiring Title X grantees to provide nondirective counseling on all options on request may have been violated. Moreover, given that the Title X projects do not provide pregnancy services, it is unnecessary for them to provide counseling with respect to such services. In light of these concerns, the Department has concluded that the best way to safeguard Title X funds from being used to promote or facilitate abortion as a method of family planning is to prohibit counseling regarding abortion and ensure that pregnant clients are referred for prenatal services for the care of the pregnancy.

6. *Statutory authority*: After considering the comments relating to the provision of factual information relative to the choice of a birth control method, the Department has modified the regulation. See § 59.8(a) (4). below. As noted in the discussion at IB1 above, it was never the Department's intention to restrict the range of contraceptives available from Title X projects, and the modification of § 59.8(a) makes clear this intent. Nor are the criticisms on informed consent grounds pertinent, particularly in light of the changes discussed above. As noted in the discussion at IIIB2 above, the issue of informed consent as it relates to pregnant women is beside the point, because Title X does not provide treatment for pregnancy. With respect to the provision of services to nonpregnant women, the policy remains unchanged from that which has previously applied. These changes eliminate any concern that regulations might be inconsistent with the statutory requirements relating to the provision of services on a voluntary basis.

The Department dissagrees with the contention that the provisions constitute

an additional and unlawful condition on eligibility for grants. Since, in the Department's view, section 1008 authorizes the provisions, they by definition do not impose conditions that are inconsistent with the statute.

The Department also disagrees with the comments criticizing the restrictions on counseling (as well as referral) as not supported by the legislative history of the 1970 Act. With respect to the reference to "information * * * activities" in the Conference Report, cited by many opponents of the provisions, it notes that the precise reference is to information activities that are "related" to, among other things, "preventive family planning services." Conf. Rep. No. 91-1667, 91st Cong., 2nd Sess. 8-9 (1970). Counseling concerning abortion is manifestly not related to preventive family planning services. Furthermore, regarding Representative Dingell's challenge to the Department's interpretation of his floor statements as made in 1970, that challenge appears to be based principally on the asserted failure of the proposed regulations to take account subsequent developments in the medico-legal environment. While the Department recognizes that there have been developments in both the medical and legal communities regarding abortion that could lead legislators to change their minds as to what restrictions are appropriate on federally funded programs, it disagrees with Representative Dingell as to what legal conclusions flow from those developments. Section 1008 remains in force precisely as enacted in 1970. If Congress believed that subsequent developments have rendered its restrictions obsolete, it could have amended it; it has not done so.

Moreover, the Department does not agree that congressional actions subsequent to 1970 constitute a form of legislative ratification of its policy of requiring abortion counseling and referral by Title X grantees such that it is now required by law to maintain that policy in force. Although Congress has enacted several unrelated amendments to the family planning provisions of Title X and has authorized funding six times, the relevant provisions of Title X have remained unchanged since 1970. Thus, the commenters' agruments that the Department is now required as a matter of law to maintain its policy of requiring abortion counseling and referral appears to rest largely on inferences drawn from Congress' failure to enact a statutory amendment affirmatively rejecting that policy.

Aside from the factual errors of this argument, discussed below, this argument rests on the mistaken legal premise that Congress' failure to enact a statutory amendment affirmatively rejecting this policy constitutes a ratification of the policy. In general, the courts have been reluctant to permit such an inference to be drawn from the legislature's failure to act. See, *e.g.*, *Motor Vehicle Manufacturers Ass'n* v. *State Farm Automobile Insurance Co.*, 463 U.S. 29 (1983). Indeed, even where Congress has acted affirmatively to the extent of publishing a committee report to subsequent legislation which interprets prior law, the Court has been unwilling to accord it great weight. As the Supreme Court observed in *Consumer Product Safety Comm'n.* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 118, n. 13 (1980), "even when it would otherwise be useful, subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment."

Moreover, the factual premise of this argument—that Congress has adopted the policy requiring abortion counseling and referral—is wrong. Many commenters described the history of Title X as reflecting seventeen years of consistent administrative policy which was well known and accepted by Congress. The facts, however, are quite different. Initially, it should be noted that the Department's policy on abortion counseling and referral developed in an evolutionary manner during the 1970s. Only in 1981 was that policy incorporated and indeed expanded in guidelines. The available evidence regarding Congress' knowledge and reaction to those policies does not reflect full knowledge and acceptance of them. Rather, in the Department's view, the available evidence indicates—in the earlier years—considerable congressional confusion as to what the Department's administrative policies were, and, thereafter, as those policies became more well known, considerable political controversy as to their correctness both as a matter of law and as a matter of social policy.

The Department does not believe it is appropriate to provide a comprehensive analysis of the legislative history of Title X subsequent to 1970 in this preamble. However, by way of illustration, the Department does think it would be useful to focus on one event that was probably given the most emphasis by the commenters who argued that the subsequent legislative events preclude the promulgation of these regulations—the 1978 defeat, by a 232-137 vote in the House of Representatives of an amendment to Title X proposed by Representative Dornan. 124 Cong. Rec. 37048 (1978).

The defeated amendment provided that: "No grant or contract authorized by this Title may be made or entered into with *an entity* which directly or indirectly provides abortion, abortion counseling, or abortion referral services." *Id.* (emphasis added). As the underscored language indicates, Rep. Dornan's amendment would have done much more than reverse HHS' then current policy of permitting abortion counseling and referral by Title X grantees in the Title X program; in addition to that, it would have banned entities that provided abortion counseling and referral with non-Federal funds in separate programs from participating in Title X. Indeed, in initially introducing this amendment, Rep. Dornan stressed the fact that it provided a ban on participation of entities—such as Planned Parenthood—which provided the described abortion-related services. See Cong. Rec. 31241-2 (1989).

Subsequently, however, when Rep. Dornan again offered his amendment, he did raise the issue of HHS' abortion counseling and referral policy, stating "it has come to my attention there are at least 117 hospitals and clinics receiving Title X family planning money where abortion is a method of family planning * * *". *Id.* at 37046. A colloquy then ensued in which Rep. Rogers—who was the sponsor of the reauthorization of Title X—vehemently rejected the statement that Title X clinics were providing abortion counseling and referral.

> Abortion is not a method of family planning. Abortion comes after pregnancy—after pregnancy. And the gentlemen misses the point of what we are doing in Title X. It is before—before. It is to let people know how to avoid pregnancy. We cannot use any funds for abortion. The amendment is not needed. I urge its defeat. *Id.*

When Rep. Dornan again referred to the 117 Title X clinics that he was informed were providing abortion counseling and referral, Rep. Rogers again denied the truth of this statement, suggesting, among other things, that "you may have a hospital that may be running a family planning section in one wing and maybe they do an abortion in that hospital to save the life of the mother." *Id.*

Thus, what occurred in 1978 was: (1) The House defeated an amendment that would have done something far different and far more sweeping than the prohibition on abortion counseling and referral contained in the regulations being promulgated today, and (2) did so

after having been emphatically misinformed by the sponsor of the reauthorization legislation that the amendment was unnecessary.[8] The Department does not believe that this episode can be construed as evidence of an adoption by the House of Representatives (much less Congress as a whole) of the Department's policy at that time. Indeed, what it appears to reflect is congressional confusion as to what was occurring in the Title X program. At the very least, it simply provides support for the view that an administrative agency or a court should look to legislation enacted by Congress to determine what Congress' intent is, and not try to draw inferences about that intent from other sources.

Congress, of course, recently did enact in the Continuing Resolution for fiscal year 1987 legislation arguably bearing on the Title X guidelines. Specifically, a Conference Report to an unenacted HHS appropriations bill was incorporated by reference into the continuing resolution for fiscal year 1987 (Pub. L. No. 99–464, section 101(b)(4)(e), 100 Stat. 1187 (1986)). Some commenters asserted that the "incorporated" Conference Report contains a restriction on administrative change in the Title X guidelines during fiscal year 1987. The Department disagrees with that interpretation of the Conference Report.

Even assuming, however, that the Continuing Resolution, in effect, "codified" the current Title X guidelines for fiscal year 1987 by forbidding the Department from changing them during that period (*i.e.*, until October 1, 1987), the Department does not believe that that fact would lead to the conclusion advanced by several commenters opposed to the proposal—that the legislation represents a definite manifestation of congressional intent to permanently adopt HHS' current Title X abortion counseling and referral guidelines. Indeed, it seems to the Department that such an interpretation would contravene the asserted meaning of the legislation by converting what was purportedly intended as temporary, one-year delay in amendment of the guidelines into a permanent incorporation of them into the statute. In this connection, the Department notes that language analogous to the language of the 1987 Continuing Resoluation was dropped in the 1988 Continuing Resolution.

[8] That Rep. Rogers was so mistaken as to the Department's interpretation of section 1008 strongly suggests that this interpretation was not widely known in Congress—at least in 1978—as some commenters have claimed.

There is no question, of course, that Congress has now become acutely aware of Title X. The treatment of abortion in connection with Title X has become a matter of sharp political controversy in recent years. Some members of Congress believe that the policies set out in the current guidelines are correct as a matter of statutory interpretation and administrative policy; other members of Congress believe that the current Department guidelines are incorrect as a matter of law and policy. Unless and until Congress enacts new legislation, however, Title X remains in effect as law, and the Department's obligation is to interpret existing law and—based on its experience in administering the program—to exercise its delegated administrative authority by adopting the policies that best effectuate the statute.

7. *First Amendment:* The Department disagrees with the comments challenging the proposed limitations on counseling on First Amendment grounds. To begin with, it should be noted that Congress has broad authority to determine the purpose, terms, and conditions under which grants are made. *Buckley* v. *Valeo*, 424 U.S. 1, 90–91 (1976). In particular, Congress, under the *McRae* case, *supra*, and under *Maher* v. *Roe*, 432 U.S. 464 (1977), may make a choice favoring childbirth over abortion and may implement that choice through the allocation of public funds. The fact that speech in the form of counseling is involved in a program such as Title X does not disable Congress from making that choice. Thus, no issue of viewpoint discrimination is posed here such as might be presented were the government to fund a widespread public relations campaign taking one view.

The *League of Women Voters* case, which was frequently cited by critics of the proposed rules, does not change this analysis. In *League of Women Voters*, the Supreme Court found unconstitutional a statute that prohibited editorializing by any broadcast station that received Federal funds. The Court expressed concern that all editorializing was prohibited, even that financed by private funds; it stated, however, that if a statute allowed a station to establish an affiliate which could editorialize with nonfederal funds, it would satisfy constitutional scrutiny. 468 U.S. at 400, n. 27. The result reached by the Court in the *Regan* case, cited by many supporters of the proposed rules, confirms this position. In *Regan*, the court upheld the constitutionality of a section of the tax code prohibiting taxpayers from deducting as charitable contributions gifts to nonprofit organizations that engage in lobbying. The Court upheld the tax statute because nonprofit organizations had available an alternative avenue for conducting lobbying activities through formation of affilate organizations under a separate section of the code. The rules below clearly meet the tests of these cases. Indeed, as discussed both above and in the following sections, the rules below do not go as far as the statutes at issue in those cases, as they do not require the formation of a separate organization to conduct various abortion activities; they merely restrict what an organization may do, with Title X project funds, within the confines of its Title X project activities.

With respect to the claim of many comments that the counseling restrictions of the proposed rules would violate the First Amendment rights of health care professionals and their patients, the Department disagrees that the cases cited in support of this claim bear on the case at hand. The proposed rules, and the final rules below, do not establish universally applicable penal provisions which interfere with an individual's right to free speech, as was the case in *Griswold, supra*. They place no restrictions on the dissemination of information by health professionals about abortion, except in the context of the federally funded project. This distinguishes the instant rules from the Illinois law declared unconstitutional in *Kempiners, supra*, which created a total ban on funding to organizations that did abortion counseling or referral. Nor is this a case like those involved in *Sherbert* v. *Verner*, 374 U.S. 398 (1963) and *Speiser* v. *Randall, supra*, in which a governmental benefit that is available to all other similarly situated persons is denied solely because of the exercise of their First Amendment rights. Title X confers no entitlement to benefits upon individual organizations; it is a discretionary grant program. Moreover, the fact that an organization's grant application does not include abortion activities will not automatically entitle it to receipt of grant funds. In any event, as noted by Judge Cudahy in his concurring opinion in the remand by the Court of Appeals for the Seventh Circuit in *Kempiners*, the Constitution does not require "equal time" on the payment of public funds to subsidize a point of view. 700 F. 2d 1115, at 1128.

8. *Unconstitutional interference with right to abortion, right to practice medicine:* The Department disagrees with the contention of numerous critics of the proposed rules that the proposed restrictions on counseling (as well as the other restrictions of proposed § 59.8 and

§ 59.10) impermissibly burden a woman's right to obtain an abortion, as well as a physician's right to practice. It notes, as an initial matter, that there is no significant difference in constitutional principle between a physician's right to practice and a patient's right to his services. See, *Harris* v. *McRae*, 448 U.S. at 318, n. 21; *Whalen* v. *Roe*, 429 U.S. 589, 605, n. 33 (1977). The regulations below are not like the statutes struck down in *Colautti* v. *Franklin*, 439 U.S. 379 (1979), *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976), and *City of Akron, supra*. In each of these cases, the law at issue imposed mandatory disclosure and informational requirements upon physicians counseling in the abortion context, requirements that were enforced through criminal and administrative sanctions. Even the Illinois statute at issue in *Kempiners, supra*, was considered by Judge Cudahy not to impermissibly burden a woman's right to an abortion, as she remained free, under that statute, to seek the services of organizations not funded by government funds or to seek counseling from friends, family, and so on. *Kempiners*, 700 F.2d at 1127. Similarly, the statutes that were struck down in *Reproductive Health Services* v. *Webster, supra*, prohibited not only the use of *any* public funds for abortions and abortion counseling but also the performance of such activities by *any* public employees or in *any* public facilities. 662 F. Supp. at 424. The rules below are far less broad. The rules below, in fact, do not prevent a health professional or a provider organization from discussing, promoting, or otherwise encouraging a woman to have an abortion as a general matter; they simply do not permit them to do so within a Title X project. As such, they do not suffer from the constitutional infirmities of the laws at issue in the cases relied upon by the opponents of the proposed rules.

IV. Referral

Section 59.8(a) of the proposed rules provided, among other things, that a project which—

> provides * * * referral for abortion services as a method of family planning is not eligible to receive funds under this subpart * * *. Where appropriate, medical or social service referrals for non-Title X supported services shall be made by providing a full list of available health care providers of appropriate prenatal medical care and delivery services from which a family planning client may select. Such referrals may not, however, be used as an indirect means to encourage or promote abortion in violation of section 1008, such as consciously weighting the list of referrals in favor of health care providers and/or facilities which provide abortions.

The example provided in proposed § 59.8(b)(2) to illustrate this requirement concerned the case of a pregnant woman whom the project diagnoses as having an ectopic pregnancy; it was stated that she should be immediately provided with a list of appropriate hospitals and physicians, and that such a referral would be permissible under the statute.

A. Comments

As with the provisions on counseling, the proposed provisions relating to referral were the subject of numerous comments. Opponents criticized the provisions on the ground that a prohibition on referral for abortion would prevent projects from insuring that women confronted with life-threatening conditions received proper emergency treatment, that it violated medical ethics, that it would slow access to abortions and to prenatal care, that it was vague and unclear, and that it was illegal. Proponents, on the other hand, argued that the provisions would correct the ethical problems presented by the 1981 guidelines and bring them into conformity with section 1008.

1. *Emergency referrals:* Opponents of the proposed provisions uniformly objected to these proposed policies. A major objection, based in large part on the ectopic pregnancy example, was that the provision was far too broad. Numerous providers contended that, as drafted, the provision would place them in the untenable position of not being able to provide appropriate treatment or referrals for life-threatening conditions. It was repeatedly stated that the medically appropriate response, where an ectopic pregnancy or other life-threatening condition is diagnosed, is to make immediate arrangements for appropriate emergency treatment. These comments stated that simply providing a list of referrals would be improper, as well as subject the provider to various tort actions.

2. *Referrals for prenatal care:* A related and very common criticism of the proposed provision was that it would subject pregnant women to a standard of care inferior to that available to nonpregnant women. The example typically cited was of the woman who is diagnosed as having a breast lump: it was asserted that if she is not pregnant, she can be referred to an oncologist for examination and treatment if it proves to be malignant; on the other hand, it was asserted that if she is pregnant, under the proposed provision she could only be referred for prenatal care, thereby building in a possibly critical delay in the treatment of a cancerous condition. The same argument was made by various commenters with respect to a range of other conditions, such as cervical cancer, breast cancer, AIDS, minor gynecological problems, and so on. According to the providers, such a disparity in the standard of care is medically indefensible and would create major liability risks for them. In addition, several comments argued that such a policy is inconsistent with the legislative history of the 1970 act, which indicates that Title X projects were intended to be providers of comprehensive health care and not simply dispensers of contraceptives.

The proposed change in policy regarding referral for abortion itself was also attacked as constituting unsound public health policy. It was argued that the requirement that women desiring abortions be given a list of providers of prenatal care and delivery services would build in a delay in obtaining services. It was asserted that this would result in an increase in later, riskier abortions, an increase in prenatal complications and infant mortality due to the delay in prenatal care, and an increase in women (particularly teenagers) being effectively deprived of the choice to elect abortions because of the time limits on availability and their own comparative inability to negotiate the health care system. A few providers suggested that the provision would have the counterproductive result of wasting valuable time for those few Title X clients who need genetic counseling and for whom *in utero* treatment of the fetus is a possibility.

Proponents of the proposed provisions, on the other hand, thought they were needed. They stated that under the 1981 guidelines, a Title X grantee must make abortion referrals, which they contended fosters a policy of encouraging abortion since, under the guidelines, projects must identify providers of acceptable quality, ensure that the services are obtained by the client and in some instances, aid the client in identifying potential resources for reimbursement. Such activities, it was argued, entangle the program with abortion and therefore require projects to indirectly support what the Federal government cannot directly support. Some maintained that the requirement to refer for abortion has resulted in the implementation of a pro-abortion program, because groups which refuse to refer for abortion are excluded, thereby causing an overall bias toward abortion.

Proponents also argued that the proposed provisions do not threaten the ethical responsibilities of family planning providers to render high quality care to their clients. They maintained that claims that health care providers have an ethical obligation to counsel clients on abortion and to arrange abortions is a novel interpretation of the canons of medical ethics, as evidenced by the fact that the House of Delegates of the AMA has consistently affirmed the right of physicians to abstain from any involvement in abortion. In support of the argument that there is no legal or ethical requirement to refer for abortion, proponents pointed to various "conscience clauses" established by various state and Federal statutes, which generally provide that physicians and other medical personnel may not be required to provide, counsel or refer for abortion if contrary to the individual's moral beliefs. It was pointed out that if there were an absolute ethical duty to refer for abortions, thousands of physicians would be unable to practice ethically, as they refuse to refer for abortion; the fact that such physicians can practice was cited as evidencing the lack of an ethical imperative to refer for abortion.

3. *"Conscious weighting"*: Numerous comments also questioned the scope and advisability of the provision prohibiting "conscious weighting" of the referral list. Both proponents and opponents of the proposed rules questioned whether they would permit or require a facility to provide a referral list that entirely omitted any abortion providers. In this regard, a number of providers, particularly from rural areas, asked whether the provision would preclude inclusion on the list of facilities such as hospitals which perform abortions; it was pointed out that in many areas of the country (Michigan and Tennessee were cited as examples), hospitals are often the main or only source of prenatal care for indigent women, so that if the provision requires excluding them, such women would be left without a source of prenatal care. Questions were also raised as to whether the list could be specifically tailored to indicates providers' specialties (such as genetic screening and counseling, experience in handling certain types of high-risk pregnancies) or their willingness to accept low-income clients and clients on welfare, so as to reduce the delay in obtaining services. With respect to indigent women, a number of providers argued that the only medically responsible course is to provide preliminary prenatal care until the woman has lined up another provider who will accept her for prenatal care; to fail to do so would constitute the tort of "abandonment."

4. *Legal authority:* The proposed provisions relating to referral were also opposed as illegal. Opponents of the provision suggested that it is inconsistent with the decision of the U.S. Court of Appeals for the Eighth Circuit in *Valley Family Planning* v. *State of North Dakota*, 661 F. 2d 99 (8 Cir. 1981), asserting that that decision relied on and upheld an earlier Departmental opinion construing 42 CFR 59.5(b)(1) as requiring, and section 1008 of the statute as not precluding, referral for abortion where "medically indicated." Opponents also argued that the proposed provisions are unconstitutional, both as a restriction on the free speech of providers and as placing another obstacle in the path of a woman's exercise of her right to abortion.

Proponents of the proposed provisions, on the other hand, argued that they are legal. It was argued that the restrictions regarding referral are essential to ensure that the statutory purpose that abortion not be promoted with Title X funds be met, and the GAO findings were cited as evidence of abuse of the referral process. In this regard, several took the position that *Valley Family Planning* would be irrelevant under the proposed regulatory scheme, since that decision simply relied on an opinion construing the prior requirements. They also maintained that the arguments supporting the constitutionality of the counseling provisions likewise support the constitutionality of the referral provisions.

B. Response

The Department agrees with and has accepted several of the points raised by the comments on this issue, as reflected in the revised provisions appearing at § 59.8 (a)(2) and (3) and § 59.8(b)(2) below.

1. *Emergency referrals:* The ectopic pregnancy example has been amended to provide for immediate provision of appropriate referral for emergency treatment, to make clear that Title X providers are in fact obligated to provide referrals for immediate and appropriate medical care when confronted with a life-threatening medical condition. See § 59.8(b)(2) below. In any cases in which emergency referrals are needed, the Title X project must expedite the referral and take whatever steps are necessary and appropriate to insure that the client receives the services needed quickly. See § 59.8 (a)(2) below.

2. *Referral for prenatal care:* In addition, the provisions below have been modified to make clear a point that was apparently misunderstood by many commenters, *i.e.*, that Title X providers are not precluded from making—and indeed are obligated to make—appropriate referrals with respect to treatment of conditions that are diagnosed in the course of examining pregnant Title X clients. Thus, in general, clients with medical conditions requiring treatment—whether pregnant or not—must be referred under the rules below to an appropriate provider of the needed medical care. If the condition is one that is related to pregnancy, the requirements of § 59.8(a) apply; if the condition is one that is not related to pregnancy, § 59.5(b)(1) continues to apply. See, in this regard, the discussion at sections IB1 and IIIB1 above.

These changes and clarifications of the proposed policies thus respond to most of the comments on the referral issue. As for the comments arguing that the policy builds an unacceptable delay into the process of obtaining both prenatal care and abortion, where chosen, the Department does not agree that substantial delays will result under the rules below. It has addressed the issue of delay in prenatal care by requiring that projects provide information designed to protect maternal and fetal health until a provider of prenatal care is secured for the client. This will permit information regarding good health practices during pregnancy (*e.g.*, warning the pregnant woman about the risks of substance abuse, counseling regarding proper nutrition, rest, and so on) to be provided by the project.

However, the Department rejects the contention of many comments that the policies below will expose poor and young women to substantially greater risk or delay in obtaining services related to pregnancy outcome. This contention is based on the assumption of delay or client loss in the referral process. However, such a risk has always existed in the Title X program, as it has never provided *any* pregnancy outcome services, whether abortion services or delivery services. All that the referral requirements below do is move what has always been, where pregnancy is diagnosed, an inevitable referral slightly ahead in time. Moreover, there is no *a priori* reason why a properly operating referral process cannot operate just as efficiently if it refers at the time pregnancy is diagnosed as it can if it

first provides options counseling and then refers.

Because Title X projects do not offer the complete continuum of care from pregnancy diagnosis to childbirth, there may have been and may continue to be some unavoidable delays in individual cases. The only certain way to eliminate any gap in time would be to award Title X funds only to organizations which provide the entire spectrum of obstetric and gynecological services including delivery services.

With respect to an abortion, moreover, these comments evidence a substantial misunderstanding of (and to the extent they come from Title X providers, probable noncompliance with) the Title X requirements. Contrary to the claims of many providers, Title X has never permitted more than "mere referral," that is, the provision of the name and telephone number of a provider for abortion; the extensive facilitation of abortion (such as setting up appointments, making transportation arrangements, making arrangements for payment of the abortion) that so many of these comments assume to be common practice have never been permissible in the Title X program. While the rules below no longer permit "mere" referral for abortion, this is consistent with the statute which clearly intended that abortion not be facilitated through the Title X program. Those who seek abortions must do so outside of the program. The Title X program has never been involved in ensuring rapid and easy access to abortion services so that a later term abortion could be avoided. Some delay in an individual decision choosing abortion is not unusual in medical practice, nor is it in all cases inadvisable. ACOG, for example, recommends that a woman "should be allowed sufficient time for reflection prior to making an informed decision." (*Standards*, p. 63.)

For the reasons above, the Department does not believe that access to abortions will be affected as a result of the change in policy. Nevertheless, it should be clear that given the prohibition of section 1008, the Department cannot now nor ever has been able to facilitate the selection or obtaining of abortion as a method of family planning. Therefore, to the extent abortions are not selected as a consequence of this policy, it believes such a result is consonant with the congressional purpose underlying section 1008, which clearly disfavors the choice of abortion as a method of family planning.

3. *"Conscious weighting"*: With respect to the comments questioning the meaning of the prohibition on "conscious weighting" of the referral lists, the Department thinks that most of the provider concerns are misplaced. As proposed, the prohibition was very narrow: It precluded only conscious weighting of the list in favor of abortion providers. As such, it was silent with respect to other characteristics of the list such as breakdown by area of specialty, acceptance of Medicaid and other relevant variables and such breakdowns were therefore not precluded. Indeed, section 59.8(a)(2) requires referral to "available" providers of prenatal care, including providers appropriate to the Title X clientele, who are primarily low income. Nor does the Department view the "conscious weighting" provision as prohibiting the inclusion of facilities, such as hospitals, in which abortions are performed if they are also major providers of prenatal care and other services and the referral is specifically made to the providers of prenatal care services. Rather, what is prohibited is inclusion on the list of providers that, as their main function, provide abortions and the deliberate exclusion in the composition of the list of providers that do not provide abortions or referrals for abortion. However, to make clear that the requirement relates solely to the actual composition of the list and does not relate to the project's intent, it has deleted the word "conscious" from § 59.8(a) below. In addition, the Department has added language to make clear that the project may not direct clients to prenatal providers on the referral list who also perform abortions.

4. *Legal authority*: The Department also rejects the contention that the referral requirements are illegal. As regards the *Valley Family Planning* decision, it notes that the Court of Appeals for the Eighth Circuit did not purport to limit the Secretary's authority to prescribe standards implementing section 1008; rather, pursuant to the Supremacy Clause of the Constitution, it simply applied the regulatory standards then in effect to supersede contrary State law. Moreover, the basic premise of that regulatory standard—that referrals where a life-threatening condition is diagnosed are not prohibited by section 1008 and are regulatorily required whether or not the treatment ultimately is abortion—is unaffected by the rules below, as the discussion at the first paragraph of this section makes clear. The Department interpretation upon which *Valley Family Planning* was partially based did not state that referral is required on demand, neither did it find that referral is always required; rather, it held only that it was required under the regulations when medically necessary, such as when the life of the mother is endangered.

Nor does the Department agree that the referral provisions of the rules below are constitutionally infirm. With regard to the First Amendment problems which many comments asserted exist, there is analytically no difference in First Amendment terms between the restrictions on counseling and the restrictions on referral. Thus, the points made at IIIB7 above apply to these claims as well. As to the claim that prohibiting projects from making referrals for abortion constitutes an unconstitutional interference with the woman's right to obtain and the doctor's right to refer for abortion, the points made at IIIB8 apply to this claim also.

V. Program Integrity

Section 59.9(a) of the proposed rules provided that a Title X project must—

be kept entirely separate and distinct, financially and physically, from any abortion-related activities. This requirement includes maintaining separate financial, accounting personnel and medical record systems and separately maintaining other project functions and physical facilities (including office space, equipment, stationary and the like) in such a manner as to clearly separate Title X-funded activities from abortion-related activities. This requirement prohibits, by way of example, common waiting, consultation, examination and treatment areas; shared telephone numbers and receptionists, common names for eligible and ineligible programs; and common office entrances and exists. Although common street or mailing addresses will presumptively constitute a failure to separate adequately Title X-funded programs from other programs which include abortion as a method of family planning, grant applicants may seek to establish the reasonableness of such arrangemnts in exceptional cases where, as in the example of a large metropolitan hospital with abortion and family planning services located in different wings, the fact of physical separation is otherwise established and no use of appropriated funds in an ineligible program is likely.

Proposed § 59.9(b) set out four examples of fact patterns which failed to comply with the proposed requirements and one example of a fact pattern that complied.

A. Comments

1. *Cost:* The most common objection to the proposed co-siting restrictions was cost. Many comments, particularly those from State and local governmental organizations, argued that the proposed restrictions would require a substantial investment in duplicate facilities, personnel and so on, which would

render Title X funds uneconomic to accept. The particular concern in this regard was typically stated to be the phrase "abortion-related services." The comments typically criticized this phrase as extremely vague, but assumed that the phrase covered any services in which abortion is mentioned, such as genetic screening and counseling or the provision of handouts mentioning abortion, and not just the actual performance of abortions. One State health department questioned whether the term "abortion-related services" covered such services as laundry, housekeeping, security, and data processing services that are shared by the abortion component of, for example, a large metropolitan hospital.

A number of public organizations stated that the practical effect of the requirements would be to bar them from participating in the Title X program. They contended that they do not have the financial ability to establish duplicate clinical facilities, provide separate parking lots (as appeared to be required in the example at proposed § 59.9(b)(1)), or even establish separate entrances and exits. Moreover, many stated that they are required by law to provide services through existing public hospitals and clinics, in which they also conduct a variety of activities in which abortion is mentioned, abortion counseling is done, or abortions are provided, frequently because of court orders mandating such activity. Several public organizations argued that the only organizations that would be able to remain in the program under the proposed requirements are the single or dual-purpose private organizations, such as Planned Parenthood affiliates, which would have the financial capability and legal flexibility to establish separate facilities. The requirements were seen as impacting particularly severely on rural areas, where existing resources are scarce and where distance is a major barrier to service. Because of such considerations, it was argued, the emphasis has been on establishing multi-purpose sites of rural health care, with which the requirements would be at odds.

Private providers likewise criticized the proposed provisions as too costly. A number argued that the net effect of separating their Title X operations from any abortion-related activities they conduct would be an increase in cost for *both* operations. These comments took the position that a cross-subsidy existed, with Title X benefitting from economies of scale due to bulk purchasing of supplies, sharing or overhead costs, and so on. A few providers and provider organizations submitted estimates of the cost of complying with this provision, which ranged up to $150 million for the program as a whole. Based on such cost estimates, a number of comments argued that the Department did not comply with Executive Order 12291 in that it did not conduct a regulatory impact analysis of the proposed requirements, and maintained that the proposed requirements exceeded the impact threshold of the Executive Order. It was argued, moreover, that it is inappropriate as a matter of public policy to require Title X funds to be spent on such items as paving parking lots, which some assumed the proposed provisions to require, and constructing new doorways and lobbies rather than on the provision of direct health care services.

2. *Continuity of care:* The co-siting requirements were also criticized on public health grounds, principally on the basis that they would impact negatively on continuity of care between family planning and abortion. Numerous comments, particularly from public providers, argued that the trend in public health has been to locate related services together, to facilitate full utilization by clients of needed services. For this reason, it was stated, even in "large, metropolitan hospitals," abortion counseling services are frequently located in the same corridor or wing as family planning services. Such arrangements also decrease the rate of repeat abortions, it was argued, by making contraceptive counseling and services readily available to women who have had or are about to have abortions. As a practical matter, therefore, it was asserted that it will often not be possible to relocate Title X services and, in any event, doing so would not be consistent with contemporary public health thinking. It was also argued that the proposed requirements, if complied with, would have at least a short-term impact on continuity of care, occasioned by the change attendant on moving to new facilities, hiring new personnel, and so on. A public agency in New York for instance, indicated that family planning providers in that state would have to seek approval under New York's certificate of need law to establish duplicative services, which could temporarily impair the ability of the Title X projects to provide services or close them down permanently, if the certificate of need were not obtained. Several commenters expressed concern that the requirement of proposed § 59.9 would interfere with the activities of other federally funded programs in which abortion information may be provided.

3. *Separation of medical, personnel and financial systems*: A related criticism was frequently expressed with regard to the proposed requirement to establish separate "medical records systems." Many providers and provider organizations argued that the requirement would be impractical for multifunction health care facilities, such as hospitals or county health departments, which maintain centralized medical records systems. They also maintained that such a requirement would interfere with continuity of care by fragmenting a patient's medical records. They stated that this could lead to poor medical management of the patient's care by the project or elsewhere in the organization if complete records are not obtained. The proposed requirement was thus generally criticized as inconsistent with proper medical procedure.

The requirement for separate personnel systems was attacked on simlar grounds. Public organizations generally argued that they could not comply with the proposed requirement, given the legal structure of most governmental personnel systems in which employees of many governmental agencies are employed under the same personnel system. Other provisions, criticizing the example at proposed § 59.9(b)(2), argued that it was improper to regulate what a physician or other health professional, who may be employed by the project on a part-time basis, does with the rest of his time.

The proposed requirement for separate accounting systems elicited similar criticisms. A number of comments recognized that it is reasonable, and consistent with customary and longstanding Department practice, to require Title X grantees to maintain separate accounting records. However, it was repeatedly stated that requiring separate accounting systems is infeasible for most large organizations, particularly governmental ones. For example, the state health department of New Jersey endorsed the reasonableness of requiring physical and financial separation of abortion and family planning services in a hospital, but argued that the common practice of having distinct "cost centers" in hospitals should be sufficient to meet the requirement for financial separation. These comments thus urged that both the policy and the example at proposed § 59.9(b)(4) be changed.

4. *Treatment of large, metropolitan hospitals:* The proposed provision which

used the example of "a large, metropolitan hospital" was critized on several grounds. A number of comments argued that it was vague. Other comments argued that it was arbitrary, in that there is no reason to except metropolitan hospitals from the requirement that does not also apply to rural hospitals, which may be the only provider of services in an area, or to hospitals which are constructed without wings but have some other type of physical separation. As noted above, a number of comments also stated that metropolitan hospitals typically locate abortion-related services in the same area of the facility as family planning services and not in separate wings. It was also argued that the proposal, together with the requirement for separate entrances and exits, does not take into account the concerns of inner city hospitals, which frequently restrict the number of entrances and exits for security reasons. For these reasons, many public providers expressed the view that the waiver for large metropolitan hospitals would be of very little help and that the co-siting requirements would force them to forego Title X funds.

5. *Legal authority*: The proposed physical separation requirements were attacked as illegal on several grounds. Numerous comments argued that there is no evidence that they are needed, asserting that the Inspector General and GAO audits failed to show that Title X grantees had intermingled project and abortion-related activities in any way. In this regard, it was argued that there is no evidence supporting the presumption of illegality with respect to common street or mailing addresses. It was also argued that the requirements greatly exceed what is needed to assure that Title X funds are not used for abortion-related purposes, and thus are invalid. The decisions in the litigation involving the State of Arizona and Planned Parenthood of Central and Northern Arizona (see, *e.g., Planned Parenthood of Central and Northern Arizona* v. *The State of Arizona*, 789 F. 2d. 1348 (9 Cir. 1986), aff'd U.S. ____, 107 S. Ct. 391 (1986)) and *Planned Parenthood of Billings, Inc.* v. *The State of Montana, supra*, were cited in support of this argument. Finally, some comments also contended that the proposed requirements violate the First Amendment, based on the decision in *League of Women Voters, supra*. In that decision, it was argued, the Supreme Court established the principle that the government may not require the recipient of a Federal benefit (in that case, a broadcast license) to establish an "entirely separate facility" to exercise its First Amendment rights, even though it could decline to subsidize the exercise of those rights with Federal funds. The proposed co-siting requirements, it was argued, constitute a requirement to establish an "entirely separate facility" analogous to that considered and rejected by the Supreme Court and is thus invalid.

Proponents of the regulations uniformly supported the proposed physical separation requirements. Many argued that physical intermingling of Title X projects with abortion facilities necessarily has the effect of subsidizing the latter, contrary to Congressional intent. Others contended that lack of physical separation necessarily leads to the public perception that the government is supporting abortion as a method of family planning, which is contrary to the intent of section 1008 that Title X funds not be used to promote abortion as a method of family planning. Because Title X clients do not see the accounting and other "paper" indices of separation, it was argued, physical separation is the only reasonable means to clarify that Title X projects may not include abortion and that the federal government insists on a clear adherence to its policy against spending federal money to facilitate abortions. In this regard, it was evident from the comments of hundreds of individuals that they confused the Title X projects with abortion providers or assumed that Title X projects were generally abortion providers.

B. Response

The Department has carefully considered the comments received concerning the proposed separation requirements and has made a number of changes to the requirements in light of the comments received. In essence, the new rules adopt an approach that will enable the Department to make case-by-case determinations as to whether a given Title X project is physically and financially separate from prohibited activities. As stated in the proposed rules, meeting the requirement of section 1008 mandates that Title X programs be organized so that they are physically and financially separate from other activities which are prohibited from inclusion in a Title X program. Having a program that is separate from such activities is a necessary predicate to any determination that abortion is not being included as a method of family planning in the Title X program. Under the rules below, the separation must be objective; that is, if the Title X program cannot be distinguished from prohibited activities conducted by the grantee or others, the statutory mandate has not been met. Thus, the rule below provides that, while accounting separation is necessary, it is not sufficient. There must also be a visible separation between the Title X program and other activities which are prohibited from inclusion in the Title X program. To determine whether sufficient separation exists in a particular case, the Department will weigh the relevant factors. The regulation identifies four non-exclusion factors relevant to such a determination. See § 59.9 below. However, because the rule below adopts a "facts and circumstances approach," it is felt that providing examples would be misleading, in that examples are unlikely to replicate the complex circumstances and conditions that the Department will be considering when making the individual determinations called for by the rule. Accordingly, unlike proposed § 59.9, § 59.9 below contains no examples.

In light of these changes to the proposed rule, the Department makes the following responses to the public comments.

1. *Cost*. Because of the adoption of a case-by-case determination approach in the rules below, it is not possible to determine with any precision the costs that grantees will face in accommodating to the rules. However, the Department would note that most of the actual or apparent requirements of proposed § 59.9 that caused the most concern regarding costs, such as the stated requirement for separate entrances and exits and the apparent (although unintended) requirement to repave parking lots, no longer constitute *per se* tests under rules below. Certainly, the Department at this point does not have complete data about each of the 4,000 clinics presently in the program so that it could determine how much, if any, expense each would incur to maintain program integrity. Indeed, the Department has in part chosen a case-by-case approach so as to be able to implement this policy with a greater understanding and sensitivity to the costs imposed. In any event, because the rules no longer contain the rigid physical separation requirements of the proposed rules, it does not agree that the "worst case" estimates submitted of approximately $50,000 per clinic are likely to be realized for many clinics. Accordingly, the Department is not persuaded that the rules below will substantially impact upon rural health care providers.

The Department also is unpersuaded by the provider arguments that Title X benefits from lack of separation from

abortion facilities due to the economies of scale that are realized. Indeed, such comments only underscore the problem of commingling the Title X services with abortion services, both in the difficulty of ensuring that no subsidy in the other direction occurs, but also in creating the appearance, if not the reality, of federal support of abortion. Further, current program policy allows grant funds to be used for the one-time costs associated with relocating a Title X clinic for the express purpose of complying with the rules below.

2. *Continuity of care:* The above changes also respond to several of the provider concerns with continuity of care, as do the related changed discussed in the following section. The example typically cited—the Title X clinic that is located at the same site as a project funded under another program that provides genetic screening and counseling—may not be affected by the requirements revised, if the project can show that the later project's activities meet the separation indicia of § 59.9 below. To the extent the rules below minimize continuity between family planning and abortion, this is a result which the Department views as consistent with section 1008.

3. *Separation of medical records, personnel, and financial and accounting systems:* The requirements relating to separate financial and accounting, personnel, and medical records systems have been eliminated in response to the concerns raised in the public comments. See § 59.9 below. However, in order to ensure financial separation of abortion from Title X and consistent with past practice as well as in recognition of the customary financial management practices of health care providers, § 59.9 below provides that one of the indicia of separation to be considered is the existence of separate accounting *records* that are separate from those of any abortion activity it conducts. This, it should be emphasized, represents no change from longstanding program practice. With respect to the issue of shared personnel, § 59.9 below establishes the existence of separate personnel as one of the regulatory indicia of separation. However, as noted above with respect to this section, the existence of this factor—like the existence of any of the factors set out in § 59.9—in a particular case is not a *per se* disqualification, but rather must be considered in light of the facts and circumstances of the project as a whole. Where sharing of personnel exists, but the project can demonstrate on an overall basis that it is objectively separated from prohibited activities, the Department will determine that the project is in compliance with § 59.9. Accordingly, the Department does not believe that the concerns raised with respect to the ability of medical personnel to act outside their employment by the project are valid. These changes thus address and should allay many of the cost concerns expressed by the public comments.

4. *Treatment of large, metropolitan hospitals:* The Department has deleted the language relating to large hospitals. It agrees that this language was unclear and suggested criteria that were never intended to apply. Moreover, the approach adopted below makes such a provision no longer necessary.

5. *Legal authority:* The legal authority for these regulations is discussed extensively elsewhere in this preamble and does not need to be repeated here. In brief, section 1008 prohibits the use of title X funds in programs that include abortion as a method of family planning. Thus, section 1008 is broader than a mere restriction on the use of federal funds, and clearly authorizes the Department to set out rules to implement its mandate that Title X programs not include prohibited activities. Based on the need to implement the mandate of the statute and the Departments experience in administering the program, the Department has concluded that greater guidance and specificity is needed with regard to program separateness. Section 59.9's case-by-case approach will allow the Department to implement the statutory mandate of program separateness with sensitivity to the circumstances of each program. Thus, adopting the case-by-case approach reflects the Department's efforts to reconcile the commands of the statute with the concerns expressed by commenters. As such, it reflects a rasonable exercise of the Department's authority to promulgate rules for the administration of the Title X program. With repsect to the constitutional claims raised by some commenters, the Department disagrees that the cases cited, particularly *League of Women Voters, supra*, preclude the policies below, for the reasons more fully discussed previously and below.

VI. Advocacy of Abortion

Proposed § 59.10 set out a number of restrictions designed to ensure that Title X grantees do not promote or encourage abortion as a method of family planning with Title X funds. Under proposed § 59.10(a), a Title X project could—

take no action which encourages, promotes, or advocates abortion as a method of family planning, or which assists a woman in obtaining an abortion as a method of family planning. Actions are considered to encourage, promote, or advocate abortion as a method of family planning if they in any way have the effect of facilitating obtaining abortion as a method of family planning.

The proposed rule prohibited certain specific actions: lobbying, providing speakers promoting abortion and paying dues to abortion advocacy organizations (proposed § 59.9(a)(1)); using legal action to make abortion available as a method of family planning (proposed § 59.9(a)(2)); and developing or disseminating materials advocating abortion as a method of family planning (proposed § 59.9(a)(3)). Five examples were provided. The following four were termed impermissible under the statute: providing a brochure advertising an abortion clinic, paying dues to an organization which devotes a substantial part of its activities to lobbying Congress for liberalized abortion laws, displaying posters encouraging clients to write legislators to vote in favor of abortion, and assisting clients in making appointments at abortion clinics; the fifth example, concerning the activities of the Title X project's personnel outside of the project in writing legislators in support of pro-choice legislation, was termed permissible. See proposed § 59.10(b).

A. Comments

1. *Provision of abortion materials:* The majority of comments opposing proposed § 59.10 criticized the prohibition of proposed § 59.10(a) relating to assisting a woman to obtain a family planning abortion and actions that "in any way have the effect of facilitating obtaining abortion," together with proposed § 59.10(a)(3) relating to the development and dissemination of materials (including printed matter and audiovisual materials) advocating abortion as a method of family planning. The usual criticism was that these provisions are overbroad, in that they fail to distinguish between the provision of factual information and advocacy of abortion. It was argued that the provisions would prohibit Title X grantees from disseminating such things as patient package inserts included in oral contraceptive packages and the patient information required by the Food and Drug Administration regarding the IUD, or even keeping copies of the telephone yellow pages which contain advertisements by abortion clinics. A national medical organization suggested that the "assisting" and "facilitating" language of proposed § 59.10(a) would preclude Title X projects from providing

copies of a patient's medical records on request, if the request came from an abortion facility, which conflicts with the principle that patients have a right to their medical records.

A series of related legal objections were also raised. The same criticisms relating to informed consent and voluntary acceptance of services that were articulated with respect to the proposed counseling provisions were likewise stated with respect to proposed § 59.10. In addition, many opponents argued that these provisions are unconstitutionally vague in failing to make clear exactly what the limits on expression are, so that a provider could never be certain whether it had violated them or not. It was also argued by a number of organizations that the provisions violate the First Amendment in constituting viewpoint-based discrimination (by forbidding pro-abortion but not anti-abortion speech) and by requiring grantees to relinquish their right to speech that is protected under *Griswold* v. *Connecticut, supra.* It was further argued that these restrictions on speech are not permissible on the theory that a benefit, rather than a right, is denied, as the government may not condition receipt of a benefit upon the relinquishment of First Amendment rights, as such a condition would have a chilling effect on the exercise of those rights. *Perry* v. *Sindermann, supra, Planned Parenthood of Central and Northern Arizona* v. *The State of Arizona, supra,* and *Alan Guttmacher Institute* v. *McPherson,* 616 F. Supp. 195, 202 (S.D.N.Y. 1985) were cited in support of this argument.

Supporters of the proposed provisions, on the other hand, generally expressed the view that they were appropriate and needed. They contended that advocacy of abortion is not a proper governmental function and is certainly not a "family planning" service which should be subsidized with federal funds. With regard to constitutional concerns, it was argued that the provisions are constitutional because the constitutional guarantees under the First Amendment do not apply to the government; those acting as agents of the government have no greater rights than the government itself, and accordingly the government may lawfully restrict what they say on its behalf. Also cited in support of the constitutionality of these provisions was *Regan* v. *Taxation Without Representation, supra.*

2. *Dues payment, lobbying and litigation:* The remaining provisions of proposed § 59.10 attracted somewhat less comment. A general criticism of these provisions was that they would prevent Title X grantees who are pro-abortion from exercising their First Amendment rights. In this regard, the provisions were criticized as politically motivated and not politically neutral; it was argued that they permit Title X funds to be used to support pro-life political, legal and lobbying activities, but prohibit such use of funds for the contrary point of view. In addition, a number of specific criticisms of the provisions were expressed. The restriction on payment of dues to organizations that advocate abortion was objected to as depriving grantees of access to needed professional information and services, as well as being an unconstitutional restriction of their right to free association under the First Amendment. The restrictions on lobbying were generally criticized as unnecessary: several comments argued that IRS requirements and OMB Circular No. A–122 already limit lobbying by grantees, and stated that there is no evidence that grantees are not complying with these requirements. It was also asserted that the lobbying restrictions violated the First Amendment. Similar arguments were made with respect to the restriction on litigation which, in addition, was criticized as vague. Questions were raised as to whether a grantee, which in its non-project activities provides abortions, could defend itself under this provision in any malpractice actions arising out of such abortions.

Proponents of the proposed provisions generally took the position that, if anything, they did not go far enough. In this regard, it was argued that it is inconsistent to restrict a grantee from advocating abortion if the parent organization is permitted to do so on the ground that the federal funds "free up" funds of the parent organization for such advocacy activity. In addition, one comment took the position that the example at proposed § 59.10(b)(2) was inconsistent with the logic of the regulation as a whole: If the point of the provisions is to separate Title X funds from abortion advocacy, then payment of dues to an organization that devotes *any* part of its activities to lobbying for abortion should be prohibited. The proponents of the provisions also took the position that, since the restrictions only apply to the Title X project itself, they are constitutional. *Regan* v. *Taxation Without Representation, supra,* was cited in support of this argument, as, it was noted, that case specifically concerned the availability of a tax exemption with regard to lobbying activities; in that case, the organization's tax exemption was denied because a substantial part of its activities were devoted to lobbying.

B. Response

The Department has considered the comments received, but for the reasons stated below, has not accepted them. Accordingly, § 59.10 below remains substantially as proposed.

1. *Provision of abortion materials:* The Department notes that many of the comments criticizing these provisions proceed from a misunderstanding of the requirements or have been addressed in connection with revisions to the rest of the regulation. As noted in the discussion at sections IIIB1 and IIIB2 above, it is not the intent of these regulations to restrict the provision of information to Title X clients necessary to assess the risks and benefits of different methods of contraception. See § 59.8(a)(4) above. Similarly, keeping the yellow pages in the project office and provision of medical records to another medical provider would not be proscribed, as they are not actions that directly "assist" a woman to obtain an abortion.

With respect to the legal criticisms of these provisions, the Department does not believe that they have merit. It notes, as an initial matter, that with the exception of the provision relating to payment of dues, the policies at proposed § 59.10(a) represent the long-standing interpretation of section 1008 by this Department, of which the grantee community should be aware and is currently bound. What the final rules below do is reduce to readily accessible written, regulatory form compliance standards which were articulated in an OGC opinion written in 1978 and a matter of public record since 1980. It is difficult to understand how, with these policies reduced to written, regulatory form and with concrete applications of them provided as in the proposed rules and the final rules below, the regulatory framework can be challenged as "vague," when the *status quo,* which the opponents of the regulations uniformly seek to continue, is not. The criticisms made on informed consent and "voluntariness" grounds are, with respect to the provisions of § 59.10, irrelevant, as those provisions in general do not relate to treatment, *per se.* However, to the extent that the requirements of § 59.10 do impinge on treatment, these concerns are addressed at section IIIB2 above. With respect to the claims that § 59.10 is unconstitutional, the Department disagrees that these claims have merit. These provisions are constitutional under the standards set forth in *Regan* v.

Taxation Without Representation, supra, and *League of Women Voters, supra,* because they do not prohibit organizations from establishing affiliates that provide abortion materials. They permit an organization to operate both a Title X project and a project that would educate women on abortion as long as they are separate and distinct.

2. *Dues payment, lobbying, and litigation:* The Department disagrees with the comments criticizing the proposed policies as not politically neutral. It is true that § 59.10, like the remainder of the rules below, does exhibit a bias in favor of childbirth and against abortion as a method of family planning. However, this bias is explicit in the statute itself, and is not a creation of this Department or this Administration. Moreover, as noted above, virtually all of the policies in § 59.10 represent program requirements that antedate the present Administration. Thus, it considers these criticisms to be unfounded.

With respect to the specific objections to the provisions relating to dues payment, lobbying and litigation, the Department disagrees that they have merit. It should be noted in this regard that the requirements apply only to the project. Thus, if a grantee organization believes that its interests are best served by belonging to an organization that advocates abortion, it is free to join; it simply may not use project funds for payment of dues. Similarly, if it wishes to lobby for the passage of pro-abortion legislation, it may, so long as project funds (including project personnel working on project time) are not used. The same principle applies with respect to the restriction on litigation, and thus the answer to the malpractice concern raised by some providers is that the organization may of course defend itself. See the examples at § 59.10(b) below.

The Department has thus not accepted the criticism expressed by some supporters of the rule, *i.e.,* that the restrictions of § 59.10 should apply to the organization in its entirely rather than just to the Title X-supported project. It does not agree that it has the statutory authority to impose such a policy, as section 1008 by its terms applies solely to programs supported with Title X funds; therefore, activities lying outside the project are not covered by the statutory prohibition. Moreover, such a policy would raise potential constitutional concerns. By the same token, since the restrictions at issue affect only the project, and not the organization as a whole, they come squarely within the *Regan* case, *supra,* and the claim that they violate the First Amendment is without merit.

VII. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule," as defined in the Executive Order. Although the rules below establish standards of performance for all Title X programs, only the requirements under § 59.9, *Maintenance of program integrity,* may have effects of the type and/or magnitude covered by Executive Order 12291. As discussed above, in reponse to comments about costs of complying with the rules, the Department has changed the rules to require appropriate and objective separation between the Title X program and activities prohibited under the subpart. The Department at this point does not have complete data about each of the 4,000 clinics presently in the program to determine how much, if any, expenses each will have to incur to maintain program integrity as mandated by Congress. However, since the rules no longer contain the rigid physical separation requirements of the proposed rules, the Department does not believe that the costs associated with implementation of the requirements contained in § 59.9 will even begin to approach the level of $100 million. The Secretary has determined, therefore, that this final rule is not a "major rule" as defined under E.O. 12291 because it will not have an annual effect on the economy of $100 million or more, or otherwise meet the criteria for which a regulatory impact analysis is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the federal government to anticipate and reduce the impact of rules and paperwork requirements on small entities. Although the rules below establish standards of performance for all Title X programs, only the requirements under § 59.9, *Maintenance of program integrity,* may have effects of the type covered by the Regulatory Flexibility Act. With one exception, the effect of the rules is to eliminate existing requirements or permissive provisions concerning the provision of abortion-related services, and as a result the rules should to this extent produce a reduction in costs for Title X programs. The exception is at § 59.9, relating to separation of services prohibited under this subpart from the Title X program. For the reasons discussed above, the Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these rules will not have a significant impact on a substantial number of small entities.

C. Executive Order 12612

Executive Order 12612 requires that a Federalism Assessment be prepared in any cases in which proposed policies have significant federalism implications as defined in the Executive Order. Among the types of actions which can have such implications are federal regulatory actions which preempt State law. As discussed above, the Department does not intend or interpret these rules as imposing additional costs or burdens on the States or preempting State laws and has argued that these rules will not have any of those effects, nor are they inconsistent with any of the principles, criteria or requirements established by this Executive Order. To the extent there are any additional costs for the operation of Title X programs resulting from these regulations, these costs are small, (see the discussion of Executive Order 12291, above) and are costs which will affect only the expenditure of Title X program funds. To the extend that these rules may have any effect, undetected by this analysis, which would create any federalism impact, the Department maintains that these regulations are necessary to ensure the integrity of the Title X program and appropriate enforcement of section 1008. Therefore, these rules comply with the letter and spirit of Executive Order 12612.

D. Paperwork Reduction Act

The final rules do not impose a burden of information collection under the Paperwork Reduction Act. Information collection requirements which were included in § 59.9 of the proposed rules have been deleted. The requirement established at § 59.7 will be administered in such a way that it will not create any paperwork burden. Applicants for grants will be asked merely to sign an assurance of compliance with the requirements in § 59.8 through § 59.10. Additional documentary evidence will be requested of an applicant or grantee only on a case-by-case basis in situations where such information is deemed necessary by the Secretary. The final rules do not contain any information collection requirements subject to OMB approval under the Paperwork Reduction Act.

E. Family Impact

The final rules have been reviewed in conformance with E.O. 12606. The effect of the final rules is to establish standards of compliance concerning the

separation of abortion services from the national family planning program.

The final rules were assessed under the seven criteria in section 1 of E.O. 12606. We conclude that the rules below will not have a significant potential negative impact on family well-being, based on the following determinations:

1. *Impact on stability of the family:* Although program services are provided without regard to, among other things, age, sex, number of pregnancies, or marital status, it is inherent in the character of the services provided under the program that other family members, such as a spouse, will be affected by the services. The limitations on project involvement with abortion in the rules below are intended to convey to the public the Department's concern for the well-being of both mothers and their unborn children.

2. *Impact on parental influence:* The rules below will lessen the influence of service providers and create an increased opportunity for parental influence on the education, nurture, and supervision of their children. Approximately 1,000,000 adolescents are served by Title X. Of those who become pregnant, Title X will no longer counsel or refer them for abortion. This increases the likelihood of adolescents seeking parental advice when faced with pregnancy and reinforces that the seeking of parental advice and involvement is preferable to government services.

3. *Governmental intrusion on family activities:* The rules below prohibit Title X projects from counseling once pregnancy is diagnosed and require referral for services. Insofar as this policy affects teenage clients of Title X projects, it thus diminishes the role of federally funded entities in influencing the childbearing decision and may serve to increase the parental role.

4. *Impact on family earnings:* The rules below will have no impact on family earnings, as they relate solely to receipt of health services under governmentally funded programs and not to income-producing activities of individuals. There should likewise be no impact on family budgets in the aggregate, as the decrease of services in some areas (*e.g.*, prenatal services) will be replaced by increased services in other areas (*e.g.*, preventive family planning services).

5. *Feasibility of less Federal government involvement:* The rules below principally involve establishing standards for compliance with a federal statute by recipients of federal grant funds. The monitoring activities called for could not be discharged by a non-federal entity.

6. *Message of the rules regarding the status of the family:* One message to the public is that family planning is separable from abortion and that the government supports, through its funding, programs that enable families to plan the number and spacing of their children, either through preventive methods of family planning or through management of infertility problems, but not through elimination of unborn children by abortion. In reviewing the public comments, the Department was impressed that both supporters and opponents of the proposed rules seemed to agree that Title X has in the past linked family planning and abortion; the rules below break this link and dispel any perception that Title X funds may be used to support abortion services and activities.

7. *Message of the rules to young people concerning their behavior and social norms:* The message to young people is that the federal government does not sanction abortion as a method of family planning and that it will not provide funding for actions that help young women with an unintended pregnancy to obtain an abortion.

List of Subjects in 42 CFR Part 59

Family planning—birth control, Grant programs—health, Health facilities.

Dated: January 28, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: January 28, 1988.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, Subpart A of Part 59, 42 Code of Federal Regulations, is hereby amended as set forth below.

PART 59—[AMENDED]

1. The authority citation for Subpart A of 42 CFR Part 59 is revised to read as follows:

Authority: 42 U.S.C. 300a–4

2. In 42 CFR 59.2, the following definitions are added:

§ 59.2 [Amended]

* * * * *

"Family planning" means the process of establishing objectives for the number and spacing of one's children and selecting the means by which those objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods (including natural family planning and abstinence) and the management of infertility (including adoption). Family planning services includes preconceptional counseling, education, and general reproductive health care (including diagnosis and treatment of infections which threaten reproductive capability). Family planning does not include pregnancy care (including obstetric or prenatal care). As required by section 1008 of the Act, abortion may not be included as a method of family planning in the Title X project. Family planning, as supported under this subpart, should reduce the incidence of abortion.

"Grantee" means the organization to which a grant is awarded under section 1001 of the Act.

* * * * *

"Prenatal care" means medical services provided to a pregnant woman to promote maternal and fetal health.

"Program" and "project" are used interchangeably and mean a coherent assembly of plans, activities and supporting resources contained within an administrative framework.

* * * * *

"Title X" means Title X of the Act, 42 U.S.C. 300, *et seq.*

"Title X program" and "Title X project" are used interchangeably and mean the identified program which is approved by the Secretary for support under section 1001 of the Act, as the context may require. Title X project funds include all funds allocated to the Title X program, including but not limited to grant funds, grant-related income or matching funds.

§ 59.5 [Amended]

3. In 42 CFR 59.5(a), paragraph (a)(5) is removed and paragraphs (a)(6) through (a)(11) are redesignated as paragraphs (a)(5) through (a)(10) respectively.

4. 42 CFR 59.5(b)(3)(i) is revised to read as follows:

§ 59.5 [Amended]

* * * * *

(b) * * *

(3) * * *

(i) achieve community understanding of the objectives of the Title X program.

* * * * *

5. In 42 CFR Part 59, § 59.7 through § 59.13 are redesignated as § 59.11 through § 59.17 respectively, and new § 59.7 through § 59.10 are added to read as follows:

§ 59.7 Standards of compliance with prohibition on abortion.

A project may not receive funds under this subpart unless it provides assurance satisfactory to the Secretary that it does not include abortion as a method of family planning. Such assurance must include, as a minimum, representations

(supported by such documentation as the Secretary may request) as to compliance with each of the requirements in § 59.8 through § 59.10. A project must comply with such requirements at all times during the period for which support under Title X is provided.

§ 59.8 Prohibition on counseling and referral for abortion services; limitation of program services to family planning.

(a)(1) a Title X project may not provide counseling concerning the use of abortion as a method of family planning or provide referral for abortion as a method of family planning.

(2) Because Title X funds are intended only for family planning, once a client served by a Title X project is diagnosed as pregnant, she must be referred for appropriate prenatal and/or social services by furnishing a list of available providers that promote the welfare of mother and unborn child. She must also be provided with information necessary to protect the health of mother and unborn child until such time as the referral appointment is kept. In cases in which emergency care is required, however, the Title X project shall be required only to refer the client immediately to an appropriate provider of emergency medical services.

(3) A Title X project may not use prenatal, social service or emergency medical or other referrals as an indirect means of encouraging or promoting abortion as a method of family planning, such as by weighing the list of referrals in favor of health care providers which perform abortions, by including on the list of referral providers health care providers whose principal business is the provision of abortions, by excluding available providers who do not provide abortions, or by "steering" clients to providers who offer abortion as a method of family planning.

(4) Nothing in this subpart shall be construed as prohibiting the provision of information to a project client which is medically necessary to assess the risks and benefits of different methods of contraception in the course of selecting a method; *provided*, that the provision of this information does not include counseling with respect to or otherwise promote abortion as a method of family planning.

(b) *Examples.* (1) A pregnant client of a Title X project requests prenatal care services, which project personnel are qualified to provide. Because the provision of such services is outside the scope of family planning supported by Title X, the client must be referred to appropriate providers of prenatal care.

(2) A Title X project discovers an ectopic pregnancy in the course of conducting a physical examination of a client. Referral arrangements for emergency medical care are immediately provided. Such action is in compliance with the requirements of paragraph (a)(2) of this section.

(3) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The Title X project tells her that it does not refer for abortion but provides her a list which includes, among other health care providers, a local clinic which principally provides abortions. Inclusion of the clinic on the list is inconsistent with paragraph (a)(3) of this section.

(4) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The project tells her that it does not refer for abortion and provides her a list which consists of hospitals and clinics and other providers which provide prenatal care and also provide abortions. None of the entries on the list are providers that principally provide abortions. Although there are several appropriate providers of prenatal care in the area which do not provide or refer for abortions, none of these providers are included on the list. Provision of the list is inconsistent with paragraph (a)(3) of this section.

(5) A pregnant woman requests information on abortion and asks the Title X project to refer her to an abortion provider. The project counselor tells her that the project does not consider abortion an appropriate method of family planning and therefore does not counsel or refer for abortion. The counselor further tells the client that the project can help her to obtain prenatal care and necessary social services, and provides her with a list of such providers from which the client may choose. Such actions are consistent with paragraph (a) of this section.

(6) Title X project staff provide contraceptive counseling to a client in order to assist her in selecting a contraceptive method. In discussing oral contraceptives, the project counselor provides the client with information contained in the patient package insert accompanying a brand of oral contraceptives, referring to abortion only in the context of a discussion of the relative safety of various contraceptive methods and in no way promoting abortion as a method of family planning. The provision of this information does not constitute abortion counseling or referral.

§ 59.9 Maintenance of program integrity.

A Title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Act and § 59.8 and § 59.10 of these regulations from inclusion in the Title X program. In order to be physically and financially separate, a Title X project must have an objective integrity and independence from prohibited activities. Mere bookkeeping separation of Title X funds from other monies is not sufficient. The Secretary will determine whether such objective integrity and independence exist based on a review of facts and circumstances. Factors relevant to this determination shall include (but are not limited to):

(a) The existence of separate accounting records;

(b) The degree of separation from facilities (*e.g.*, treatment, consultation, examination, and waiting rooms) in which prohibited activities occur and the extent of such prohibited activities;

(c) The existence of separate personnel;

(d) The extent to which signs and other forms of identification of the Title X project are present and signs and material promoting abortion are absent.

§ 59.10 Prohibition on activities that encourage, promote or advocate abortion.

(a) A Title X project may not encourage, promote or advocate abortion as a method of family planning. This requirement prohibits actions to assist women to obtain abortions or increase the availability or accessibility of abortion for family planning purposes. Prohibited actions include the use of Title X project funds for the following:

(1) Lobbying for the passage of legislation to increase in any way the availability of abortion as a method of family planning;

(2) Providing speakers to promote the use of abortion as a method of family planning;

(3) Paying dues to any group that as a significant part of its activities advocates abortion as a method of family planning;

(4) Using legal action to make abortion available in any way as a method of family planning; and

(5) Developing or disseminating in any way materials (including printed matter and audiovisual materials) advocating abortion as a method of family planning.

(b) *Examples.* (1) Clients at a Title X project are given brochures advertising an abortion clinic. Provision of the brochure violates subparagraph (a) of this section.

(2) A Title X project makes an appointment for a pregnant client with

an abortion clinic. The Title X project has violated paragraph (a) of this section.

(3) A Title X project pays dues to a state association which, among other activities, lobbies at state and local levels for the passage of legislation to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association violates paragraph (a)(3) of this section.

(4) An organization conducts a number of activities, including operating a Title X project. The organization uses non-project funds to pay dues to an association which, among other activities, engages in lobbying to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association by the organization does not violate paragraph (a)(3) of this section.

(5) An organization that operates a Title X project engages in lobbying to increase the legal availability of abortion as a method of family planning. The project itself engages in no such activities and the facilities and funds of the project are kept separate from prohibited activities. The project is not in violation of paragraph (a)(1) of this section.

(6) Employees of a Title X project write their legislative representatives in support of legislation seeking to expand the legal availability of abortion, using no project funds to do so. The Title X project has not violated paragraph (a)(1) of this section.

(7) On her own time and at her own expense, a Title X project employee speaks before a legislative body in support of abortion as a method of family planning. The Title X project has not violated paragraph (a) of this section.

6. In addition to the amendments set forth above, in 42 CFR Part 59 remove the words "project" or "projects" or "project's" and add in their place, the words "Title X project" or "Title X projects" or "Title X project's," respectively, in the following places:

(a) Section 59.2 definition of "low income family";

(b) Section 59.5(a)(1);

(c) Section 59.5(b), introductory text;

(d) Section 59.5(b)(3)(iii);

(e) Section 59.5(b)(4);

(f) Section 59.5(b)(7);

(g) Section 59.5(b)(10);

(h) Section 59.6(a);

(i) Newly redesignated § 59.11(a);

(k) Newly redesignated § 59.11(a)(7);

(l) Newly redesignated § 59.11(b);

(m) Newly redesignated § 59.11(c);

(n) Newly redesignated § 59.12(a), the first time it appears;

(o) Newly redesignated § 59.15;

(p) Newly redesignated § 59.16(a).

[FR Doc. 88-2089 Filed 1-29-88; 9:13 am]

BILLING CODE 4160-17-M

federal register

Tuesday
February 2, 1988

Part V

Department of Transportation

Urban Mass Transportation Administration

UMTA Fiscal Year 1988 Formula Grant Apportionments; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Fiscal Year 1988 Formula Grant Apportionments

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act signed into law by President Reagan on December 22, 1987, provides, among other things, Fiscal Year 1988 appropriations for the formula grant program under Sections 9 and 18 and for the section 16(b)(2) elderly and handicapped program of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). This notice includes the distribution of these funds. The law also provides limitations on the use of operating assistance, also included in this Notice.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202)366–2053.

SUPPLEMENTARY INFORMATION: Federal assistance to urban mass transportation systems is authorized under the UMT Act, as amended. Funds for Fiscal Year 1988 were appropriated by the DOT and Related Agencies Appropriations Act, 1988, Pub. L. 100–202.

Formula Program Appropriations

This Notice provides the Fiscal Year 1988 apportionments of Sections 9 and 18 funds for urbanized and nonurbanized areas, based on the most recent U.S. Census data. Section 9 apportionments for urbanized areas over 200,000 in population are also based on operating and financial data submitted for the 1986 Section 15 Annual Report.

A total of $1,731,703,000 has been appropriated for Fiscal Year 1988 for the Sections 9 and 18 programs. In addition, $4,750,000 is available for the Rural Transportation Assistance Program (RTAP). The Appropriations Act directs that, before apportionment of the Sections 9 and 18 funds, $12,350,000 shall be made available to the Section 18 program. Of the remaining amount, 97.07 percent is being made available to the Section 9 program and 2.93 percent is being made available to the Section 18 program.

Construction Management Oversight Set Aside

The UMT Act allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available for Fiscal Year 1988 under Sections 3, 9, 9B, 18, the National Capital Transportation Act of 1969 ("Stark-Harris"), and Section 103(e)(4) of Title 23, United States Code, to contract with any person to oversee the construction of any major project under such programs. Therefore, one-half of one percent of the funds appropriated for Fiscal Year 1988 under the Section 9 (including Section 9B) and 18 programs, or $8,984,765, has been reserved for this purpose ($8,661,571 under Section 9 and $323,194 under Section 18). The remaining amount of Fiscal Year 1988 funds is apportioned in this Notice.

Section 9 Additional Funding

This apportionment also includes Fiscal Year 1984 Section 9 funds ($4,053,809) that were never obligated and thus have become available for reapportionment. In addition, it includes Fiscal Year 1975 to Fiscal Year 1983 Section 5 funds ($11,103,856) that were deobligated in Fiscal Year 1987 and thus also have become available for reapportionment. These Sections 9 and 5 funds, totaling $15,157,665, are being apportioned under and become part of the Fiscal Year 1988 Section 9 program as provided for in the Surface Transportation Assistance Act of 1982. Also, $431,227 of reserved construction management oversight Fiscal Year 1987 funds that were not required for this function in Fiscal Year 1987 are being reapportioned. In addition, this apportionment includes Fiscal Year 1986 construction management oversight funds ($538,526) that were deobligated in Fiscal Year 1987 and have become available for reapportionment. Thus, the total additional funding amount being apportioned under Section 9 is $16,127,418.

Section 9B Formula Program—Distribution of Mass Transit Account (Trust Fund)

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (the STURA Act) made a number of changes to the programs of the Urban Mass Transportation Administration and established a new Section 9B Program. The Act states that beginning in Fiscal Year 1988, in any year in which an obligation limitation in the Discretionary Grants Program exceeds $1 billion, the funds in excess of that amount are to be allocated half on a discretionary basis and half under a new Section 9B formula program—essentially a capital-only Section 9 program. The obligation limitation for Fiscal Year 1988 is $1,130,500,000. Thus, $65,250,000 have been allocated for Section 9B. These Section 9B funds cannot be used for operating assistance but are otherwise treated as Section 9 funds. In grant applications, amounts applied for under each Section should be clearly shown.

Total Section 9 Fiscal Year 1988 Apportionments

This Notice provides tables which reflect both the amounts apportioned under the Section 9 program (General Fund) and the Section 9B program (Trust Fund). The amounts apportioned under Section 9 ($1,667,064,132) and Section 9B ($65,250,000) have been added together. Adjustments have been made previously to Section 9 for construction management oversight and reapportioned funds. The total amount being apportioned for Section 9 (including Section 9B) is $1,739,779,979.

Section 9 Fiscal Year 1987 Data Corrections

Corrections have been made to the data from certain areas that were used to compute the Fiscal Year 1987 formula grant apportionments published in the **Federal Register** of December 10, 1986 (51 FR 44546). Differences between corrected apportionments and previously published apportionments have been resolved and necessary adjustments have been made by adding to or subtracting from, as appropriate, the apportionments for Fiscal Year 1988. The dollar amounts published in this Notice contain these corrections. The affected unbanized area have been advised of these corrections.

Section 9 Fiscal Year 1988 Apportionments to the Governors

For all urbanized areas under 200,000 in population within each State, one figure is provided for the Governor's apportionment. In accordance with Section 9 of the UMT Act, these apportionments are not made to individual urbanized areas but are made to the Governors for use within all urbanized areas between 50,000 and 200,000 in population as needed. UMTA has administered the Section 9 program in this fashion from its inception, and it parallels UMTA's procedures under the Section 5 program. For technical assistance purposes, and in compliance with the STURA Act, this Notice also contains the amount attributable to the

most recent U.S. Census data for each urbanized area above 50,000 in population within the State.

Section 9 Operating Assistance Limitations

In addition to the Fiscal Year 1988 apportionments, included in this Notice is a listing of the Fiscal Year 1988 limitations on the amount of Section 9 funds that may be used for operating assistance.

The STURA Act revised certain of the Section 9 formula program operating assistance limitations. Operating assistance limitations for urbanized area under 200,000 in population increased by 32.2 percent on October 1, 1987, or increased to ⅔ of an area's apportionment during the first full year it received funds under Section 9 for urbanized areas that became urbanized under the 1980 Census or thereafter. Previously, the operating assistance limitation for urbanized areas under 200,000 in population was 95% of its Fiscal Year 1982 Section 5 Tiers I, II, and III apportionment or forty percent of its Section 9 apportionment in the case of a newly urbanized area. Under the UMT Act (as revised by the STURA Act) the revised operating assistance limitation for these areas as well as all other urbanized areas total $912,598,392. However, the Fiscal Year 1988 Appropriations Act reduces the nationwide availability for operating assistance to a maximum of $804,691,892 (for funds under the Fiscal Year 1988 Appropriations Act).

Accordingly, this notice provides operating assistance limitations which take into account both the UMT Act and the FY 1988 Appropriations Act. That is, the operating assistance limitation in the Fiscal Year 1988 Appropriations Act is being met by taking a pro rata reduction applicable to all areas and States subject to the $912,598,392 UMT Act total limitation to reach the limitation of $804,691,892 in the Appropriations Act.

For all urbanized areas under 200,000 in population within each State, one limitation for operating assistance is provided to the State Governor. However, for technical assistance purposes, and in conformance with the STURA Act, this Notice also contains the limitation attributable to the data for each urbanized area within the State.

The operating assistance limitations were adjusted in a few urbanized areas and States so as not to exceed the area's or State's General Fund apportionments. However, in those States where the operating assistance limitations shown for the individual urbanized areas under 200,000 in population exceeded the General Fund apportionment levels attributable to individual urbanized areas no such adjustments had to be made because the Governor's limitation is the controlling limitation.

Section 18 Program

In addition to the appropriated Fiscal Year 1988 formula funds, the Section 18 Fiscal Year 1988 apportionment also includes $401,143 in prior year funds which had lapsed to the States to which they were originally apportioned, and $375,024 in unused Fiscal Year 1987 funds which had been set aside for construction management oversight. Thus the total amount apportioned for Section 18 is $65,091,841.

The Fiscal Year 1988 Rural Transit Assistance Program (RTAP) allocations to the States are also included in this Notice. Of the RTAP program total of $4,750,000, $4,037,500 in RTAP funds is being allocated to the States. These RTAP funds are available to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas, in conjunction with the States' administration of the Section 18 formula assistance program. The remainder of the RTAP funds are made available by UMTA in direct contracts.

Section 16(b)(2) Elderly and Handicapped Program

A total of $35,180,378 is allocated to the States under the Section 16(b)(2) program. This capital assistance program provides funds to nonprofit organizations to provide transportation for elderly and handicapped persons. Of the total allocated, $35,000,000 is the Fiscal Year 1988 appropriation and $180,378 is prior year reapportioned funds.

Period of Availability of Funds

The funds apportioned to urbanized areas under Section 9 in this Notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following Fiscal Year 1988. Any of these apportioned funds unobligated at close of business on September 30, 1991, will be added to the amounts available for apportionment for the succeeding fiscal year under Section 9. Funds apportioned to nonurbanized areas under Section 18, including RTAP funds, will remain available for two (2) years following Fiscal Year 1988. Any such funds remaining unobligated at the close of business on September 30, 1990, will be reapportioned among the States in the succeeding Fiscal Year. Funds allocated to States under Section 16(b)(2) in this Notice must be obligated by September 30, 1988. Any such funds remaining unobligated as of this date will be added to the succeeding Fiscal Year allocation.

Approval of Grants

The Urban Mass Transportation Administration has established a quarterly and bimonthly cycle for processing formula grants. Section 9, Interstate Transfer and Federal-Aid Urban Systems grants are processed on a quarterly basis and Sections 8, 16(b)(2), and 18 grants will be processed on a bimonthly basis.

Applicants should submit completed applications to the appropriate UMTA regional offices by the first day of each review cycle. If the application is complete, UMTA will approve and release the grant by the end of the cycle. The only factor which would delay UMTA's approval of the project would be a failure by the Department of Labor (DOL) to issue a 13(c) certification where such certification is a prerequisite to grant approval.

For an application to be considered complete, all appropriate ancillary activities such as inclusion of the project in a Transportation Improvement Program (TIP), intergovernmental reviews, environmental reviews, all applicable civil rights and 504 program requirements, and submission of all requisite documentation must be completed. The application must be in approvable form with all required documentation and submissions on hand, except for the 13(c) certification which is issued by DOL.

The application submission and approval dates for the remainder of Fiscal Year 1988 for Section 9, Interstate and FAUS projects are for completed applications submitted to UMTA no later than January 4, April 1, or July 1: UMTA will award grants on March 31, June 30, or September 30. For Sections 8, 16(b)(2), and 18 projects, completed applications submitted to UMTA no later than January 4, March 1, May 2, or July 1: UMTA will award grants on February 29, April 29, June 30, or August 31.

Application Procedures

Applications for Section 9 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9030.1A, published September 18, 1987. Applications for Section 18 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9040.1A, published May 23, 1985. Applications for Section 16(b)(2) funds should be submitted to the appropriate UMTA Regional Office in conformance with Circular 9070.1A, published May 14, 1985.

Issued on: January 22, 1988.

Alfred A. DelliBovi,

Administrator.

BILLING CODE 4910-57-M

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Atlanta, Georgia	$21,520,210	$834,840	$22,355,050
Baltimore, Maryland	19,198,167	745,222	19,943,389
Boston, Massachusetts	49,150,292	1,904,347	51,054,639
Buffalo, New York	8,506,396	330,861	8,837,257
Chicago, Illinois-Northwestern Indiana	133,490,604	5,173,031	138,663,635
Cincinnati, Ohio-Kentucky	8,575,255	333,532	8,908,787
Cleveland, Ohio	17,554,995	681,767	18,236,762
Dallas-Fort Worth, Texas	17,395,171	676,329	18,071,500
Denver, Colorado	13,486,141	524,576	14,010,717
Detroit, Michigan	21,912,106	1,023,965	22,936,071
Fort Lauderdale-Hollywood, Florida	7,044,243	274,074	7,318,317
Houston, Texas	20,181,592	784,899	20,966,491
Kansas City, Missouri-Kansas	6,068,996	236,297	6,305,293
Los Angeles-Long Beach, California	101,873,622	3,958,362	105,831,984
Miami, Florida	18,120,358	703,888	18,824,246
Milwaukee, Wisconsin	12,293,236	478,166	12,771,402
Minneapolis-St. Paul, Minnesota	14,550,748	565,679	15,116,427
New Orleans, Louisiana	11,578,197	449,052	12,027,249
New York, N.Y.-Northeastern New Jersey	419,582,606	16,311,569	435,894,175
Philadelphia, Pennsylvania-New Jersey	75,142,871	2,912,640	78,055,511
Phoenix, Arizona	7,282,962	283,503	7,566,465
Pittsburgh, Pennsylvania	22,653,699	879,786	23,533,485
Portland, Oregon-Washington	11,249,304	437,587	11,686,891
St. Louis, Missouri-Illinois	14,060,246	581,868	14,642,114
San Diego, California	18,194,538	706,483	18,901,021
San Francisco-Oakland, California	71,387,542	2,766,218	74,153,760
San Jose, California	14,875,500	577,963	15,453,463
San Juan, Puerto Rico	10,413,605	404,810	10,818,415
Seattle-Everett, Washington	25,218,609	977,945	26,196,554
Washington, D.C.-Maryland-Virginia	51,449,987	1,994,402	53,444,389
TOTAL	$1,244,011,798	$48,513,661	$1,292,525,459

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Akron, Ohio	$3,382,352	$131,720	$3,514,072
Albany-Schenectady-Troy, New York	4,641,968	180,588	4,822,556
Albuquerque, New Mexico	2,752,539	107,233	2,859,772
Allentown-Bethlehem-Easton, Pa.-N.J.	2,289,158	89,180	2,378,338
Ann Arbor, Michigan	2,032,164	79,139	2,111,303
Augusta, Georgia-South Carolina	1,093,923	42,616	1,136,539
Austin, Texas	4,022,823	156,720	4,179,543
Bakersfield, California	1,693,481	65,936	1,759,417
Baton Rouge, Louisiana	2,046,886	79,612	2,126,498
Birmingham, Alabama	3,342,777	130,120	3,472,897
Bridgeport, Connecticut	3,573,869	146,545	3,720,414
Canton, Ohio	1,334,957	52,007	1,386,964
Charleston, South Carolina	1,755,081	68,259	1,823,340
Charlotte, North Carolina	2,459,943	95,715	2,555,658
Chattanooga, Tennessee-Georgia	1,637,357	63,729	1,701,086
Colorado Springs, Colorado	883,444	34,417	917,861
Columbia, South Carolina	1,683,092	65,569	1,748,661
Columbus, Georgia-Alabama	1,192,804	46,469	1,239,273
Columbus, Ohio	7,765,359	301,968	8,067,327
Corpus Christi, Texas	1,393,557	54,279	1,447,836
Davenport-Rock Island-Moline, Iowa-Illinois	2,075,118	80,798	2,155,916
Dayton, Ohio	8,240,369	319,644	8,560,013
Des Moines, Iowa	1,839,453	71,588	1,911,041
El Paso, Texas	4,036,296	156,788	4,193,084
Fayetteville, North Carolina	848,988	33,075	882,063
Flint, Michigan	2,047,255	79,715	2,126,970
Fort Wayne, Indiana	1,485,751	57,876	1,543,627
Fresno, California	2,909,302	113,232	3,022,534
Grand Rapids, Michigan	2,455,894	95,613	2,551,507
Greenville, South Carolina	1,350,650	52,595	1,403,245
Harrisburg, Pennsylvania	1,740,609	67,708	1,808,317
Hartford, Connecticut	5,048,104	196,333	5,244,437
Honolulu, Hawaii	13,378,146	518,449	13,896,595
Indianapolis, Indiana	5,233,481	203,618	5,437,099
Jackson, Mississippi	1,303,257	50,750	1,354,007
Jacksonville, Florida	3,829,670	149,195	3,978,865
Knoxville, Tennessee	1,486,630	57,886	1,544,516
Lansing, Michigan	1,853,530	72,170	1,925,700
Las Vegas, Nevada	1,504,491	66,401	1,570,892
Lawrence-Haverhill, Mass.-New Hampshire	2,128,049	47,815	2,175,864
Little Rock-North Little Rock, Arkansas	1,748,658	68,051	1,816,709
Lorain-Elyria, Ohio	653,996	25,478	679,474
Louisville, Kentucky-Indiana	6,789,420	264,071	7,053,491
Madison, Wisconsin	2,953,027	114,830	3,067,857
Melbourne-Cocoa, Florida	1,061,533	41,334	1,102,867

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Memphis, Tennessee-Arkansas-Mississippi	$6,005,135	$233,549	$6,238,684
Mobile, Alabama	1,475,160	57,468	1,532,628
Nashville-Davidson, Tennessee	3,224,984	125,448	3,350,432
New Haven, Connecticut	4,239,542	164,567	4,404,109
Newport News-Hampton, Virginia	1,952,379	75,946	2,028,325
Norfolk-Portsmouth, Virginia	5,753,868	224,069	5,977,937
Ogden, Utah	1,584,112	61,652	1,645,764
Oklahoma City, Oklahoma	2,987,519	116,356	3,103,875
Omaha, Nebraska-Iowa	4,054,040	157,808	4,211,848
Orlando, Florida	3,753,534	146,070	3,899,604
Oxnard-Venture-Thousand Oaks, California	1,874,389	73,020	1,947,409
Pensacola, Florida	1,075,393	41,874	1,117,267
Peoria, Illinois	1,553,486	60,514	1,614,000
Providence-Pawtucket-Warwick, R.I.-Mass	10,589,116	410,878	10,999,994
Raleigh, North Carolina	1,283,176	49,990	1,333,166
Richmond, Virginia	4,273,454	166,161	4,439,615
Rochester, New York	5,138,054	199,988	5,338,042
Rockford, Illinois	844,921	32,891	877,812
Sacramento, California	6,429,368	250,072	6,679,440
St. Petersburg, Florida	5,722,014	222,674	5,944,688
Salt Lake City, Utah	6,161,303	239,785	6,401,088
San Antonio, Texas	10,376,404	403,730	10,780,134
San Bernardino-Riverside, California	4,747,571	184,927	4,932,498
Sarasota-Bradenton, Florida	1,641,898	63,949	1,705,847
Scranton-Wilkes-Barre, Pennsylvania	2,429,336	94,640	2,523,976
Shreveport, Louisiana	1,718,844	66,908	1,785,752
South Bend, Indiana-Michigan	1,708,300	66,518	1,774,818
Spokane, Washington	2,954,603	114,961	3,069,564
Springfield-Chicopee-Holyoke, Mass.-Conn	3,641,006	141,698	3,782,704
Syracuse, New York	3,664,446	142,656	3,807,102
Tacoma, Washington	4,189,174	163,061	4,352,235
Tampa, Florida	4,633,999	180,215	4,814,214
Toledo, Ohio-Michigan	4,063,268	158,129	4,221,397
Trenton, New Jersey-Pennsylvania	2,648,924	102,966	2,751,890
Tucson, Arizona	4,770,765	185,701	4,956,466
Tulsa, Oklahoma	2,498,103	97,320	2,595,423
West Palm Beach, Florida	2,772,234	107,940	2,880,174
Wichita, Kansas	1,935,269	75,340	2,010,609
Wilmington, Delaware-New Jersey-Maryland	2,554,658	99,445	2,654,103
Worcester, Massachusetts	1,977,972	77,021	2,054,993
Youngstown-Warren, Ohio	1,810,961	70,551	1,881,512
TOTAL	$275,691,893	$10,705,290	$286,397,183

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ALABAMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,059,737	$158,192	$4,217,929
Anniston	352,477	13,734	366,211
Auburn-Opelika	219,134	8,538	227,672
Decatur	256,696	10,003	266,699
Dothan	224,975	8,766	233,741
Florence	344,747	13,433	358,180
Gadsden	324,871	12,659	337,530
Huntsville	724,932	28,248	753,180
Montgomery	1,081,509	42,143	1,123,652
Tuscaloosa	530,396	20,668	551,064
ALASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$823,198	$32,077	$855,275
Anchorage	823,198	32,077	855,275
ARIZONA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$354,537	$13,815	$368,352
Yuma, Ariz.-Calif	354,537	13,815	368,352
ARKANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,196,269	$46,614	$1,242,883
Fayetteville-Springdale	284,573	11,088	295,661
Fort Smith, Ark.-Okla	425,506	16,580	442,086
Pine Bluff	390,166	15,204	405,370
Texarkana, Tex.-Ark	96,024	3,742	99,766
CALIFORNIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$12,524,232	$488,022	$13,012,254
Antioch-Pittsburg	681,819	26,568	708,387
Chico	315,754	12,304	328,058
Fairfield	429,953	16,754	446,707
Hemet	328,877	12,816	341,693
Lancaster	275,300	10,728	286,028

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
CALIFORNIA—Continued:			
Merced	$380,168	$14,813	$394,981
Modesto	1,291,744	50,334	1,342,078
Napa	450,078	17,538	467,616
Palm Springs	305,629	11,909	317,538
Redding	252,489	9,839	262,328
Salinas	835,193	32,544	867,737
Santa Barbara	1,187,426	46,270	1,233,696
Santa Cruz	675,966	26,340	702,306
Santa Maria	382,283	14,896	397,179
Santa Rosa	944,113	36,789	980,902
Seaside-Monterey	876,177	34,141	910,318
Simi Valley	588,304	22,923	611,227
Stockton	1,542,976	60,123	1,603,099
Visalia	382,585	14,908	397,493
Yuba City	395,829	15,424	411,253
Yuma, Ariz.-Calif	1,569	61	1,630
COLORADO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,683,914	$104,582	$2,788,496
Boulder	665,304	25,924	691,228
Fort Collins	494,302	19,262	513,564
Grand Junction	321,099	12,512	333,611
Greeley	472,556	18,414	490,970
Pueblo	730,653	28,470	759,123
CONNECTICUT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$11,693,786	$453,725	$12,147,511
Bristol	467,923	18,233	486,156
* Danbury, Conn.-N.Y	1,906,788	73,817	1,980,605
Meriden	380,992	14,846	395,838
New Britain	941,339	36,680	978,019
New London-Norwich	772,012	30,082	802,094
* Norwalk	2,125,344	82,332	2,207,676
* Stamford	2,629,857	101,991	2,731,848
* Waterbury	2,469,531	95,744	2,565,275
*An appropriate amount for commuter rail from UZA's above 200,000 has been included.			
DELAWARE:			

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
FLORIDA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,610,978	$218,639	$5,829,617
Daytona Beach	927,013	36,124	963,137
Fort Myers	736,287	28,690	764,977
Fort Pierce	347,280	13,532	360,812
Fort Walton Beach	435,151	16,956	452,107
Gainesville	618,972	24,119	643,091
Lakeland	597,519	23,283	620,802
Naples	248,497	9,683	258,180
Ocala	247,692	9,652	257,344
Panama City	397,891	15,504	413,395
Tallahassee	665,889	25,947	691,836
Winter Haven	388,787	15,149	403,936
GEORGIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,125,137	$121,775	$3,246,912
Albany	450,812	17,566	468,378
Athens	333,089	12,979	346,068
Macon	802,436	31,268	833,704
Rome	253,951	9,896	263,847
Savannah	970,361	37,811	1,008,172
Warner Robins	314,488	12,255	326,743
HAWAII:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$800,965	$31,210	$832,175
Kailua-Kaneohe	800,965	31,210	832,175
IDAHO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,162,338	$45,291	$1,207,629
Boise City	839,319	32,704	872,023
Pocatello	323,019	12,587	335,606

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ILLINOIS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$7,709,942	$300,428	$8,010,370
Alton	507,646	19,781	527,427
Aurora	1,018,550	39,689	1,058,239
Beloit, Wis.-Ill	36,364	1,416	37,780
Bloomington-Normal	662,974	25,833	688,807
Champaign-Urbana	953,644	37,159	990,803
Danville	332,434	12,954	345,388
Decatur	682,614	26,598	709,212
Dubuque, Iowa-Ill	13,870	541	14,411
Elgin	760,710	29,642	790,352
Joliet	1,095,270	42,682	1,137,952
Kankakee	449,319	17,508	466,827
Round Lake Beach	354,279	13,805	368,084
Springfield	842,268	32,820	875,088
INDIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,749,013	$185,051	$4,934,064
Anderson	431,859	16,828	448,687
Bloomington	487,392	18,991	506,383
Elkhart-Goshen	489,762	19,084	508,846
Evansville, Ind.-Ky	1,100,183	42,870	1,143,053
Kokomo	446,683	17,406	464,089
Lafayette-West Lafayette	697,931	27,196	725,127
Muncie	627,543	24,453	651,996
Terre Haute	467,660	18,223	485,883
IOWA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,648,914	$103,218	$2,752,132
Cedar Rapids	828,319	32,275	860,594
Dubuque, Iowa-Ill	444,747	17,332	462,079
Iowa City	352,060	13,718	365,778
Sioux City, Iowa-Nebr.-S. Dak	440,231	17,154	457,385
Waterloo	583,557	22,739	606,296

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
KANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,138,683	$44,369	$1,183,052
Lawrence	374,895	14,607	389,502
St. Joseph, Mo.-Kans	6,203	242	6,445
Topeka	757,585	29,520	787,105
KENTUCKY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,409,024	$93,869	$2,502,893
Clarksville, Tenn.-Ky	133,630	5,207	138,837
Evansville, Ind.-Ky	144,090	5,613	149,703
Huntington-Ashland, W.Va.-Ky.-Ohio	339,984	13,248	353,232
Lexington-Fayette	1,314,607	51,225	1,365,832
Owensboro	476,713	18,576	495,289
LOUISIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,813,785	$109,643	$2,923,428
Alexandria	499,879	19,478	519,357
Houma	325,117	12,669	337,786
Lafayette	742,571	28,936	771,507
Lake Charles	641,926	25,013	666,939
Monroe	604,292	23,547	627,839
MAINE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,214,671	$47,330	$1,262,001
Bangor	257,894	10,049	267,943
Lewiston-Auburn	305,590	11,907	317,497
Portland	592,928	23,104	616,032
Portsmouth-Dover-Rochester, N.H.-Me.	58,259	2,270	60,529
MARYLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,066,295	$41,550	$1,107,845
Annapolis	386,104	15,045	401,149
Cumberland, Md.-W. Va	309,293	12,052	321,345
Hagerstown, Md.-Pa	370,898	14,453	385,351

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MASSACHUSETTS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,314,175	$207,072	$5,521,247
Brockton	1,261,819	49,167	1,310,986
Fall River, Mass.-R.I.	1,003,826	39,115	1,042,941
Fitchburg-Leominster	370,747	14,447	385,194
Lowell, Mass.-N.H.	1,078,371	42,020	1,120,391
New Bedford	1,086,617	42,341	1,128,958
Pittsfield	283,542	11,049	294,591
Taunton	229,253	8,933	238,186
MICHIGAN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,728,845	$184,266	$4,913,111
Battle Creek	425,591	16,584	442,175
Bay City	488,433	19,032	507,465
Benton Harbor	358,196	13,958	372,154
Jackson	507,501	19,775	527,276
Kalamazoo	922,488	35,946	958,434
Muskegon-Muskegon Heights	608,225	23,700	631,925
Port Huron	367,367	14,315	381,682
Saginaw	1,051,044	40,956	1,092,000
MINNESOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,606,388	$62,595	$1,668,983
Duluth-Superior, Minn.-Wis.	479,172	18,671	497,843
Fargo-Moorhead, N. Dak.-Minn.	227,096	8,849	235,945
Grand Forks, N. Dak.-Minn.	53,881	2,100	55,981
La Crosse, Wis.-Minn.	23,036	897	23,933
Rochester	438,139	17,073	455,212
St. Cloud	385,064	15,005	400,069
MISSISSIPPI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,523,612	$59,370	$1,582,982
Biloxi-Gulfport	923,478	35,985	959,463
Hattiesburg	281,505	10,969	292,474
Pascagoula-Moss Point	318,629	12,416	331,045

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MISSOURI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,877,842	$73,174	$1,951,016
Columbia	341,699	13,315	355,014
Joplin	268,106	10,447	278,553
St. Joseph, Mo.-Kans	440,743	17,175	457,918
Springfield	827,294	32,237	859,531
MONTANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,358,844	$52,950	$1,411,794
Billings	537,576	20,948	558,524
Great Falls	468,620	18,261	486,881
Missoula	352,648	13,741	366,389
NEBRASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,278,928	$49,835	$1,328,763
Lincoln	1,215,180	47,351	1,262,531
Sioux City, Iowa-Nebr.-S. Dak	63,748	2,484	66,232
NEVADA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,028,666	$40,083	$1,068,749
Reno	1,028,666	40,083	1,068,749
NEW HAMPSHIRE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,537,980	$59,930	$1,597,910
Lowell, Mass.-N.H	3,750	146	3,896
Manchester	680,933	26,535	707,468
Nashua	466,058	18,160	484,218
Portsmouth-Dover-Rochester, N.H.-Me.	387,239	15,089	402,328

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NEW JERSEY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,205,780	$46,985	$1,252,765
Atlantic City	844,861	32,921	877,782
Vineland-Millville	360,919	14,064	374,983
NEW MEXICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$583,100	$22,721	$605,821
Las Cruces	311,035	12,120	323,155
Santa Fe	272,065	10,601	282,666
NEW YORK:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,844,342	$149,799	$3,994,141
Binghamton	1,075,759	41,918	1,117,677
Danbury, Conn.-N.Y.	12,293	479	12,772
Elmira	469,023	18,276	487,299
Glens Falls	277,469	10,812	288,281
Newburgh	344,094	13,408	357,502
Poughkeepsie	757,478	29,516	786,994
Utica-Rome	908,226	35,390	943,616
NORTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,588,360	$256,723	$6,845,083
Asheville	497,806	19,398	517,204
Burlington	353,948	13,792	367,740
Concord	353,014	13,756	366,770
Durham	974,428	37,970	1,012,398
Gastonia	543,443	21,176	564,619
Goldsboro	275,595	10,739	286,334
Greensboro	1,092,555	42,571	1,135,126
Hickory	293,888	11,452	305,340
High Point	518,026	20,185	538,211
Jacksonville	346,223	13,491	359,714
Wilmington	421,098	16,409	437,507
Winston-Salem	918,336	35,784	954,120

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NORTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,155,111	$45,010	$1,200,121
Bismarck-Mandan	368,117	14,344	382,461
Fargo-Moorhead, N. Dak.-Minn	446,954	17,416	464,370
Grand Forks, N. Dak.-Minn	340,040	13,250	353,290
OHIO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,741,525	$145,793	$3,887,318
Hamilton	677,886	26,415	704,301
Huntington-Ashland, W.Va.-Ky.-Ohio	196,500	7,657	204,157
Lima	431,163	16,800	447,963
Mansfield	426,902	16,634	443,536
Middletown	481,804	18,774	500,578
Newark	289,999	11,300	301,299
Parkersburg, W.Va.-Ohio	47,891	1,866	49,757
Sharon, Pa.-Ohio	28,755	1,121	29,876
Springfield	670,297	26,119	696,416
Steubenville-Weirton,Ohio-W.Va.-Pa.	264,295	10,299	274,594
Wheeling, W. Va.-Ohio	226,033	8,808	234,841
OKLAHOMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$814,794	$31,752	$846,546
Enid	261,527	10,191	271,718
Fort Smith, Ark.-Okla	9,905	386	10,291
Lawton	543,362	21,175	564,537
OREGON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,603,763	$101,459	$2,705,222
Eugene	1,338,865	52,171	1,391,036
Longview, Wash.-Oreg	6,855	267	7,122
Medford	327,413	12,758	340,171
Salem	930,630	36,263	966,893

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
PENNSYLVANIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$7,455,645	$290,518	$7,746,163
Altoona	575,387	22,421	597,808
Erie	1,469,533	57,262	1,526,795
Hagerstown, Md.-Pa.	4,765	185	4,950
Johnstown	605,154	23,581	628,735
Lancaster	1,027,460	40,036	1,067,496
Monessen	355,878	13,867	369,745
Reading	1,371,228	53,431	1,424,659
Sharon, Pa.-Ohio	315,701	12,302	328,003
State College	429,909	16,752	446,661
Steubenville-Weirton,Ohio-W.Va.-Pa.	1,316	51	1,367
Williamsport	396,901	15,466	412,367
York	902,413	35,164	937,577
PUERTO RICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,209,214	$202,982	$5,412,196
Aquadilla	416,786	16,241	433,027
Arecibo	477,373	18,601	495,974
Caguas	1,118,017	43,565	1,161,582
Mayaguez	782,940	30,508	813,448
Ponce	1,840,111	71,701	1,911,812
Vega Baja-Manati	573,987	22,366	596,353
RHODE ISLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$414,499	$16,151	$430,650
Fall River, Mass.-R.I.	90,303	3,519	93,822
Newport	324,196	12,632	336,828
SOUTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,302,309	$50,747	$1,353,056
Anderson	267,651	10,429	278,080
Florence	281,957	10,987	292,944
Rock Hill	252,337	9,833	262,170
Spartanburg	500,364	19,498	519,862

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
SOUTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$827,252	$32,234	$859,486
Rapid City	300,634	11,715	312,349
Sioux City, Iowa-Nebr.-S.Dak.	8,655	337	8,992
Sioux Falls	517,963	20,182	538,145
TENNESSEE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,417,160	$55,223	$1,472,383
Bristol, Tenn.-Bristol, Va.	137,457	5,356	142,813
Clarksville, Tenn.-Ky.	260,253	10,141	270,394
Jackson	251,346	9,794	261,140
Johnson City	387,397	15,097	402,494
Kingsport, Tenn.-Va.	380,707	14,835	395,542
TEXAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$13,035,421	$507,929	$13,543,350
Abilene	484,698	18,887	503,585
Amarillo	861,838	33,582	895,420
Beaumont	654,177	25,490	679,667
Brownsville	673,691	26,251	699,942
Bryan-College Station	463,318	18,053	481,371
Galveston	376,897	14,686	391,583
Harlingen-San Benito	362,228	14,115	376,343
Killeen	552,333	21,523	573,856
Laredo	885,501	34,504	920,005
Longview	347,400	13,537	360,937
Lubbock	1,013,940	39,509	1,053,449
McAllen-Pharr-Edinburg	1,053,691	41,048	1,094,739
Midland	426,401	16,615	443,016
Odessa	643,776	25,086	668,862
Port Arthur	581,012	22,640	603,652
San Angelo	436,120	16,994	453,114
Sherman-Denison	269,640	10,507	280,147
Temple	248,876	9,698	258,574
Texarkana, Tex.-Ark.	238,011	9,274	247,285
Texas City-La Marque	479,592	18,688	498,280
Tyler	438,175	17,074	455,249
Victoria	342,242	13,336	355,578

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
TEXAS—Continued:			
Waco	$655,955	$25,560	$681,515
Wichita Falls	545,909	21,272	567,181
UTAH:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,056,484	$41,168	$1,097,652
Provo-Orem	1,056,484	41,168	1,097,652
VERMONT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$411,931	$16,052	$427,983
Burlington	411,931	16,052	427,983
VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,952,600	$115,053	$3,067,653
Bristol, Tenn.-Bristol, Va	106,990	4,169	111,159
Charlottesville	438,356	17,081	455,437
Danville	308,869	12,035	320,904
Kingsport, Tenn.-Va	20,683	806	21,489
Lynchburg	432,239	16,842	449,081
Petersburg-Colonial Heights	592,999	23,107	616,106
Roanoke	1,052,464	41,013	1,093,477
WASHINGTON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,488,367	$96,961	$2,585,328
Bellingham	301,923	11,765	313,688
Bremerton	370,748	14,447	385,195
Longview, Wash.-Oreg	295,588	11,518	307,106
Olympia	373,318	14,547	387,865
Richland-Kennewick	608,986	23,728	632,714
Yakima	537,804	20,956	558,760
WEST VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,719,020	$105,951	$2,824,971
Charleston	990,188	38,584	1,028,772

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
WEST VIRGINIA--Continued:			
Cumberland, Md.-W. Va.	$14,712	$573	$15,285
Huntington-Ashland, W.Va.-Ky.-Ohio	640,955	24,976	665,931
Parkersburg, W. Va.-Ohio	421,672	16,431	438,103
Steubenville-Weirton,Ohio-W.Va.-Pa	167,211	6,516	173,727
Wheeling, W. Va.-Ohio	484,282	18,871	503,153
WISCONSIN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,182,508	$240,910	$6,423,418
Appleton	1,034,237	40,302	1,074,539
Beloit, Wis.-Ill	269,583	10,505	280,088
Duluth-Superior, Minn.-Wis	121,212	4,723	125,935
Eau Claire	402,671	15,691	418,362
Green Bay	782,017	30,472	812,489
Janesville	326,671	12,729	339,400
Kenosha	747,505	29,127	776,632
La Crosse, Wis.-Minn	433,661	16,898	450,559
Oshkosh	388,447	15,136	403,583
Racine	951,693	37,084	988,777
Sheboygan	405,505	15,801	421,306
Wausau	319,306	12,442	331,748
WYOMING:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$776,405	$30,253	$806,658
Casper	413,663	16,119	429,782
Cheyenne	362,742	14,134	376,876
TOTAL	$154,826,288	$6,031,049	$160,857,337
OVER 1,000,000 IN POPULATION	$1,244,011,798	$48,513,661	$1,292,525,459
200,000-1,000,000 IN POPULATION	275,691,893	10,705,290	286,397,183
50,000-200,000 IN POPULATION	154,826,288	6,031,049	160,857,337
NATIONAL TOTALS	$1,674,529,979	$65,250,000	$1,739,779,979

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Atlanta, Georgia	$6,274,314
Baltimore, Maryland	10,042,549
Boston, Massachusetts	18,854,832
Buffalo, New York	6,188,866
Chicago, Illinois-Northwestern Indiana	52,219,763
Cincinnati, Ohio-Kentucky	5,439,789
Cleveland, Ohio	9,953,010
Dallas-Fort Worth, Texas	8,925,311
Denver, Colorado	6,093,242
Detroit, Michigan	22,096,273
Fort Lauderdale-Hollywood, Florida	3,913,740
Houston, Texas	9,378,625
Kansas City, Missouri-Kansas	4,609,253
Los Angeles-Long Beach, California	58,934,914
Miami, Florida	8,656,794
Milwaukee, Wisconsin	5,640,315
Minneapolis-St. Paul, Minnesota	7,520,507
New Orleans, Louisiana	6,822,181
New York, N.Y.-Northeastern New Jersey	136,489,138
Philadelphia, Pennsylvania-New Jersey	32,856,564
Phoenix, Arizona	4,859,118
Pittsburgh, Pennsylvania	9,807,640
Portland, Oregon-Washington	4,544,394
St. Louis, Missouri-Illinois	9,901,048
San Diego, California	7,541,905
San Francisco-Oakland, California	20,081,207
San Jose, California	6,822,662
San Juan, Puerto Rico	7,754,477
Seattle-Everett, Washington	6,372,267
Washington, D.C.-Maryland-Virginia	17,432,429
TOTAL	$516,027,127

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Akron, Ohio	$2,373,702
Albany-Schenectady-Troy, New York	2,302,231
Albuquerque, New Mexico	1,591,753
Allentown-Bethlehem-Easton, Pa.-N.J.	2,289,158
Ann Arbor, Michigan	1,009,290
Augusta, Georgia-South Carolina	804,005
Austin, Texas	1,514,084
Bakersfield, California	987,235
Baton Rouge, Louisiana	1,319,245
Birmingham, Alabama	2,423,356
Bridgeport, Connecticut	2,103,919
Canton, Ohio	1,162,425
Charleston, South Carolina	1,102,097
Charlotte, North Carolina	1,328,598
Chattanooga, Tennessee-Georgia	1,001,580
Colorado Springs, Colorado	883,444
Columbia, South Carolina	1,133,776
Columbus, Georgia-Alabama	843,019
Columbus, Ohio	4,479,086
Corpus Christi, Texas	884,703
Davenport-Rock Island-Moline, Iowa-Illinois	1,151,136
Dayton, Ohio	2,980,480
Des Moines, Iowa	1,121,143
El Paso, Texas	1,833,735
Fayetteville, North Carolina	758,231
Flint, Michigan	1,559,557
Fort Wayne, Indiana	1,112,045
Fresno, California	1,496,520
Grand Rapids, Michigan	1,581,761
Greenville, South Carolina	764,544
Harrisburg, Pennsylvania	1,154,660
Hartford, Connecticut	2,343,198
Honolulu, Hawaii	2,901,999
Indianapolis, Indiana	3,899,213

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION	URBANIZED AREA	LIMITATION
Jackson, Mississippi	$921,764	Richmond, Virginia	$1,977,018
Jacksonville, Florida	2,065,975	Rochester, New York	3,169,210
Knoxville, Tennessee	918,885	Rockford, Illinois	844,921
Lansing, Michigan	1,186,167	Sacramento, California	3,584,466
Las Vegas, Nevada	1,408,056	St. Petersburg, Florida	3,409,042
Lawrence-Haverhill, Mass.-New Hampshire	871,642	Salt Lake City, Utah	2,506,601
Little Rock-North Little Rock, Arkansas	1,057,272	San Antonio, Texas	4,716,519
Lorain-Elyria, Ohio	653,996	San Bernardino-Riverside, California	2,591,821
Louisville, Kentucky-Indiana	3,982,292	Sarasota-Bradenton, Florida	1,293,934
Madison, Wisconsin	1,017,265	Scranton-Wilkes-Barre, Pennsylvania	1,778,208
Melbourne-Cocoa, Florida	718,540	Shreveport, Louisiana	1,077,687
Memphis, Tennessee-Arkansas-Mississippi	3,690,744	South Bend, Indiana-Michigan	1,177,274
Mobile, Alabama	1,028,478	Spokane, Washington	1,142,378
Nashville-Davidson, Tennessee	1,711,176	Springfield-Chicopee-Holyoke, Mass.-Conn	2,075,500
New Haven, Connecticut	1,898,175	Syracuse, New York	1,945,802
Newport News-Hampton, Virginia	1,163,207	Tacoma, Washington	1,590,485
Norfolk-Portsmouth, Virginia	3,161,029	Tampa, Florida	1,970,219
Ogden, Utah	714,555	Toledo, Ohio-Michigan	2,297,887
Oklahoma City, Oklahoma	2,368,349	Trenton, New Jersey-Pennsylvania	2,028,857
Omaha, Nebraska-Iowa	2,428,901	Tucson, Arizona	1,699,875
Orlando, Florida	1,787,239	Tulsa, Oklahoma	1,609,468
Oxnard-Ventura-Thousand Oaks, California	1,386,073	West Palm Beach, Florida	1,693,987
Pensacola, Florida	774,604	Wichita, Kansas	1,392,379
Peoria, Illinois	1,079,262	Wilmington, Delaware-New Jersey-Maryland	2,059,317
Providence-Pawtucket-Warwick, R.I.-Mass	4,851,771	Worcester, Massachusetts	1,188,681
Raleigh, North Carolina	746,409	Youngstown-Warren, Ohio	1,810,961

TOTAL			$152,419,251

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
ALABAMA:	
State limitation for areas 50,000 to 200,000 in population:	$3,772,171
Anniston	332,949
Auburn-Opelika	178,644
Decatur	210,068
Dothan	183,719
Florence	337,285
Gadsden	334,495
Huntsville	724,775
Montgomery	967,627
Tuscaloosa	502,609
ALASKA:	
State limitation for areas 50,000 to 200,000 in population:	$726,326
Anchorage	726,326
ARIZONA:	
State limitation for areas 50,000 to 200,000 in population:	$285,240
Yuma, Ariz.-Calif	285,240
ARKANSAS:	
State limitation for areas 50,000 to 200,000 in population:	$1,136,690
Fayetteville-Springdale	232,012
Fort Smith, Ark.-Okla	395,053
Pine Bluff	386,707
Texarkana, Tex.-Ark	122,918
CALIFORNIA:	
State limitation for areas 50,000 to 200,000 in population:	$9,820,454
Antioch-Pittsburg	496,074
Chico	255,103
Fairfield	352,366
Hemet	269,711
Lancaster	223,871
Merced	259,194
Modesto	935,920
CALIFORNIA--Continued:	
Napa	$367,604
Palm Springs	249,026
Redding	206,241
Salinas	607,384
Santa Barbara	1,004,849
Santa Cruz	540,667
Santa Maria	312,870
Santa Rosa	644,520
Seaside-Monterey	749,032
Simi Valley	439,800
Stockton	1,267,146
Visalia	310,842
Yuba City	326,078
Yuma, Ariz.-Calif	2,156
COLORADO:	
State limitation for areas 50,000 to 200,000 in population:	$2,350,692
Boulder	592,050
Fort Collins	406,002
Grand Junction	261,178
Greeley	390,899
Pueblo	700,563
CONNECTICUT:	
State limitation for areas 50,000 to 200,000 in population:	$6,951,833
Bristol	427,406
Danbury, Conn.-N.Y.	706,574
Meriden	430,880
New Britain	898,622
New London-Norwich	766,331
Norwalk	970,891
Stamford	1,458,569
Waterbury	1,292,560
DELAWARE:	

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
FLORIDA:	
State limitation for areas 50,000 to 200,000 in population:	$4,528,917
Daytona Beach	739,110
Fort Myers	538,401
Fort Pierce	282,829
Fort Walton Beach	356,134
Gainesville	504,987
Lakeland	495,937
Naples	202,414
Ocala	202,740
Panama City	323,876
Tallahassee	565,286
Winter Haven	317,203
GEORGIA:	
State limitation for areas 50,000 to 200,000 in population:	$2,958,801
Albany	453,724
Athens	272,131
Macon	779,049
Rome	206,281
Savannah	990,180
Warner Robins	257,436
HAWAII:	
State limitation for areas 50,000 to 200,000 in population:	$655,820
Kailua-Kaneohe	655,820
IDAHO:	
State limitation for areas 50,000 to 200,000 in population:	$940,311
Boise City	674,417
Pocatello	265,894
ILLINOIS:	
State limitation for areas 50,000 to 200,000 in population:	$7,709,942
Alton	535,038
Aurora	1,038,349
Beloit, Wis.-Ill	$35,141
Bloomington-Normal	549,189
Champaign-Urbana	885,206
Danville	268,959
Decatur	641,241
Dubuque, Iowa-Ill	12,580
Elgin	913,953
Joliet	1,368,620
Kankakee	361,910
Round Lake Beach	288,973
Springfield	833,629
INDIANA:	
State limitation for areas 50,000 to 200,000 in population:	$4,349,214
Anderson	435,287
Bloomington	396,877
Elkhart-Goshen	397,617
Evansville, Ind.-Ky	1,022,160
Kokomo	365,349
Lafayette-West Lafayette	630,096
Muncie	625,176
Terre Haute	476,652
IOWA:	
State limitation for areas 50,000 to 200,000 in population:	$2,539,775
Cedar Rapids	778,731
Dubuque, Iowa-Ill	434,442
Iowa City	285,708
Sioux City, Iowa-Nebr.-S. Dak	447,205
Waterloo	593,689
KANSAS:	
State limitation for areas 50,000 to 200,000 in population:	$1,078,329
Lawrence	299,970
St. Joseph, Mo.-Kans	5,550
Topeka	772,809

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
KENTUCKY:	
State limitation for areas 50,000 to 200,000 in population:	$2,134,748
Clarksville, Tenn.-Ky.	104,851
Evansville, Ind.-Ky.	64,665
Huntington-Ashland, W.Va.-Ky.-Ohio	313,523
Lexington-Fayette	1,222,555
Owensboro	429,154
LOUISIANA:	
State limitation for areas 50,000 to 200,000 in population:	$2,507,788
Alexandria	468,091
Houma	264,936
Lafayette	615,704
Lake Charles	594,177
Monroe	564,880
MAINE:	
State limitation for areas 50,000 to 200,000 in population:	$1,149,896
Bangor	210,531
Lewiston-Auburn	309,486
Portland	587,947
Portsmouth-Dover-Rochester,N.H.-Me	41,932
MARYLAND:	
State limitation for areas 50,000 to 200,000 in population:	$865,542
Annapolis	315,105
Cumberland, Md.-W. Va.	248,500
Hagerstown, Md.-Pa.	301,937
MASSACHUSETTS:	
State limitation for areas 50,000 to 200,000 in population:	$5,314,175
Brockton	1,387,461
Fall River, Mass.-R.I.	902,729
Fitchburg-Leominster	381,174
Lowell, Mass.-N.H.	1,431,188
New Bedford	998,924
MASSACHUSETTS--Continued:	
Pittsfield	$304,254
Taunton	186,716
MICHIGAN:	
State limitation for areas 50,000 to 200,000 in population:	$4,492,195
Battle Creek	450,408
Bay City	493,576
Benton Harbor	291,109
Jackson	470,217
Kalamazoo	881,392
Muskegon-Muskegon Heights	595,193
Port Huron	300,802
Saginaw	1,009,498
MINNESOTA:	
State limitation for areas 50,000 to 200,000 in population:	$1,563,612
Duluth-Superior, Minn.-Wis.	514,448
Fargo-Moorhead, N. Dak.-Minn.	218,594
Grand Forks, N. Dak.-Minn.	51,728
La Crosse, Wis.-Minn.	17,876
Rochester	412,178
St. Cloud	348,788
MISSISSIPPI:	
State limitation for areas 50,000 to 200,000 in population:	$1,281,083
Biloxi-Gulfport	792,496
Hattiesburg	228,865
Pascagoula-Moss Point	259,722
MISSOURI:	
State limitation for areas 50,000 to 200,000 in population:	$1,720,766
Columbia	319,303
Joplin	218,592
St. Joseph, Mo.-Kans.	447,357
Springfield	735,514

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
MONTANA:	
State limitation for areas 50,000 to 200,000 in population:	$1,230,771
Billings	477,728
Great Falls	465,654
Missoula	287,389
NEBRASKA:	
State limitation for areas 50,000 to 200,000 in population:	$1,124,670
Lincoln	1,072,293
Sioux City, Iowa-Nebr.-S. Dak.	52,377
NEVADA:	
State limitation for areas 50,000 to 200,000 in population:	$795,605
Reno	795,605
NEW HAMPSHIRE:	
State limitation for areas 50,000 to 200,000 in population:	$1,322,736
Lowell, Mass.-N.H.	1,631
Manchester	610,739
Nashua	388,617
Portsmouth-Dover-Rochester, N.H.-Me	321,749
NEW JERSEY:	
State limitation for areas 50,000 to 200,000 in population:	$1,205,780
Atlantic City	1,273,191
Vineland-Millville	357,009
NEW MEXICO:	
State limitation for areas 50,000 to 200,000 in population:	$477,367
Las Cruces	255,075
Santa Fe	222,292
NEW YORK:	
State limitation for areas 50,000 to 200,000 in population:	$3,844,342
Binghamton	1,082,123
Danbury, Conn.-N.Y.	6,064
Elmira	471,441
Glens Falls	225,350
Newburgh	280,427
Poughkeepsie	905,065
Utica-Rome	991,743
NORTH CAROLINA:	
State limitation for areas 50,000 to 200,000 in population:	$5,844,389
Asheville	450,293
Burlington	342,396
Concord	285,794
Durham	761,819
Gastonia	521,040
Goldsboro	224,637
Greensboro	985,340
Hickory	239,396
High Point	512,780
Jacksonville	282,548
Wilmington	373,040
Winston-Salem	865,306
NORTH DAKOTA:	
State limitation for areas 50,000 to 200,000 in population:	$974,049
Bismarck-Mandan	299,487
Fargo-Moorhead, N. Dak.-Minn.	409,621
Grand Forks, N. Dak.-Minn.	264,941
OHIO:	
State limitation for areas 50,000 to 200,000 in population:	$3,496,143
Hamilton	593,948
Huntington-Ashland, W.Va.-Ky.-Ohio	176,874
Lima	425,923
Mansfield	426,418
Middletown	394,284

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
OHIO--Continued:	
Newark	$236,911
Parkersburg, W.Va.-Ohio	44,725
Sharon, Pa.-Ohio	28,936
Springfield	651,068
Steubenville-Weirton,Ohio-W.Va.-Pa	278,664
Wheeling, W. Va.-Ohio	238,392
OKLAHOMA:	
State limitation for areas 50,000 to 200,000 in population:	$769,050
Enid	214,448
Fort Smith, Ark.-Okla	9,550
Lawton	545,052
OREGON:	
State limitation for areas 50,000 to 200,000 in population:	$2,033,974
Eugene	1,041,479
Longview, Wash.-Oreg	7,400
Medford	268,138
Salem	716,957
PENNSYLVANIA:	
State limitation for areas 50,000 to 200,000 in population:	$7,156,036
Altoona	585,653
Erie	1,333,704
Hagerstown, Md.-Pa	5,819
Johnstown	627,499
Lancaster	872,167
Monessen	291,601
Reading	1,590,970
Sharon, Pa.-Ohio	254,051
State College	345,896
Steubenville-Weirton,Ohio-W.Va.-Pa	978
Williamsport	398,729
York	848,969
PUERTO RICO:	
State limitation for areas 50,000 to 200,000 in population:	$4,252,677
Aquadilla	338,813
Arecibo	392,369
Caguas	883,774
Mayaguez	651,282
Ponce	1,515,822
Vega Baja-Manati	470,617
RHODE ISLAND:	
State limitation for areas 50,000 to 200,000 in population:	$342,525
Fall River, Mass.-R.I	77,761
Newport	264,764
SOUTH CAROLINA:	
State limitation for areas 50,000 to 200,000 in population:	$1,113,257
Anderson	218,852
Florence	229,504
Rock Hill	205,629
Spartanburg	459,272
SOUTH DAKOTA:	
State limitation for areas 50,000 to 200,000 in population:	$740,987
Rapid City	245,051
Sioux City, Iowa-Nebr.-S.Dak	6,056
Sioux Falls	489,880
TENNESSEE:	
State limitation for areas 50,000 to 200,000 in population:	$1,247,624
Bristol, Tenn.-Bristol, Va	124,369
Clarksville, Tenn.-Ky	240,065
Jackson	204,885
Johnson City	315,316
Kingsport, Tenn.-Va	362,989

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
TEXAS:	
State limitation for areas 50,000 to 200,000 in population:	$11,406,701
Abilene	462,399
Amarillo	781,007
Beaumont	627,112
Brownsville	492,882
Bryan-College Station	357,100
Galveston	378,267
Harlingen-San Benito	306,770
Killeen	463,034
Laredo	631,621
Longview	283,758
Lubbock	911,014
McAllen-Pharr-Edinburg	781,423
Midland	371,087
Odessa	585,697
Port Arthur	600,250
San Angelo	386,362
Sherman-Denison	283,228
Temple	203,355
Texarkana, Tex.-Ark	205,037
Texas City-La Marque	443,236
Tyler	390,833
Victoria	278,892
Waco	626,058
Wichita Falls	556,279
UTAH:	
State limitation for areas 50,000 to 200,000 in population:	$769,091
Provo-Orem	769,091
VERMONT:	
State limitation for areas 50,000 to 200,000 in population:	$336,812
Burlington	336,812
VIRGINIA:	
State limitation for areas 50,000 to 200,000 in population:	$2,693,674
Bristol, Tenn.-Bristol, Va	75,246
Charlottesville	355,860
Danville	251,422
Kingsport, Tenn.-Va	22,403
Lynchburg	416,855
Petersburg-Colonial Heights	594,305
Roanoke	977,583
WASHINGTON:	
State limitation for areas 50,000 to 200,000 in population:	$2,024,431
Bellingham	245,378
Bremerton	301,655
Longview, Wash.-Oreg	238,254
Olympia	303,612
Richland-Kennewick	472,052
Yakima	463,480
WEST VIRGINIA:	
State limitation for areas 50,000 to 200,000 in population:	$2,595,709
Charleston	959,263
Cumberland, Md.-W. Va	14,448
Huntington-Ashland, W.Va.-Ky.-Ohio	624,282
Parkersburg, W. Va.-Ohio	395,192
Steubenville-Weirton,Ohio-W.Va.-Pa	184,381
Wheeling, W. Va.-Ohio	418,143
WISCONSIN:	
State limitation for areas 50,000 to 200,000 in population:	$5,589,814
Appleton	941,104
Beloit, Wis.-Ill	214,487

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
WISCONSIN--Continued:	
Oshkosh	$405,547
Racine	892,530
Sheboygan	329,076
Wausau	258,711
WYOMING:	
State limitation for areas 50,000 to 200,000 in population:	$635,625
Casper	340,966
Cheyenne	294,659
TOTAL	$134,858,159

OVER 1,000,000 IN POPULATION	$516,027,127
200,000-1,000,000 IN POPULATION	152,419,251
50,000-200,000 IN POPULATION	134,858,159
NATIONAL TOTALS	$803,304,537

FISCAL YEAR 1988

UMTA SECTION 18 FORMULA APPORTIONMENTS AND

RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

TO THE STATES FOR NONURBANIZED AREAS

STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION	STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION
ALABAMA	$1,555,611	$84,593	NEBRASKA	683,860	65,208
ALASKA	169,273	53,764	NEVADA	150,072	53,337
AMERICAN SAMOA	23,605	10,525	NEW HAMPSHIRE	458,654	60,199
ARIZONA	588,083	63,078	NEW JERSEY	784,390	67,443
ARKANSAS	1,259,359	78,005	NEW MEXICO	568,308	62,638
CALIFORNIA	2,815,749	112,616	NEW YORK	2,752,248	111,204
COLORADO	637,980	64,187	NORTH CAROLINA	2,835,600	113,058
CONNECTICUT	579,404	62,885	NORTH DAKOTA	347,803	57,734
DELAWARE	165,745	53,686	NORTHERN MARIANAS	12,264	10,273
FLORIDA	1,694,039	87,672	OHIO	3,113,100	119,229
GEORGIA	2,090,195	96,481	OKLAHOMA	1,285,190	78,580
GUAM	77,457	11,722	OREGON	997,554	72,183
HAWAII	202,098	54,494	PENNSYLVANIA	3,431,922	126,318
IDAHO	552,311	62,282	PUERTO RICO	1,079,509	74,006
ILLINOIS	2,289,564	100,915	RHODE ISLAND	114,268	52,541
INDIANA	2,111,539	96,956	SOUTH CAROLINA	1,412,154	81,403
IOWA	1,448,556	82,213	SOUTH DAKOTA	403,486	58,973
KANSAS	1,102,980	74,528	TENNESSEE	1,830,565	90,708
KENTUCKY	1,774,630	89,464	TEXAS	3,728,065	132,906
LOUISIANA	1,464,845	82,575	UTAH	300,676	56,686
MAINE	639,873	64,229	VERMONT	317,877	57,069
MARYLAND	786,131	67,482	VIRGIN ISLANDS	70,580	11,570
MASSACHUSETTS	944,539	71,004	VIRGINIA	1,682,727	87,420
MICHIGAN	2,543,673	106,566	WASHINGTON	1,104,128	74,553
MINNESOTA	1,477,849	82,864	WEST VIRGINIA	1,130,125	75,132
MISSISSIPPI	1,411,966	81,399	WISCONSIN	1,731,514	88,505
MISSOURI	1,678,500	87,326	WYOMING	257,151	55,718
MONTANA	422,497	59,395			
TOTAL				$65,091,841	$4,037,500

FISCAL YEAR 1988 UMTA SECTION 16(b)(2) ALLOCATIONS

AMOUNTS ALLOCATED TO STATES

STATE	ALLOCATION	STATE	ALLOCATION
ALABAMA	628,693	MONTANA	214,312
ALASKA	139,178	NEBRASKA	341,105
AMERICAN SAMOA	50,940	NEVADA	197,146
ARIZONA	462,276	NEW HAMPSHIRE	234,038
ARKANSAS	478,635	NEW JERSEY	1,067,238
CALIFORNIA	2,793,657	NEW MEXICO	254,059
COLORADO	394,046	NEW YORK	2,503,015
CONNECTICUT	513,880	NORTH CAROLINA	809,190
DELEWARE	189,854	NORTH DAKOTA	208,040
DISTRICT OF COLUMBIA	208,666	NORTHERN MARIANAS	50,492
FLORIDA	1,930,904	OHIO	1,413,651
GEORGIA	718,781	OKLAHOMA	534,984
GUAM	127,969	OREGON	447,482
HAWAII	208,745	PENNSYLVANIA	1,776,855
IDAHO	225,106	PUERTO RICO	432,550
ILLINOIS	1,508,754	RHODE ISLAND	263,131
INDIANA	752,384	SOUTH CAROLINA	455,329
IOWA	532,412	SOUTH DAKOTA	219,959
KANSAS	446,565	TENNESSEE	716,202
KENTUCKY	596,769	TEXAS	1,642,145
LOUISIANA	585,594	UTAH	242,615
MAINE	276,195	VERMONT	187,558
MARYLAND	567,318	VIRGIN ISLANDS	129,450
MASSACHUSETTS	915,515	VIRGINIA	683,314
MICHIGAN	1,141,220	WASHINGTON	588,925
MINNESOTA	629,179	WEST VIRGINIA	388,378
MISSISSIPPI	454,606	WISCONSIN	715,988
MISSOURI	821,409	WYOMING	163,977
TOTAL			$35,180,378

[FR Doc. 88-2069 Filed 2-1-88; 8:45 am]
BILLING CODE 4910-57-C

federal register

Tuesday
February 2, 1988

Part VI

Department of Agriculture
Forest Service

Department of the Interior
Bureau of Land Management

36 CFR Part 222
43 CFR Part 4100
Grazing Fees; Final Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing Fees on National Forests in the 16 Western States

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture hereby establishes regulations for annually determining fees for livestock grazing and use on National Forest and Land Utilization Project lands in the 16 Western States. The fee system is the formula prescribed in Executive Order 12548 of February 14, 1986, and, in most respects, is the same grazing fee formula as that enacted by Congress in 1978 under the Public Rangelands Improvement Act. Grazing fees will be based on a rate per head month.

EFFECTIVE DATE: This rule is effective March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Director, or Edward R. Frandsen, Range Economist, Range Management Staff, Forest Service, USDA, P.O. Box 96090, Room 601 RP–E, Washington, DC 20090–6090, (703) 235–8139.

SUPPLEMENTARY INFORMATION:

Background

Except in limited circumstances, fees are charged for all livestock grazing use or occupancy of National Forest System lands, or other lands under the control of the Forest Service. In 1978, with enactment of the Public Rangelands Improvement Act (PRIA), 43 U.S.C. 1752–1753, 1901, 1908; 16 U.S.C. 1333(b), Congress created a new grazing fee formula to be used on a trial basis. The formula sought to base public land grazing fees on the cost of livestock production and the public land grazer's ability to pay. The objective was to prevent crippling economic impacts on the public land grazer and dependent rural communities in the Western States. The Act required the Secretaries of Agriculture and the Interior to present to Congress an evaluation of the trial formula as well as an analysis of alternative grazing fee systems.

Pursuant to the sunset provisions in the Act, the trial grazing fee formula expired on December 31, 1985. Shortly before expiration of the formula, Congressional delegations from many of the Western States appealed to the President to extend the PRIA fee formula. On February 14, 1986, in the absence of Congressional action to establish a grazing fee system for 1986 and subsequent grazing years, the President, through Executive Order 12548, indefinitely extended the PRIA fee formula subject to a few minor changes. The Executive Order also directed how the formula indexes would be calculated by specifying that: (1) The Forage Value Index shall be based on 11 Western States data, and use "the weighted average estimate of the annual rental charge per head per month," rather than "animal unit month;" (2) the "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States, and (3) the Prices Paid Index would reflect selected livestock production costs in the Western States. In addition, the Executive Order specified that the fee "shall not be less than $1.35 per Animal Unit Month." The Executive Order retained the PRIA formula provision that annual adjustments would not exceed plus or minus 25 percent of the previous year's grazing fee. Accordingly, the Secretaries of Agriculture and the Interior calculated the 1986 and 1987 grazing fee, using 11 Western States data, for application to the public lands in the 16 Western States using the formula prescribed in the Executive Order.

In 1986, in *Natural Resources Defense Council, et.al.*, v. *Lyng, Hodel*, plaintiffs filed suit in the United States District Court for the Eastern District of California, Civil No. 86–0548, alleging that the Secretaries of Agriculture and the Interior lacked statutory and regulatory authority to implement the prescribed fee formula, and, further, they had failed to engage in the formal rulemaking requirements of the Administrative Procedures Act (APA) (5 U.S.C. 553) and, in the case of the Secretary of Agriculture, the public participation requirements of the National Forest Management Act (NFMA) (16 U.S.C. 1621(12–13)). On August 13, 1987, the Court issued a bench opinion followed by a Memorandum of Decision and Order filed October 13, 1987. The Court determined, first, that both Secretaries had discretion under their respective governing statutes to consider factors in addition to market value in determining a grazing fee, and second, that the affected Departments had not complied with the APA and the public participation requirements of NFMA and other applicable statutes in establishing the grazing fee formula. The Court ordered the agencies to follow formal APA rulemaking procedures to establish a fee formula with full opportunity for public participation.

In compliance with the District Court ruling, the Department of Agriculture proposed amending its rules governing grazing fees at 36 CFR 222.50 and 222.51 to establish the fee formula prescribed by Executive Order 12548. The proposed rule was published on October 7, 1987, at 52 FR 37483.

Under the rule, the fee for grazing livestock on National Forest and Land Utilization Project lands in the 16 Western States will be calculated annually for 1988 and subsequent grazing years. The formula would apply to designated lands in the 16 contiguous Western States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. National Grasslands are excluded.

This action is consistent with previous Congressional policy for grazing fees on Federal rangelands established in the Public Rangelands Improvement Act. This policy was designed to prevent economic disruption and harm to the public lands sector of the western livestock industry. Congress deemed it in the public interest to charge a fee for livestock grazing on National Forest lands in the 16 Western States based on a formula reflecting annual changes in the costs of production and livestock prices.

The annual grazing fee generally represents the economic value of the use of the land to the user rather than market value or value in exchange. The annual calculated fee equals the $1.23 base value established by the 1966 Western Livestock Grazing Survey, multiplied by the result for the Forage Value Index (FVI), added to the Beef Cattle Price Index (BCPI), less the Prices Paid Index (PPI) or the cost of livestock production index, and divided by 100. The rule provides that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and that the fee shall not be less than $1.35 per Head Month.

In equation format the formula is:

$$\text{Economic value per head month} = \frac{\$1.23 \times FVI + BCPI - PPI}{100}$$

1988 Calculated Grazing fee per Head Month:

$$\text{Economic value fee per head month} = \frac{\$1.23 \times 234 + 272 - 381}{100} = \$1.54/\text{Head Month.}$$

The $1.23 in the formula is the base fair market value in 1966. This value is based on the principle that the value of public range forage used for grazing is equal to the rental value of private rangelands leased for grazing after adjusting for differences in the costs of services routinely provided on private lands that are not provided on public rangelands.

"Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangeland in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming) (computed by the Statistical Reporting Service (now National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per Head Month and multiplied by 100;

"Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming) for November through October (computed by the Statistical Reporting Service (now National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100;

"Prices Paid Index" means the following selected components from the Statistical Reporting Service's (now National Agricultural Statistics Service) Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States:

1. Fuels and Energy (14.5);
2. Farm and Motor Supplies (12.0);
3. Autos and Trucks (4.5);
4. Tractors and Self-Propelled Machinery (4.5);
5. Other Machinery (12.0);
6. Building and Fencing Materials (14.5);
7. Interest (6.0);
8. Farm Wage Rates (14.0);
9. Farm Services (18.0).

As set forth at § 222.50, the Forest Service shall charge a monthly grazing fee for each head of livestock grazing use, or occupancy by one adult animal. The grazing fee, then, is equal to the use fee per Head Month multiplied by the number of months the grazing animal will be on National Forest or Land Utilization Project (LUP) ranges during the grazing fee year.

Analysis of Public Comments

A Content Summary Analysis (CSA) approach was used in the tabulation and analysis of the 4,314 public responses received on the proposed rulemaking. An additional 367 responses were postmarked after the close of the response period (November 23, 1987) and were not used in the analysis of comments. From the responses received and analyzed, 9,745 specific comments were identified, both for and against the proposed rule. Of the 4,314 responses, a total of 3,710 were from individuals, 435 businesses, 129 from associations, 26 from local or State governments, 9 from Western States Universities, and 5 from Congressmen. The majority of the individual responses were from the livestock industry. Association responses included national and regional conservation, wildlife and sportsmens groups as well as National and State Livestock Producer Associations. The 435 responses from businesses were located primarily in rural communities throughout the Western states.

Total comments and content of the comments are used in the CSA process. Principal focus of the process is to evaluate the substance of the comments in order to reveal the public's concerns, argumentation, rationale, and discourse. The CSA process is not a vote count.

Comments were categorized into subject matter areas as follows: Ecology-Conservation-Land Restoration; Subsidy-Operational Costs; Fair Market Value-Fair Profit-Subleasing; Adequacy of Grazing Fee System; Rural Economic Stability; Social Values; Livestock Grazing as a Tool; Multiple Use-Wilderness Grazing-Wildlife-Fish-Riparian Values-Recreation-Other Resource Values; Agency Staffing and Budget; Change in Grazing Permit System, Legal Basis and Analytical Logic for Fee System, and, Removal of Livestock.

There was a public concern evident throughout the more than 9,700 comments about the relationship of the grazing fee to the Federal Budget deficit. Nationally, the majority of the substantive comments stressed that public land grazing fees should be raised to fair market value or at least be cost effective and provide enough funds to pay for the costs of permit administration. On the other hand, the majority of the individual, state and local government, and rural business responses, which were primarily from the Western States, favored the continuation of the proposed grazing fee formula. Major comments and Forest Service responses are summarized below.

Comments on Ecology, Conservation, and Land Restoration: There were 351 comments received concerning ecology, conservation and restoration of National Forest lands. Typical comments were: Low grazing fees will perpetuate overgrazing and increase poor range condition; grazing fee revenues do not cover the costs of administering the program and rehabilitating overgrazed areas, and under the Government proposal, the taxpayer will continue to foot most of the bill for the grazing program, and critical areas damaged by overgrazing will not be restored.

Response: The level of the grazing fee and stocking rates or livestock carrying capacity are not related. Livestock grazing capacity on national forest lands is determined biologically rather than through economic principles of supply and demand. The conventional economic principle of an inverse relationship between quantity available and its price in a competitive market does not apply on National Forest lands. Therefore, the level of the grazing fee does not affect the amount of forage available for grazing.

The relationship between the current grazing fee and overgrazing remains speculative given that many other considerations besides the grazing fee govern ranchers' decisions to graze livestock on National Forest lands. The grazing fee bears neither any relationship to how many livestock graze nor the Forest Service's management of the activity. From 1980 to 1986, the grazing fee steadily decreased from $2.36 to $1.35. The amount of livestock grazing occurring on the National Forest lands in the 16 Western States during the same period fluctuated. The relationship between the fee and the level of grazing use was variable. For example, from 1982 to 1983, while the fee decreased by twenty-five

percent, livestock use did not increase at all. Also telling is that while the fee remained the same in 1985 and 1986, livestock use again decreased substantially. Moreover, if the years 1980 and 1986 are compared the fee decreased by forty-three percent, but the amount of livestock grazing essentially remained the same.

The assertion that the current fee causes overgrazing also must assume that ranchers will increase their livestock use on National Forest lands when the fee is low. The Forest Service has been unable to document this assertion. If a rancher chooses to forego full livestock use authorized under permit, Forest Service approval must first be obtained. Conversely, if the rancher decides to activate the approved non-use, approval must be obtained. The governing consideration is whether the requested increase in actual use will exceed the allotment's grazing capacity. Thus, the grazing fee in itself cannot lead to poor range conditions.

Concerning recovery of the cost of administering grazing permits, it is true that the cost of administering a Forest Service grazing permit, including allotment inventory and planning, grazing use supervision and management, range improvement, and program management, will not be entirely recovered by grazing fee levels under the planned fee formula.

The grazing fee, in itself, has no bearing on the ultimate amount of monies available for range improvement projects and programs. Instead the level of monies available will be determined annually by Congress through the appropriation process. Section 401 of the Federal Land Policy and Management Act states that receipts from grazing fees are simply "authorized to be appropriated" for range improvements (43 U.S.C. 1751(b)(1)). Unless Congress actually appropriates funds that have been previously authorized by statute for range improvements, the monies are not available. They must be annually appropriated by Congress, and are subject to the current circumstances of the given appropriation year.

For the years 1977–1987, the RBF appropriated by the Congress has been 50 percent of grazing fee receipts. However, any projections with regard to future appropriations would be purely speculative. Besides the RBF, the Forest Service uses other appropriated funds, in particular, appropriations under PRIA and Protection and Management, and grazing permittee contributions for range improvement. It also must be recognized that Congress does not always appropriate monies authorized by statute.

Comments on Subsidies and Operational Costs: Comments in this category were of two types. Six hundred and eleven comments stated that the public land grazing fee was a subsidy. Typical comments from this group of respondents were: Grazing fees are too low to provide adequate funds to administer the grazing program on Federal lands; below cost grazing fees are an unfair subsidy that benefits a small number of livestock producers, and it is very troubling that the American taxpayer is subsidizing grazing permit fees at a cost of $46 million, 70 percent of the total cost. One hundred and twenty-nine comments stated that costs of operating on public lands were significantly higher than leased private lands. These respondents stated that "when total non-fee costs associated with Federal grazing are considered, permittees are paying, in many instances, far above private land lease rates."

Response: Concerning operational costs or the nonfee costs of grazing public rangelands, prior to 1978, fair market value grazing fees were charged through a fee formula based on an economic model developed at Utah State University. This model defined fair market value as the price that a willing buyer will pay and a knowledgeable seller will accept. The principle used in the fee model was that the value of public land grazing is equal to the rental value of private pastures leased for grazing after adjusting for differences in the costs of services provided on the private lands but not on public rangelands. When the nonfee cost items for public land grazing are subtracted from the total cost to the rancher leasing comparable private grazing land, the difference measures the dollar value a rancher should be willing to pay in a competitive market for the use of the public rangeland. The 1966 base fair market value for public lands was $1.23 per Animal Unit Month. Fair market value grazing fees were to be reached in ten years. The $1.23 was the residual value after equalizing the costs of grazing public rangelands and comparable leased private lands.

With regard to the subsidy issue, the addition of the ability to pay and cost of production components in the public rangeland grazing fee formula, through the Public Rangeland Improvement Act of 1978, may be perceived as providing a level of benefit since costs of permit administration are not covered. Some double counting of ability to pay and cost of production occurs through the addition of these components. However, Congress added these components to the fee formula to help protect ranchers dependent on public lands from being forced out of busines as well as to help sustain dependent rural communities in the Western States.

In 1986, to recover the total cost of the livestock grazing progam on National Forest lands in the 16 Western states, it would have been necessary to collect $3.57 per Animal Unit Month. However, there are other multiple resource values resulting from the grazing program. These benefits are discussed under the response to comments concerning multiple use, wilderness grazing, wildlife, fish and riparian values, and other resource values.

Comments on Fair Market Value, Fair Profit, and Subleasing of Public Rangelands: Of the 9,725 comments analyzed, 811 were concerned about fair market value, receiving a fair profit, and the subleasing of public rangelands. Typical comments were: Public Rangeland Improvement Act (PRIA) grazing fees do not reflect fair market value, and are unfair to ranchers that do not have access to the public lands. Current permit fees are so far below market value that the program cannot support itself, and should be raised to the point where they pay for the costs of managing the range program. Permittees are subleasing their grazing permits at a profit while paying the Government below market fees. Grazing permittees stated that the proposed fee formula is fair and equitable.

Response: To prevent economic disruption and harm to the Western livestock industry, Congress through the PRIA, determined that it was in the public interest to charge a fee for livestock grazing permits and leases on the public lands based on a formula reflecting annual changes in the cost of livestock production. The fee formula represents the economic value of the land to the user rather than fair market value. It is an ability to pay fee system.

In enacting the Public Rangelands Improvement Act (PRIA), Congress rejected market value as a sole method for establishing a public land grazing fee, and instead opted for a value combining fair market value with cost of production. As reported in Senate Report 1237, 95th Congress, 2nd Sess., September 23, 1978, page 11, the formula would prevent ranchers who depend upon public lands for grazing livestock from being forced out of business by the combined pressures of high production costs and relatively low beef cattle prices. Congress, through the PRIA, rejected fair market value primarily because it failed to incorporate factors recognizing "the costs of production, beef prices, or the ranchers' ability to

pay" (PRIA House Report, page 18). It believes these factors were important because the fee increases proposed in 1977 by the Secretaries of Agriculture and the Interior (Study of Fees For Grazing Livestock On Federal Lands, October 21, 1977) "when considered along with rapidly escalating costs for other aspects of livestock production, would place an increasing, and perhaps crippling, burden on the many livestock operations which are heavily dependent on the use of the public grazing lands" (PRIA House Report). This burden could contribute to what Congress saw as an "alarming rate" of farm and ranch foreclosures occurring nationwide. The legislative history of PRIA discloses that Congress was concerned that the Secretaries' proposed grazing fee increases would come at a time when the western livestock industry is just recovering from very depressed beef prices and severe drought conditions. By establishing the formula for a 7-year trial basis, Congress acknowledged that there were concerns related to the adoption of a fee formula based on changes in the costs of production.

In the lawsuit filed in 1986, (*Natural Resource Defense Council, et. al.*, v. *Lyng, Hodel*), the Court ruled that while fair market value of forage is one goal in establishing public land grazing fees, it is within the discretion of the Secretary of Agriculture and satisfies Congressional policy to consider other factors. Moreover, the statutory responsibilities of the Secretary of Agriculture permit, if not require him, to consider other factors in addition to economic ones in the setting of grazing fees. In setting grazing fees on National Forest lands in the 16 Western states, the Secretary of Agriculture has dual responsibility to assure that the ranching industry remains viable and to balance broader national interest against the need to charge reasonable fees.

The question of how to measure the fair market value of Federal forage has always been subject to dispute and there is no single accepted way to measure the value. On September 22, 1987, in testimony before the House Subcommittee on National Parks and Public Lands, the Department of Agriculture stated its position that "given the different views on what constitutes fair market value, we believe that additional time should be taken to focus specifically on the question. Views should be solicited from permittees, other users of public lands, the academic community, and others interested in public land issues to develop a consensus on principles for defining fair market value."

The issue of a fair profit (fair share, parity, or ability to pay) is an agricultural income or equity issue. The proposed fee formula will materially assist the public land grazing user, however, it will not solve the broader equity issue of agricultural income because the grazing fee is only available to those livestock producers who are also users of National Forest and BLM administered public rangelands.

With regard to subleasing, grazing users on National Forest System lands are required to own base property and permitted livestock. Grazing of livestock owned by someone else is a violation of their grazing permit. When violation of this nature is discovered actions are taken against the permit, including suspension or cancelling the permit in whole or in part.

Comments Concerning Adequacy of Grazing Fee System: Standard form letters or post cards amounting to 2,120 responses from individuals stated they "support the Forest Service's proposed rules * * * as embodied in Executive Order No. 12548." Other comments stated that:

(1) The intent of the Federal Land Policy Management Act of 1976 was to create a grazing fee system which provided a fair return to the Federal Government yet considers the economic circumstance of the livestock industry, and (2) the proposed fee formula adequately reflects changes in the livestock industry so that the fee increases when livestock prices are up and decreases when the industry is economically depressed.

Response: The proposed fee system responds to changes in prices received for the sale of beef cattle, and costs of livestock production. Therefore, it meets the criteria of reflecting changes in the livestock industry. For these reasons, the Administration as outlined in Executive Order 12548, February 14, 1986, determined that the fee formula is adequate.

Comments On Rural Economic Stability: Grazing permittees, local and State Governments, agricultural business organizations, and several western State universities addressed the issue of rural economic stability. Many comments came from local rural businesses that are dependent on the livestock industry sector for their own existence such as retail trade and service industries. Discussions centered around the economic conditions facing agriculture and farm and ranching communities, about long term ranchers knowing no other way of life and presented a strong feeling by the ranching community that they are providing a vital service to the Nation.

Opposing comments stated that the number of actual users of public rangelands are few and that the amount of red meat that is produced from these lands is insignificant and would have very little effect on the Nation's economy. Further, the ranching community has become so dependent on subsidies that grazing permittees need to make it on their own or get out of business.

Response: Certain Western states rural economies are heavily dependent on the public lands sector of the Western livestock industry. The level of the grazing fee primarily affects personal income. A significant increase in the grazing fee on National Forest land would have an immediate negative impact on both permittee income as well as personal income in dependent rural communities. Alternative fee level impacts on these sectors are influenced in large part by the changes in State and county personal incomes and community employment resulting from grazing fee changes, and the disbursement of fee receipts to the Western States.

Seventy-five percent of grazing fee receipts, through the Range Betterment Fund and payments to Roads and Counties, are returned to the states and counties in the Western states. Therefore, any change in the level of the grazing fee will have an impact on dependent rural communities, affected State and local governments, and others having an interest in the public rangelands. The Range Betterment Fund returns 50 percent of the fee collected to the place of origin for investment in range improvements. Investing range betterment funds and disbursement of the States and counties share of receipts affects those economic sectors furnishing supplies and materials for range improvement and fish and wildlife habitat improvement, and households through wage payments to construct or install these improvements. Monies returned for roads and schools (25 percent of receipts) have the greatest effect on the household sector through wages and salaries or reduced local taxes and through household consumption in other sectors of the economy. While personal income of permittees and dependent rural economies are affected by changes in the fee level, the fee level also affects the amount of receipts paid to States and local governments for support of public roads and schools. The proposed fee system has the least negative impact

on local and state personal income because of the low fee level, but has the greatest impact on the level of receipts to States for roads and schools.

Comments Concerning Social Values: One hundred and seventy-five comments addressed the continuation of livestock ranching as a lifestyle and the significance of family ties to the land. The majority of the respondents writing to this concern feel threatened with Federal policies on public lands and stated that higher grazing fees would put them out of business and end a way of life that is a part of the Western heritage.

Response: In 1978, the Congress in creating the Public Rangelands Improvement Act (PRIA) fee formula determined that it was of National interest to charge a grazing fee based on the public land grazers ability to pay. On February 14, 1986, the President through Executive Order No. 12548 continued the same policies established by Public Rangelands Improvement Act (PRIA). This action will help preserve social values attached to Western rural lifestyles.

Comments Concerning Livestock Grazing As A Tool: Thirty comments were received concerning the use of livestock as a management tool to maintain or improve the health and vigor of the plant community and other resource values.

Response: A principle of range management is the use of controlled livestock grazing to achieve a desired plant community, including protection of the soil. Livestock use can be prescribed that will minimize impacts on and maximize recovery from grazing desirable forage species. In addition grazing may be used to promote the tillering to reduce plant residues which inhibit productive growth when species which have these characteristics exist. Results will be increased plant vigor and higher density.

Comments Concerning Multiple Use, Wilderness Grazing, Wildlife, Fish and Riparian Values, Outdoor Recreation, and Other Resource Values: The proposed rule generated 396 comments concerning these issues and concerns. The majority of the comments were opposed to the proposed grazing fee formula. Commentors believe that low grazing fees would contribute to increased numbers of livestock and create severe competition with needs for wildlife, and further degrade the structure and composition of native plant communities. They also believe that rangelands, especially wilderness areas, should be cleared from grazing and set aside for wilderness and/or wilderness users. Grazing permittee comments asserted that Forest Service allotment management plans consider wildlife and fish needs, and that permittee's contribute to wildlife by investing in and maintaining range improvements which benefit and enhance wildlife.

Response: In response to environmental concerns, stocking rates for livestock grazing are biologically determined. Therefore, the fee level does not affect the number of livestock grazed on National Forest lands. The lands are managed under Forest land management plans which are multiple use in concept and scope. The National Forests are managed for the various values present, such as wildlife and fisheries, livestock grazing, timber, watershed, wilderness, and recreation.

While environmental concerns are important, grazing fees are charged for the use and occupancy of public rangelands, and essentially is an economic issue.

Comments Concerning Adequacy of Agency Staffing and Budget—Grazing Fees Inadequate: There were 136 comments concerning the adequacy of agency staffing and budget, and 550 respondents commented that grazing fees on National Forest lands were too low. The majority of the comments received in this category opposed keeping current grazing fees at below cost levels, and asserted that the grazing fee level affects the number of range management personnel available to administer range programs on National Forests and the amount of funds available for range improvement.

Response: Grazing fees are paid to the U.S. Treasury and are deposited to the General Fund. Range management program funds are annually appropriated by the Congress, including range management, range improvement, and allotment analysis and planning. No relationship exists between the fee level and the number of range management personnel in the Forest Service.

Comments on Changes in Grazing Permit System: Sixty individual responses commented on the subject of changing the grazing permit process. Recommendations were to use a 5-year term instead of the current 10-year term permit, eliminate the commensurate property requirements, and use a competitive bidding process to allow all livestock producers access to the public rangelands. Others asserted that the current fee system is unfair to livestock producers in the Western states who do not have access to public lands.

Response: Competitive bidding has been used by the Forest Service in certain situations for new or vacant grazing allotments. Where there have been long established grazing permittees competitive bidding has not been used. Changes in grazing permit requirements, including base property and livestock ownership are being reviewed. Any proposed changes will be addressed, with full public involvement, separate from this rulemaking effort.

The Federal Land Policy and Management Act of 1976 established that permits and leases for domestic livestock grazing on National Forests in the 16 Western States shall be for a term of 10 years subject to such terms and conditions that the Secretary of Agriculture deems appropriate and consistent with the governing law, including, but not limited to, the authority to cancel, suspend, or modify a grazing permit for any violation of a grazing resolution or of any term or condition of such grazing permit or lease. Permits or leases may be issued for a period shorter than 10 years where: (1) The land is pending disposal; (2) the land will be devoted to a public purpose prior to the end of ten years; or (3) it will be in the best interest of sound land management to specify a shorter term. The Act goes on to state that the holder of the expiring permit shall be given first priority for receipt of the new permit.

Comments on Legal Basis and Analytical Logic for Proposed Fee Formula: One hundred and eight comments stated that the Court for the Eastern District for California recognized that the Forest Service has legal authority for the proposed fee formula. These respondents also stated that the proposed formula, utilizing livestock industry conditions, is an equitable process for establishing public land grazing fees, and that the Environmental Analysis (EA) was sufficient. One comment suggested retention of Animal Unit Month (AUM) as the pricing unit as permittees were use to this terminology.

Conversely, 225 comments asserted that the Forest Service must comply with its statutory responsibilities prior to issuing final regulations, and has abandoned long standing policy of charging Fair Market Value. These comments also argue that impacts on the environment resulting from low grazing fees have not adequately been considered, and that the Forest Service must supply a convincing statement of reasons why they have failed to prepare an Environmental Impact Statement (EIS).

Response: The Federal District Court for the Eastern District of California has ruled that the Secretary of Agriculture has discretion under his governing authorities to consider other factors in

addition to fair market value in determining National Forest grazing fees in the 16 Western States. Through the Public Rangelands Improvement Act (PRIA), Congress determined that public land grazing fees were to include, in addition to fair market value, the costs of livestock production and the producers ability to pay. Grazing fees under this approach help protect the interest of public land grazing permittees. The intent of the PRIA was continued through the Executive Order of the President on February 14, 1986. This action is viewed by the Administration as a postive step in helping to maintain the economic stability of public land grazers and dependent rural communities.

In response to the assertion to prepare an EIS, the Forest Service conducted an environmental analysis (EA) on the proposed grazing fee formula for calculating grazing fees for the National Forests and Land Utilization Projects in the 16 Western States. In the EA, the Secretary of Agriculture determined that establishing a grazing fee formula for National Forests in the 16 Western States is not a major Federal action that would significantly affect the quality of the human environment. Pursuant to the EA, a Finding of No Significant Impact (FONSI) was prepared which concluded that an EIS does not need to be prepared because the physical and biological impacts of establishing a grazing fee formula are minor, and that grazing fees are primarily an economic issue rather than an environmental issue. Further, the FONSI documented that: (1) The Forest Service establishes stocking rates for permitted livestock grazing through its range analysis and planning processes which encorporates analysis processes included in Forest land management plans and attendant EIS's; (2) grazing use is controlled through grazing permits; (3) actual grazing use is normally less than permitted use and is correlated with prevailing economic conditions rather than with grazing fee levels; (4) fee levels for grazing have no known, measurable, or predictable effect on the physical and biological environment, and (5) appropriation of funds for improving National Forest rangelands from the Range Betterment Fund are controlled by Congress rather than the grazing fee. It was acknowledged in the FONSI that social and economic effects would occur proportionate to grazing fee levels, but that economic or social effects by themselves are not intended to require preparation of an EIS, according to Council of Environmental Quality Regulations implementing the National Environmental Policy Act (40 CFR 1508.14).

Concerning the use of Head Month as the formula pricing unit, the Executive Order specifies that the Forage Value Index be calculated using the unit of dollar per head month. The majority of the private sector uses "rate per head" or "rate per head month." The Forest Service has used "Animal Month" (AM) as the formula pricing unit rather than the AUM. It is the intent of the Forest Service to utilize a pricing unit that is commonly used in the private sector. This terminology change will not affect the calculation of grazing bills, and will help to eliminate confusion which now exists between AUM and AM.

Comments on Removal of Livestock From National Forest Lands: Approximately 50 comments advocated the removal of livestock grazing from the National Forests and recommended they be replaced with an alternate use that would either increase dollars collected or at least equal that generated by grazing fees. The majority of these comments favored removal of livestock in favor of wildlife, and other resource uses.

Response: As previously stated, National Forest System lands are managed under Forest land management plans which are multiple use in scope and concept. These plans provide for the management of the various values present, such as wildlife, livestock grazing, timber, watershed, wilderness and recreation, so removing livestock to manage National Forest lands exclusively for wildlife would not meet the requirements of the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 (note), and the National Forest Management Act of 1976.

Basis for Final Rulemaking

Continuing the PRIA grazing fee formula as prescribed in Executive Order No. 12548 is based on the judgment that it results in a reasonable charge. This formula has produced grazing fees that change annually according to the cost of producing livestock and the market prices received for the sale of beef cattle. And while the PRIA formula is subject to criticism, it has worked the way Congress intended—it produced fees corresponding to a rancher's ability to pay. As Congress explained in the PRIA, any benefit the fee may confer to the grazing permittee on National Forests in the 16 Western States is acceptable because of the need to protect them from economic disruption and the need to sustain dependent Western rural communities. The establishment of a minimum fee at an amount which, in lean years for the public land grazer, exceeds the formula's calculated fee, represents an effort to make the fee more responsive to the notion of cost recovery. The prescribed formula annually recovers about one-third of the cost of administering National Forest grazing permits in the 16 Western States.

None of the previous discussion or response to public comments is meant to suggest that the consideration of fair market value has been ignored. As acknowledged, too many uncertainties remain about it to justify any departure, at this time, from the President's direction that the fee formula prescribed in the EO (the PRIA fee formula with a floor level of $1.35 per Head Month) should continue to govern grazing fees on National Forest lands in the 16 Western States.

The final rulemaking serves the additional purpose of being consistent with legislative intent under the Federal Land Policy and Management Act of 1976 as well as the PRIA. By using the formula specified in the EO, which has worked as Congress intended, the policies underlying the PRIA fee system are promoted. The fee level is considered to be equitable to the public land grazing permittee and is reasonable to the Administration. Since the formula takes into account costs of production, market conditions and ability to pay the fee system promotes stability within the public lands sector of the Western livestock industry. Moreover, the Final Rulemaking preserves the status quo.

Regulatory Impact

Under USDA procedures and Executive Order 12291, this action has been determined not to be a major rule. While there will be a monetary difference between the market value of National Forest land grazing and the rate per head under the concept of the economic value in use or value to the user, the actual monetary difference will be available for direct expenditure by the grazing permittee in local, rural communities throughout the Western States. From a regional economic viewpoint, the Federal grazing permittees enjoy a slight competitive advantage in the short-term, but are disadvantaged in the long-term due to high capital replacement costs. Thus, little or no effect on the National economy will result from this regulation. The Department of Agriculture has further determined that this regulatory action will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The provisions of

this regulatory rulemaking are applicable to all persons or entities who possess a grazing permit on National Forest or Land Utilization Project lands in the 16 Western States, without regard to the size of the operation.

An environmental analysis has been conducted by the Forest Service on this action and is available for public review in the office of the Director, Range Management Staff, Washington, DC. The analysis addresses issues discussed in "The Grazing Fee Review and Evaluation: A Report From the Secretary of Agriculture and the Secretary of the Interior," February, 1986, Washington, DC, 99 pp., available from the Director, Range Management, USDA Forest Service, Room 601 RP–E, P.O. Box 96090, Washington, DC 20090–6090. It specifically addresses:

1. Questions concerning the formula's methodology;
2. Effects on government revenues for range improvements;
3. Cost of the grazing program;
4. Equitability between permittees and nonpermittees; and
5. Potential environmental effects.

Based on the environmental assessment, it has been determined that this regulatory action will not have a significant effect on the human environment.

Information Collection Requirements.

There are no additional informaion collection requirements because of the final rulemaking.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, Range management, Wildlife.

Therefore, for the reasons set forth above, Title 36 of the Code of Federal Regulations, Part 222, Subpart C—Grazing Fees, is amended as follows:

PART 222—[AMENDED]

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

Authority: 16 U.S.C. 551; 31 U.S.C. 483A; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

2. Section 222.50 is amended by revising paragraph (c) to read as follows:

§ 222.50 General procedures.

* * * * *

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and occupancy of range by one animal, except for sheep or goats. A full head month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.

* * * * *

3. Section 222.51 is amended by revising paragraph (b) and removing paragraph (c), to read as follows:

§ 222.51 National Forests in 16 Western States.

* * * * *

(b) Notwithstanding the provisions of § 222.50, paragraph (b), the calculated grazing fee for 1988 and subsequent grazing fee years represents the economic value of the use of the land to the user and is the product of multiplying the base fair market value of $1.23 by the result of the annual Forage Value Index, added to the sum of the Beef Cattle Price Index minus the Prices Paid Index and divided by 100; provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per head per month. The indexes used in this formula are as follows:

(1) Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per head month and multiplied by 100;

(2) Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) for November through October (computed by the National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100; and

(3) Prices Paid Index means the following selected components from the National Agricultural Statistics Service "Annual National Index of Prices Paid by Farmers for Goods and Services" adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States:

1. Fuels and Energy (14.5);
2. Farm and Motor Supplies (12.0);
3. Autos and Trucks (4.5);
4. Tractors and Self-Propelled Machinery (4.5);
5. Other Machinery (12.0);
6. Building and Fencing Materials (14.5);
7. Interest (6.0);
8. Farm Wage Rates (14.0);
9. Farm Services (18.0).

Date: January 27, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–2085 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2602; AA–220–88–4322–02]

43 CFR Part 4100

Grazing Administration; Exclusive of Alaska; Grazing Fees for 1988

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking and notice of Grazing Fee for 1988.

SUMMARY: This final rulemaking amends the regulations in 43 CFR Part 4100 Subpart 4130.7 concerning the determination of grazing fees for grazing domestic livestock on public land administered by the Bureau of Land Management (BLM). These regulations were issued by the Department of the Interior as proposed rulemaking and published in the **Federal Register** on October 7, 1987 (52 FR 37485) with a public comment period of 45 days.

Four thousand seven hundred and thirty-eight responses were received during the comment period and considered during the development of this final rulemaking. This final rulemaking amends the regulations in 43 CFR Part 4100 Subpart 4130.7 by providing that fees for grazing domestic livestock on public land administered by the Bureau of Land Management for 1988 and subsequent years will be determined by a formula that consists of a base value of grazing on public land adjusted by indexes reflecting current year land lease rates, cost of production, and beef cattle prices. Because the formula for establishing grazing fees is being incorporated into the regulations, hereafter only the fee, as established under the formula, will be published as a **Federal Register** notice.

EFFECTIVE DATE: February 2, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room

5626, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton or Donald Waite, (202) 653–9193, or Mark E. Lawrence (202) 343–8735.

SUPPLEMENTARY INFORMATION: This final rulemaking amends Subpart 4130.7 of the existing regulations for the management of grazing on the public lands by providing that fees for grazing domestic livestock on public land administered by the Bureau of Land Management for 1988 and subsequent years will be determined by a formula that consists of a base value of grazing on public land adjusted by indexes reflecting current year land lease rates, cost of production, and beef cattle prices. Because the formula for establishing grazing fees is being incorporated into the regulations, only the fees as established under the formula for years *after 1988* will be published as a Federal Register notice. The grazing fee for the 1988 grazing season is established in accordance with this final rulemaking. Notice of the grazing fee for 1988 is contained in this preamble to the rulemaking.

Background

Under section three of the Taylor Grazing Act, enacted in 1934, "[t]he Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock * * * upon payment annually of reasonable fees in each case to be fixed or determined from time to time * * *.". The statute's preamble declared that its operative provisions were intended "to stabilize the livestock industry dependent upon the public range * * *".

The Federal Land Policy and Management Act of 1976 (FLPMA), did not alter this concept. The policy statement in that law that "the United States receive fair market value of the use of the public lands and their resources" was not reflected in the provisions relating to grazing fees. Rather, the statute simply directed the Secretary to study what was an "equitable" grazing fee, taking into account "the costs of production normally associated with domestic livestock grazing * * *, differences in forage values, and such other factors as may relate to the reasonableness of such fee." FLPMA left intact the notion that grazing fees were premised on reasonableness.

In 1978, however, with enactment of the Public Rangelands Improvement Act, (PRIA), the Secretary was provided with specific directions governing grazing fees. PRIA stated that "to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production." The statute then established a policy "to charge for public grazing use which is equitable and reflects the concerns addressed * * * above." PRIA contained a grazing fee formula that takes into account the cost of livestock production and the public land permittee's ability to pay.

House Report 1122 (1978) of the 95th Congress stated that PRIA's policy direction and formula were in direct response to the Secretary's attempt at that time to set a grazing fee reflecting the fair market value of the public lands for that activity. Congress was extremely concerned that increasing grazing fees to fair market value would be injurious to the western livestock industry, especially since it was just recovering from a depressed agricultural economy. Moreover, as the House Committee on Interior and Insular Affairs reported, the formula produced a fee sensitive to the ranchers' costs of production and beef prices. This was viewed as a stabilizing influence on the western livestock industry. The Committee also pointed out that the fees generated by the formula, based upon ability to pay, would contribute to improving range conditions by encouraging private investment and discouraging trespass. The Senate Committee on Energy and Natural Resources concurred in the findings made by the House of Representatives in Senate Report 1237 (1978).

Congress, in considering the formula eventually codified in PRIA, acknowledged that many persons concerned with the public rangelands disagreed with pegging grazing fees to a ranchers' costs and ability to pay. Accordingly, PRIA made the grazing fee formula effective on a trial basis, from 1979 until the end of 1985. The law also called for a study to evaluate the performance of the formula and to explore alternative fee systems by the end of 1985. That study was produced too late for deliberation by the Congress in 1985. Therefore, to establish a fee for the 1986 grazing season and to give the Congress adequate time to consider the fee issue, the President of the United States, acting on advice from the affected Federal agencies and a number of Members of Congress, issued Executive Order 12548 on February 14, 1986.

Through Executive Order 12548, the President directed the Secretary of the Interior "to exercise [his] authority, to the extent permitted by law * * *, to establish fees for domestic livestock grazing on the public rangelands which annually equals [the fee under PRIA] * * * provided * * * that the fee shall not be less than $1.35 per animal unit month."

On March 12, 1986, the Secretary announced a decision to continue using the PRIA formula to set grazing fees, with the qualification that the fee would not be less than $1.35 per animal unit month of forage permitted or leased. The decision was based on the Secretary's Final Grazing Fee Review and Evaluation that was also issued on March 12, 1986. The fee for 1986 and 1987 was $1.35.

In the fall of 1987, the Secretary's decisions were judicially reviewed in *Natural Resources Defense Council* v. *Lyng, et al.*, Civil Action No. S–86–0548 EJG (E.D. Cal. 1987).

The Federal district court held that the grazing fee adopted, derived from the PRIA formula, was consistent with substantive statutory mandates and legislative policy. In particular, the opinion stressed that despite the fact that the trial period for the fee formula established by PRIA had expired, PRIA's underlying policies governing grazing fees remain in effect. The court also pointed out that the Secretary's decision was unaffected by FLPMA's policy favoring fair market value. That policy, while to be considered, was not required to be implemented in the case of grazing fees. FLPMA's specific direction was that the Secretary determine a grazing fee that is "equitable to the United States and to the holders of grazing permits and leases." The court also noted that the Secretary's adoption of the lapsed PRIA formula was consistent with the Taylor Grazing Act's purpose of stabilizing the western livestock industry.

However, the Secretary's procedure of adopting the grazing fee in a published notice alone was not upheld. The court ordered the Secretary to comply with the procedures for adopting rules specified in the Administrative Procedure Act.

Finally, the court remanded back to the Secretary the question of the formula's environmental consequence, and directed him to consider anew the formula's environmental impacts, if any, as specified by the National Environmental Policy Act.

Notice of Proposed Rulemaking and Environmental Assessment

In compliance with the district court's opinion, the Department of the Interior informed the public by publishing in the

Federal Register on October 7, 1987, a notice of proposed rulemaking relating to grazing fees, (52 FR 37485) with a 45 day comment period.

Under the proposed rule, the fees for grazing domestic livestock on public lands administered by the Bureau of Land Management for 1988 and subsequent years would be determined by using the lapsed PRIA formula, as specified in Executive Order 12548. It consists of a base value of grazing on public lands adjusted by indexes reflecting currrent year private land lease rates, cost of production and beef cattle prices. Because the formula for establishing grazing fees would be incorporated into the agency's rules and regulations, after 1988 the grazing fees would simply be published as a notice in the **Federal Register.**

The purposes of the proposed regulation were "to meet the policy objective set forth in the Taylor Grazing Act, the Federal Land Policy and Management Act, and the Public Rangelands Improvements Act, which remain vital", and achieve a "fee level that is reasonable and promotes stability in the western livestock industry." The proposed rulemaking stated that these objectives would be met, since "[t]he fee is intended to reflect annual changes in costs of production and to be equitable to both grazing permit holders and to the government." The proposed rulemaking also stated that "the formula is intended to have no negative environmental impacts."

The latter finding was based upon an environmental assessment. It considered the proposition that the amount of grazing fees influences the level of grazing, especially the premise that lower fees lead to overgrazing. The environmental assessment observed on the basis of historical data that the conventional economic principle of inverse relationship between quantity available and its price in a competitive market did not apply under the lapsed PRIA formula. It followed, then, that continuing to use that formula would not alter existing environmental conditions. The environmental assessment also pointed out that grazing on public lands is determined on the basis of multiple use and sustained yield principles, not on economic principles of supply and demand. It also followed, then, that even if the proposed fees might encourage someone to seek the agency's approval to increase grazing, in actuality increased grazing could only occur if the agency decided that was consistent with its management principles. The fee itself could not be the proximate cause of the increased grazing.

The public was invited to comment on the proposed rulemaking, the environmental assessment and the finding of no significant impact. The environmental assessment also was made available to the public.

Public Comment on the Notice of Proposed Rulemaking

During the comment period, the public submitted 4,738 responses commenting on the notice of proposed rulemaking. Of this number 4,131 were from individuals, 435 from businesses, 129 from associations, 14 from local governments, 12 from state governments, 9 from universities and 8 from Congressmen or from other federal agencies. An additional 409 responses were postmarked after November 23, 1987. They were not considered.

Most of the individuals and other respondents supported the proposal to use the lapsed PRIA grazing fee formula, as set out by the President in Executive Order 12548. They pointed out that the formula, by accounting for costs of production and ability to pay, produced a fee that avoids economic disruption to the western livestock industry that depends upon public lands. They considered this particularly important given the relatively ill health of the agricultural economy.

Conservation groups and a minority of individuals opposed the proposal. The usual criticism was that the formula produces a fee below the fair market rental value of the public rangelands, and, by doing so, denies the government funds needed to manage rangelands and promotes overgrazing. Some concern was voiced that the proposal would give an inequitable advantage to public land permittees over ranchers without federal grazing permits. To avoid these consequences, they urged the Secretary to adopt a formula that recovers the fair market value of federal grazing.

Statement of Basis and Purpose

The decision to continue using the PRIA formula contained in Executive Order 12548 in setting grazing fees is based on the judgment that it results in a fair, just and suitable charge.

The formula produces a grazing fee that is equitable to the person who must pay it. Under the PRIA formula grazing fees change annually according to the costs of producing livestock and the market for that commodity. As previously reported to Congress by the Secretary of Agriculture and the Secretary of the Interior in the 1986 Grazing Fee Review and Evaluation study, under the PRIA formula, when the costs of production increased as measured by the prices paid index, the grazing fee decreased. Also reported to Congress was that almost every year the market price for livestock, as measured by the beef cattle price index, decreased, so did the grazing fee. The PRIA formula has worked the way Congress intended—it produces grazing fees corresponding to a rancher's cost of production and ability to pay.

Any inequity that might arise to a rancher who pays a higher price to graze livestock on private property is beside the point. As Congress explained in enacting PRIA, any benefit the fee might confer to public lands ranchers is acceptable because of the need to protect them from economic dislocation and to sustain dependent rural communities.

The formula, by producing fees responsive to a public lands rancher's economic realities, also is particularly appropriate, where, as here, any substantial increase in fees is likely to cause hardship to many ranchers. The Secretary's report addresses this. "When the grazing fee was increased from $2.00 to $5.00 per AUM, net returns [for ranchers] above cash costs declined." This increase would be significant for those permittees that are highly dependent on public lands. This becomes particularly important when measured against the long-term costs persons must pay to stay in the livestock business. With an average debt to asset ratio of 20%, any increase in grazing fees would aggravate and make quite difficult many ranchers' ability to pay off their long-term debt. Also, the size of livestock businesses may be adversely affected by a significant increase in grazing fees. "An increase in the fee of $1.00 per AUM would increase total grazing fee costs to 26,700 FS and BLM permittees by about $17.6 million." Finally, "changes in the grazing fee affect the permittee's asset position as a result of the changes in the value of the permit and thus affect the ability to borrow money."

The foregoing is corroborated by the numerous letters from ranchers and others establishing that any substantial increase in grazing fees would hurt a substantial number of ranchers just as they are beginning to recover from the plight of the agricultural economy over the past decade. States and localities also echoed the concern in the Secretary's report to Congress that a jump in grazing fees could depress rural community economies.

The formula also is equitable to the United States. It recovers a reasonable portion of the costs the BLM incurs in

rangeland management. As the Secretary's report to Congress stated, the PRIA fee could generate revenues covering fifty-four percent of those costs. Conversely, "[a]s grazing fees increase, the amount of permittee contribution to range improvements is expected to decline." Moreover, the establishment of a minimum fee at an amount which, in lean years for the western livestock industry, exceeds the formula's calculated fee, represents a direct effort to make the fee more responsive to the concept of cost recovery. While higher fees, assuming inelasticity of demand for federal forage, might provide for recovery of all the costs the BLM incurs in rangeland management, full recovery of the range program budget from ranchers is inappropriate because forty percent of the planning, inventory and management budget would be required to carry out basic range ecological tasks even in the absence of livestock grazing. Also funds spent on range improvements produce multiple use benefits and it would not be appropriate to charge all of these costs to the livestock industry.

The decision to continue using the PRIA formula, as stated in Executive Order 12548, to set grazing fees is also based on the finding that it poses no significant impact to the environment. By preserving the status quo, it should have no environmental consequence.

Despite the public comment that the PRIA fee is the cause of overgrazing, there is no evidence of any correlation between the fee and livestock use. From 1980 to 1986, the grazing fee steadily decreased from $2.36 to $1.35. However, the amount of livestock grazing occurring on the public lands during the same period fluctuated. Accordingly, if the PRIA fee dictated use, the expectation would be that every year the fee decreased, an increase in use would have occurred. This was not the case. For example, from 1982 to 1983, while the fee decreased by twenty-five percent, livestock use did not increase at all, but instead decreased by three percent. While the fee remained the same in 1985 and 1986, livestock use decreased by nearly seven percent.

Moreover, from the years 1980 to 1986 the fee decreased by forty-three percent while the amount of livestock use remained almost unaltered, increasing less than two percent. In short, the changes in the PRIA fee and livestock use are unrelated and it is unreasonable to assume any correlation.

Thus, the PRIA fee is highly unlikely to alter livestock use. By preserving the status quo, it is equally unlikely that there will be any changes in environmental conditions.

The absence of a correlation between the PRIA formula and livestock use is not reflected in other governmental documents. A document prepared by the Office of Management and Budget, entitled Grazing Fee Presentation (1985), which is referred to in a few public comments, had only two statements about grazing fees and overgrazing. One states that "[e]nvironmental groups support fee increases as [a] disincentive to overgraze." The other statement is found in a section named "objectives of grazing fee system," and states that a grazing fee should "discourage overgrazing." Neither are substantive statements. The Council on Environmental Quality's report, *Desertification of the United States* (1981), another often cited document, reaches a similar conclusion. While the report infers that "federal grazing fees that are well below the free market price encourage overgrazing of the commons," the statement represents theory rather than empirical evidence. No proof accompanies the statement. More important, the statement was made seven years ago. Since then the evidence shows that there is no discernable relationship between the PRIA fee and livestock use.

BLM's publication entitled *Program Direction—Oregon and Washington 1986* and the Economic Research Service report, *A Theoretical Evaluation of Fee Systems for Private Grazing on Federal Lands* have also been examined. While they also state a relationship between fees and livestock use, the statements are unpersuasive, theoretical and not supported by rigorous analysis of empirical data.

Other public comments state that the PRIA fee causes overgrazing because ranchers increase their use on the public lands because the price is artificially low. The statement, though, is only speculation. Ranchers may opt to, and in fact have, foregone increasing their livestock use despite the existence of the PRIA fee. While the fee may affect a rancher's decision about how many livestock to graze, it is only one consideration among many, and usually, is not the predominant factor. According to recognized experts in the field, and the livestock industry, costs of production, market conditions, and the quality of the public lands from one year to another, among other considerations have more bearing on the amount of grazing.

A corollary public comment draws a connection between how the BLM manages livestock grazing and the fee. These comments claim: (1) Ranchers are not grazing as many livestock as the agency permits; (2) ranchers' actual use, however, causes environmental degradation, and therefore, (3) if the fee induces the ranchers to make more use, up to permitted levels, then more environmental harm will occur.

These comments fail to recognize that even if the fee is an inducement, it has no bearing on how many livestock the rancher may graze. Agency approval is required before ranchers may increase their livestock use up to the maximum level and any increase in grazing use is the prerogative of the agency. That decision is not based on economics, but on the agency's judgment concerning whether the range can withstand additional grazing. In making that judgment the agency's responsibility is to prevent unnecessary and undue environmental degradation.

Even if the PRIA fee were to have the effect claimed by some public comments—that increased livestock use leads to overgrazing—the environmental impacts from any grazing are largely known on a site specific basis. One hundred thirty-seven impact statements have already been completed on grazing use covering 169,809,000 acres of public rangelands. By the end of 1988, five more site specific statements will be completed, involving another 4,042,000 acres. A review of the completed studies shows consideration of livestock grazing at actual use and permitted levels, as well as grazing beyond permitted levels. The documents also address ways to redress any overgrazing that is or may occur under differing levels of use. Repeating that effort by producing a programmatic impact statement that accounts for different levels of use, upon the assumption that fees are the cause, is to place form over substance. It also is a questionable use of resources given the fact that the current fee has little effect in altering the status quo.

The court and others commenting on the environmental assessment expressed concern that the description of the "affected environment" did not specifically relate to lands administered by BLM and there is no reference to the current range condition of any site specific areas or aggregated areas. Description of the "affected environment" comes directly from the programmatic EIS *Livestock Grazing Management on National Resource Land (1974)* and provides a broad overview of the general nature of the western environment of public lands. As stated previously BLM has completed site-specific environmental impact statements. In addition to describing the

"affected environment," the EIS's discuss range condition, and the effects of livestock grazing, provide site-specific analysis, allotment or area specific objectives, and site-specific grazing proposals, and address site-specific issues, resource problems, conflicts, and management actions on public rangelands. Also, the environmental impacts of range improvements are analyzed.

Even though the BLM has or will by the end of 1988 complete site specific EIS's on all public lands subject to livestock grazing and the grazing fee, this information is not necessary for analyzing the impact of the fee. As had been documented in the EA on this rulemaking, the grazing fee has no known, predictable, or measurable effect on the physical or biological environment.

None of this discussion is meant to suggest that the consideration of fair market value has been ignored in this rulemaking. Rather, the arguments for fair market value are unpersuasive.

First, raising grazing fees to "fair market value" will not necessarily reduce grazing. Regardless of the fee, ranchers must make substantial use of the privilege to graze livestock. The regulations prohibit a rancher from "failing to make substantial grazing use as authorized for two consecutive years." And while a higher fee may mean some ranchers cannot abide by this regulation, and thus lose their permit, fair market value implies that someone else will be willing to take over at the new price.

Second, no one knows with any confidence what will happen to the demand for federal forage if its price is increased to fair market value. It all rests on the hypothesis that the demand will remain inelastic. At this point, the relationship is conjectural.

Third, the perception that fair market value will reduce overgrazing rests on chance. If a rancher can afford the new fee in an area where overgrazing may be occurring, a reduction in grazing will not occur. Conversely, if a rancher cannot afford the fee in an area of that is being properly grazed, the higher fee causes economic dislocation with no corresponding environmental benefit.

Fourth, there are means available to deal with overgrazing other than the grazing fee. They range from the BLM ordering reduced livestock numbers, changes in seasons of use or kinds of use, to new grazing patterns, and to projects to rehabilitate the range, including seeding or water development. The traditional means make it unnecessary to use pricing which is indiscriminate as a means of solving overgrazing problems.

Fifth, it is somewhat uncertain that adopting a fair market value approach would generate more monies to fund the range improvements necessary to compensate for isolated cases of overgrazing. Beyond resting on the premise of inelastic demand, the proposition appears to assume Congress will appropriate sufficient funds for needed range improvements. Recent experience would bring into question that assumption. In making appropriations for fiscal year 1987, Congress did not choose to make up the difference between the grazing fee receipts collected by the BLM and the ten million dollar range improvement appropriation fund promised in FLPMA. Moreover, Congress has not funded any of the 360 million dollar authorization for range improvements made in 1978 under PRIA.

Finally, the final rulemaking serves the additional purpose of being consistent with legislative intent under PRIA, FLMPA and the Taylor Grazing Act. The formula specified in PRIA has worked as intended and meets the policies underlying that formula. It is equally equitable to the rancher who must pay the fee and to the United States. FLPMA, as a consequence, is served well by the rule. Finally, since the formula takes into account costs of production, market conditions and ability to pay, little doubt can exist that the fee promotes stability in the western livestock industry. Thus, the final rulemaking meets the intent of Taylor Grazing Act. All of this is confirmed by the decision in *Natural Resources Defense Council v. Lyng, et al.*, supra.

Response to Public Comment on Related Issues

Comments on the proposed fee formula centered on eight basic issues: (1) Fee Formula Structure and Alternatives, (2) Fair Market Value and Comparability, (3) Livestock Grazing Use and Environmental Effects, (4) Availability of Range Improvement Funds, (5) Subsidy and Stability of the Western Livestock Industry, (6) Equity to Other Public Land Users and Non-Permittees, (7) Cost Recovery, and (8) The Local Economy, Rural Social Values, and Importance of Public Forage. The following discussion supplements the presentation of these issues in the Statement of Basis and Purpose above.

(1) *Fee Formula Structure and Alternatives*—Several comments opposing the proposed grazing fee formula expressed concern that the PRIA fee formula takes costs of production into account three times—in establishing the $1.23 per AUM base value, in the "Forage Value Index" (FVI), and in the "Prices Paid Index" (PPI). Several other comments expressed the belief that the PRIA formula "double counts" Federal permittees' ability to pay and that the $1.23 per AUM base value is too low. These comments suggested the alternative of not including beef cattle prices and cost of production or other "ability to pay" indexes in the fee formula. Competitive bidding was suggested several times as an alternative approach to establishing grazing fees. Several comments expressed the belief that the Administration had abandoned its 1977 Grazing Fee Study position of supporting a formula that attained fair market value.

Most comments supporting the proposed fee formula either specifically mentioned or inferred support of all that is embodied in the PRIA formula. The comments viewed the proposed formula as a judicious reflection of private land lease rates, produciton costs of operators, and beef cattle prices. Many comments expressed the view that the PRIA formula, with a minimum of $1.35, is working well and as intended and there is no reason to change it.

In reviewing the comments regarding the number of times cost of production is counted in the proposed fee formula, is became evident that there is a lack of understanding concerning the difference in establishing the base value of $1.23 per AUM and the functions of the Forage Value Index and Prices Paid Index indexes. The $1.23 base was established as the fair market value of Federal forage through the 1966 Western Livestock Grazing Survey. Cost differences of using private leases as opposed to public leases were used to adjust the private land lease rate so that it reflected a comparable public land lease rate. This is not an adjustment to reflect change in "ability to pay." The PPI adjusts for year-to-year changes in the cost of production and does reflect "ability to pay." The FVI adjusts for year-to-year changes in the private land lease rate and, thus, keeps the base value current in reflecting fair market value. A level of ability to pay is probably reflected in the FVI but only to the extent it reflects the cost of private land leases. The extent to which the FVI and PPI are combined to reflect ability to pay is not apparent because the cost components that make up the PPI, which is a composite index, do not include the cost of private land leases. Even if the PPI did include the private land lease rate, an increase in the lease rate and

thus the PPI would drive the fee down, whereas an increase in the private land lease rate and thus in the FVI would drive the fee up. These two indexes drive the fee in opposite directions.

The Administration's proposal to include consideration of beef cattle prices and cost of production in the fee forula and to reject all other alternative formulas that do not include these factors is in direct response to the expressed findings of Congress when it enacted the 1978 Public Rangeland Improvement Act. The underlying policy of PRIA, which is still in effect, states thta "* * * to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production." In response to the concern that the Administration has changed its position since its 1977 proposal *(Study of Fee for Grazing on Federal Lands, October 21, 1977)*, the action of Congress since that time should be noted.

In stating the policy that the grazing fee should include beef cattle prices and cost of production. Congress specifically rejected the fair market value policy expressed in the 1977 Fee Report. H.R. Rep. 1122, 95th Cong., 2d Sess., *Improving the Range Conditions of the Public Lands* (PRIA House Report) at pp. 16–20. As the House Committee reported, the formula would prevent ranchers who depend upon public lands for grazing livestock from being forced out of business by the combined pressures of high production costs and low beef prices. The Senate Committee on Energy and Natural Resources concurred in the findings made by the House of Representatives. S. Rep. 1237, 95th Cong., 2d Sess., at 11 (September 23, 1978).

To elaborate, the PRIA House report makes it clear that Congress rejected the Secretaries' formula primarily because it failed to incorporate factors recognizing "the costs of production, beef prices, or the ranchers' ability to pay." It believed these factors were important because the fee increases proposed by the Secretaries' formula, "when considered along with rapidly escalating costs for other aspects of livestock production, would place an increasing, and perhaps crippling, burden on the many livestock operations which are heavily dependent on the use of the public grazing lands." This burden could contribute to what Congress saw as an alarming rate of farm and ranch closures occurring nationwide. Congress was equally concerned that the Secretaries' proposed grazing fee increases would come "at a time when the Western Livestock industry is just recovering from, very depressed beef prices and severe drought conditions."

(2) *Fair Market Value and Comparability*—Many of the comments opposing the proposed fee formula expressed the view that the Government should charge fair market value for Federal forage. The 1983 *Mass Appraisal Report* prepared by the Bureau of Land Management and Forest Service (FS) was cited as the basis for the determination of fair market value. Also cited in support of the determination of fair market value was the report prepared by C. Kerry Gee and Albert G. Madsen, *The Cost of Subleasing Federal Grazing Privileges.* Comments related to this report suggested that subleasing is proof that lessees are willing to pay considerably more for public grazing than the Government charges. A few comments cited specific examples of private land leases where the leases were considered comparable to public land leases but the lease rate was significantly higher than the Federal grazing fee. Also, cited were situations where States and railroad companies charge higher grazing fees than the BLM and FS.

A number of comments that supported incorporating in the proposed rulemaking the formula in Executive Order 12548 expressed the belief that the public lands are not comparable to private lands, and therefore, private land lease rates do not reflect the value of public land grazing. Numerous examples of this situation were presented. Higher costs of using public lands are compared to private lands were cited most often as the major difference between private and public leases. Cost differences cited most often were higher fence and water facilities maintenance, trucking, herding, salt distribution, vandalism, capital investments, male breeding stock, and death losses. Also some comments expressed the belief that land administered by BLM, as compared to private lands, are of poorer grazing quality, have less water, produce lighter calves and lower calving percentages, and are subject to more restrictions and control. A few comments suggested that the high level of non-use of available AUM's on public land in some areas is proof that the current grazing fee exceeds the grazing benefits to the user. A number of comments expressed the view that the PRIA formula as presented in the proposed rulemaking represents the fair market value of a Federal grazing permit or lease.

The fair market value issue was addressed in the case of *Natural Resources Defense Council, Inc. v. Lyng, et al., supra.* The Court held that "although return of the fair market value of Federal forage is one goal in establishing the grazing fee, it is within the discretion of the Secretaries to consider other factors." This discretion is accorded to the Secretary of the Interior under PRIA, FLPMA and the Taylor Grazing Act.

Even though the Government is not required to charge fair market value for Federal grazing, that concept nevertheless is given consideration. Fair market value has been previously addressed in the statement of basis and purpose. In addition, what constitutes fair market value and how to measure it is disputed. As mentioned earlier, the base value of $1.23 per AUM used in the proposed fee formula was established as fair market value in the 1966 Western Livestock Grazing Survey (WLGS). To arrive at this value, the Survey used a scientifically and statistically sound process of explicitly accounting for the differences in the costs (e.g., fence maintenance) of using public lands as compared to private lands. Congress defined "fair market value" of Federal grazing as the fee that is generated by the Public Rangeland Improvement Act formula. The 1983 mass appraisal, conducted by the BLM and FS, used the private land lease rates with adjustments to reflect the market rental value for Federal forage. Values were estimated for each of six pricing areas. The value estimates do not represent the "site specific" fair market grazing rental value of any individual allotment. Rather, they are intended to represent a reasonable estimate of the mean average rental value of public grazing in each pricing area. It should be noted that using these average values to set fees would result in overpricing one-half of the forage in each pricing area and underpricing the other one-half. The 1983 mass appraisal has been heavily criticized principally for not being statistically valid and not making proper adjustments for comparability between private and public land leases.

In reviewing the comments concerning subleasing of BLM grazing privileges, it becomes clear that confusion exists on this issue. First, the so-called subleases discovered in the 1983 mass appraisal and analyzed in the Gee and Madsen Report do not fit BLM's legal definition of a sublease. If the BLM land was any part of a ranching operation under lease, the appraisal categorized this as a sublease even though the leasee of the ranching operation may have had a

separate valid lease from the BLM. It is legal to gain access to BLM grazing privileges and thus lease BLM permits directly by leasing or otherwise controlling the private base property that is associated with the public lands. Most of the so-called subleases in the appraisal were not 100 percent BLM land but part of a larger operation which may have included private deeded land, railroad land, or other types of ownership. Second, as indicated in the Gee and Madsen report, the lease rates were higher where the percentage of BLM acreage was low and lower where BLM land made up a larger percentage of the lease. The Gee and Madsen Report also indicated that current Federal grazing fees do not reflect market value of the resource but that lease market rates are highly variable and individualized. Third, subleasing is illegal. The regulations makes this very clear. Whenever subleasing is discovered, actions are taken against both the permittee and the sublessee.

(3) *Livestock Use and Environmental Effects*—A substantial number of the comments opposing the proposed grazing fee formula expressed concern that the fee resulting from the formula would encourage overgrazing and have harmful environmental effects. The comments stated that a low fee would cause permittees to graze excessive livestock resulting in degradation of wildlife habitat, riparian areas, and other environmentally sensitive areas. A number of comments also suggested that if the Government is not going to charge fees above what they currently charge, all livestock should be removed from public lands. A few comments suggested that a higher fee would induce permittees to take better care of their Federal grazing privileges.

On the other hand, a large number of comments opposed the view that there is a connection between the level of fees, livestock use, and environmental effects. Some comments observed that the level of livestock grazing use is established by Government agencies through land use plans and other procedures and that these levels are regulated and enforced. Several other comments expressed the belief that permittees take as good of care of public lands as they do their own, that financially strong permittees are better able to maintain public land productivity and that much of the West never supported vegetation or wildlife much above current levels. A number of additional comments directly opposed the view that livestock should be removed from the public rangelands and suggested that livestock can be used as a tool to restore, protect, and enhance resource values. They stated that livestock grazing may be the least environmentally harmful of all public land uses. Finally, a couple of comments suggested that the BLM should continue a strong program of monitoring, enforcing, supervising, and implementing stocking rates and that the fee should not be tied directly to these objectives.

These comments were addressed in the Statement of Basis and Purpose. To supplement that discussion, land use plans (LUP) and environmental impact statements (EIS) set forth the overall management objectives for managing livestock grazing on public lands. The broad management objectives of the LUP determine the number of livestock and season of grazing, the types of grazing prescriptions that can be used, and the range improvements that may be installed. Livestock grazing management on public land is closely monitored to ensure that current management practices are meeting the management objectives of the LUP/EIS. If the objectives are not being met, adjustments in management are made to change the direction of management to reach the objectives. Livestock grazing management on public lands is to be consistent with the principles of multiple use and sustained yield.

By both statute and regulation, the level of livestock permitted to graze on public lands is based upon a determination of the carrying capacity of the land which in turn is based on monitoring range conditions and incorporates environmental considerations. The grazing fee plays no part in the determination of permitted grazing use. For various reasons, permittees may, with agency approval, elect not to graze up to the level of permitted use. The difference between actual use and full permitted use is referred to as "approved nonuse." If a permittee decides to activate the approved nonuse, agency approval must be obtained. The only possible bearing that fees could have on the level of grazing use is in the area of "approved nonuse" or of unauthorized use.

An analysis of the correlation between nonuse and grazing fees and active grazing use levels and grazing fees for the past 7 years indicates that these factors do not correlate in accordance with economic theory. There is no clear evidence that lower fees have led to increased utilization of BLM forage within the allowable limits or that higher grazing fees have led to decreased utilization.

Any assessment of the comments that lower fees would create an incentive to illegally exceed levels of permitted use would be a speculative exercise. Grazing use above permitted use is considered trespass and is handled accordingly.

Concerning the comments on removal of all livestock and the alternative of using livestock as a management tool, it is important to recognize certain principles of range management. Controlled livestock grazing can be used to selectively graze undesirable plant species. Controlled livestock grazing also can be used to graze desirable species during phenological periods of reduced susceptibility. In addition, grazing may be used to promote the tillering of desirable species and to reduce plant residues which inhibit productive growth. A further benefit of proper livestock grazing is the increased vigor and production of desirable plants. Furthermore, removal of all livestock from public lands would not be in accordance with the principles of multiple use required by FLPMA.

(4) *Availability of Range Improvement Funds*—A large number of the comments opposed to the proposed rulemaking expressed the view that higher fees would generate more funds for improving Federal rangeland. Some comments suggested specific projects identified in existing LUP/EIS's as areas that need funding.

A large number of comments in support of the proposed rulemaking suggested that the range improvement funds may not increase with increased fees because permittees might use less forage. Other comments stated that Congress might not appropriate the additional funds and permittees might invest less of their own funds in public lands. A few comments suggested that incentives and programs, such as Experimental Stewardship, be used to increase funds for improving public rangelands.

It would be entirely speculative to project whether an increase in fees would result in increased funds for on-the-ground range improvements. FLPMA provides that 50 percent of all grazing fees are authorized to be appropriated by Congress and that one-half of these receipts are available for use in the district or region from where they were derived and the remaining one-half as the Secretary concerned directs. All of these funds are to be used for on-the-ground range rehabilitation, protection, and improvements. Congress has not always appropriated the full amount of difference between the funds available from receipts and the $10 million

specified by FLPMA. Whether it will do so in the future is uncertain. Also, since Range Improvement (RI) funds cannot be used for range administration it is necessary for Congress to supplement the appropriation in order for RI funds to be expended in a planned manner. Additionally, the level of increased revenue will depend upon the amount of forage demanded at various fee levels. The elasticity of demand for Federal forage had not been empirically tested and demand studies of the private forage market is a free market and does not have many of the requirements placed on the public forage market (e.g., base property requirements). Also, an increase in fees is likely to reduce the level of permittee investments in public lands.

(5) *Subsidy and Stability of the Western Livestock Industry*—A large number of the comments that opposed the proposed rulemaking expressed the belief that the fee generated by the formula results in an unwarranted subsidy to a small segment of the western livestock industry. Many comments also expressed the belief that the fee largely subsidizes ranching operations owned by oil companies, out-of state investors, and large corporations. It was also suggested that since BLM and FS permittees represent only 7 percent of the livestock producers in the 16 Western States, it is not possible for the grazing fee to stabilize the industry. Finally, a few comments suggested that if the industry is to be subsidized, it should be subsidized directly and not through grazing fees.

Numerous comments supporting the proposed rulemaking described the financial difficulties of the livestock industry, the large number of bankruptices, and economic troubles of family ranch operations and suggested that a fee tied to economic conditions is justified. A few comments expressed the view that raising fees would only serve to negate the effect of other programs designed to assist agriculture.

In response to these comments and as expressed earlier, the Secretary of the Interior is statutorily mandated by the Taylor Grazing Act "to stabilize the livestock industry dependent upon the public range." The underlying policy of PRIA, which is still in effect, prescribes that the grazing fee formula reflect annual changes in the costs of production in order "to prevent economic disruption and harm to the western livestock industry."

According to the findings of a recent General Accounting Office investigation, the typical BLM permittee is an individual, operating a family business, who owns the ranch that serves as base property, and also resides on the base property or in a local community within 100 miles of the base property. Specifically, the report states that 84 percent are individuals or partnerships, 91 percent own the base property, and 95 percent reside within 100 miles of base property. Only 11 percent of BLM permittees were found to be corporations, and many of these are family corporations. Additionally, BLM's grazing records indicate that about 90 percent of it permittees are family size operations or smaller with less than 500 head of cattle. The level of dependency of permittee ranch operations on Federal forage varies considerably from State to State. In Arizona, permittees obtain an average of 60 percent of their annual feed supply from Federal rangelands. This is the highest average percentage of the 13 Western States. In Montana, the State with the lowest percentage, permittees depend on Federal forage for 11 percent of their supply. It should be noted that the percentage do not always reflect the extent of the dependency because use of public and private land is interdependent and Federal forage often provides feed during critical periods of the year. Regardless of what percent of the western livestock industry are permittees or the extent to which fees might held stabilize the industry or the percentage of forage that is provided to permittees by public lands, the Secretary of the Interior is still required to the extent possible to consider and carry out the statutory obligation of stabilizing the dependent livestock industry.

(6) *Equity to Other Public Land Users and Non Permittees*—A large number of comments opposing the proposed rulemaking raised the point that the Federal grazing fee is not equitable because only a part of the livestock industry has federal grazing permits. The belief is that the fee structure gives permittees an unfair competitive advantage over non-permittees. A few of the comments also expressed the belief that large numbers of permittees exclude the public from Federal lands, and therefore, permittees should not be given credit for sharing public lands.

Numerous comments in support of the proposed rulemaking expressed the view that the proposed fee formula is equitable because Federal permittees provide feed and shelter on their private lands to wildlife that the public enjoys on public lands, and permittees invest in and maintain water facilities, roads, and other improvements on public lands that benefit wildlife, wild horses, riparian areas, and recreational users. Also mentioned in several comments was the belief that livestock grazing reduces fire hazards. Many other comments noted that a number of public land users such as hunters and general recreationists do not pay anything to use public lands. Finally a few comments raised the equity issue that in order to use federal grazing privileges, it is necessary to invest in base property and because of the intermingled land pattern, Government restrictions are placed on permittees' private lands.

Beyond the earlier consideration given this issue, the Economic Research Service, U.S. Department of Agriculture, compared the "receipts less cash costs" positions of public land permittees and all western livestock industry producers and found them not to be statistically different. One of the explanations is that any advantage that might result from the level of the PRIA fee is offset by the higher cost of using public lands or the lower return from less productive public lands. The proposed grazing fee formula provides no specific adjustment to compensate permittees for the benefit they might provide to, or the added costs they might incur from, other public land users. At the same time it should be noted that some recreationists pay to use BLM land for special recreational events and camping but most do not pay for general recreation uses.

(7) *Cost Recovery*—A large number of comments opposing the proposed rulemaking suggested that the grazing fee recover the costs of the grazing program. Most felt this was necessary in view of the large Federal deficit and the need to reduce taxes.

A large number of comments supporting the rulemaking expressed the opposite view and suggested that the fee should not recover all the costs. The belief was expressed that range program costs include non-range related items such as salaries for other resource specialists, some basic range program costs that would be incurred even in the absence of livestock grazing, and that the range program generates multiple-use benefits.

In response to the comments concerning cost recovery, and in addition to what has been said earlier, it is helpful to understand that the costs of the BLM range program include three broad categories: Allotment Planning and Inventory, Grazing Management, and Range Improvement. Congress appropriates the funds for the first two categories and in the past has appropriated all the funds that are available from return of 50 percent of the grazing receipts for range improvements. However, in recent years, Congress has not made up the

difference between 50 percent of the fee receipts and the $10 million for range improvements specified in the Federal Land Policy and Management Act. Range program funds do not provide salaries for the resource specialists or their programs. It is true that there would still be some basic range resource tasks and, thus, costs in the absence of livestock grazing. In a special budget analysis, the BLM determined that it would require about 40 percent of the current planning, inventory, and range management budget to carry out certain basic resource protection and rangeland ecology tasks even in the absence of livestock grazing. Comments concerning multiple use benefits are also valid. Range improvements are capital investments that improve wildlife habitat, watersheds, and riparian areas, as well as livestock forage. Water developments particularly benefit wildlife. In view of this, it is questionable whether the grazing fee should be required to recover annually all of capital investment RI costs that produce non-livestock benefits as well as livestock benefits.

(8) *The Local Economy, Rural Social Values and Importance of Public Forage*—A number of comments opposing the proposed rulemaking expressed the belief that since Federal land forage makes such an insignificant contribution to the nation's forage supply, it is not important enough to be given special pricing consideration. A few comments expressed the view that livestock forage production should not be supported because it leads to the production of red meat which is an unhealthy food. A few comments expressed opposition to the proposed fee formula because it is believed to support a rural western lifestyle and that support of this lifestyle is unnecessary. Some comments stated that Federal grazing represents a very small portion of the local economy.

A large number of comments in support of the proposed rulemaking expressed a different position on the socioeconomic aspect of grazing fees. Many stated that Federal grazing is very important to many local rural economies and that an increase in grazing fees could have a significant impact on rural western communities that are already economically depressed. Many comments stated that a healthy ranching community contributes to the diversity of the local economy, lifestyle, and social values and that this is a public benefit.

Additionally, a large number of comments countered the view that production of Federal forage is not significant and cited statistics on a number of Western States where a large percentage of the beef cattle graze at least part of the year on Federal rangeland. A few comments also expressed the opinion that the contribution of forage and livestock production from Federal lands is important to providing food for the Nation.

In response to the comments it should be recognized that State and community interests are affected in two basic ways by changes in the grazing fee. First, State and county governments are affected financially through the level of payments that are made from grazing fee receipts. Under the Taylor Grazing Act, BLM makes payments to the State and county governments of 12.5 percent and 50 percent of the fees collected from section 3 and section 15 lands, respectively. The 1986 Grazing Fee Report shows, for example, that payments to States in 1982, when fees were $1.86 per AUM, varied from a high of $946,600 to New Mexico to a low of $200 to Kansas. Second, the State and local economy is affected by the amount of fees that are paid out and the percentage of money that is returned to the area. Money is returned through direct payment as well as through range improvement expenditures that come from the return of 50 percent of the grazing receipts. Since the Federal Government retains a percentage of all fee receipts, any increase in grazing fees would have an adverse economic impact on the State and local areas. The significance of the impact varies depending upon how dependent the State or local economy is on Federal grazing.

Special studies prepared for the 1986 Grazing Fee Report also show that there is a wide range in economic dependency of rural western communities on Federal forage. Areas that show higher dependency, for example, include Catron County, New Mexico; Owyhee County, Idaho; Sublette County, Wyoming; and Harney County, Oregon. Raising the grazing fee from the current level of $1.35 to $4 per AUM would reduce personal income in these four areas by about 7.1 percent, 6.0 percent, 3.5 percent and 3.5 percent, respectively. A study of the economic impact on Western States of increasing fees from $1.35 to $3 shows that personal income would be reduced by about $50.5 million and employment by about 1,590 jobs.

The importance of Federal forage from the production standpoint depends upon the context in which it is being considered. Federal forage provides 10 percent of the Nation's total rangeland forage and 2 percent of the total feed consumed by cattle in the United States. In many Western States, Federal grazing is a highly significant portion of total grazing. For example, 88 percent of the cattle produced in Idaho, 64 percent in Wyoming, and 63 percent in Arizona graze at least part of the year on public rangelands. The Secretary of the Interior cannot eliminate consideration of community social or economic impacts or the importance of production of Federal forage in the decision on the grazing fee formula simply because a few western states do not have a significant level of dependency on Federal forage.

Conclusion

For the foregoing reasons, the final rulemaking adopts the provisions of the proposed rulemaking without change. Implementation of the fee formula set out by the President of the United States in Executive Order 12548 and reestablished in this rulemaking will result in a grazing fee that is reasonable and equitable to the United States, the holders of the grazing privileges, State and local interests, and other interested parties. Also, administration of this fee system will be efficient and cost effective.

The public is hereby notified that the grazing fee for 1988 is $1.54 per animal unit month (AUM). This was arrived at by using the fee formula contained in this rulemaking which becomes effective today.

$$\text{CF (Calculated Fee)} = \$1.23 \times \frac{234\,(\text{FVI}) + 272\,(\text{BCPI}) - 381\,(\text{PPI})}{100} = \$1.54 \text{ per AUM}$$

This fee meets the requirements of § 4130.7–1(a)(2) of the regulations that any annual increase be not more than 25 percent of the previous year's fee. The fee in 1987 was $1.35 per AUM.

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Billy R. Templeton and Donald Waite, Division of Rangeland Resources, Bureau of Land Management, assisted by staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

Based upon an environmental assessment and a finding of no signficant impact, it is hereby determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this proposed rulemaking will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*). The provisions of this proposed rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), and Executive Order 12548 of February 1986, it is proposed to amend § 4130.7, Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Livestock, Penalties, Range management.

J. Steven Griles,

Assistant Secretary of the Interior.

January 27, 1988.

PART 4100—[AMENDED]

1. The authority citation for 43 CFR Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 *et seq.*, 1181d, and 98 Stat. 1837.

2. Section 4130.7–1 is amended by adding paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 4130.7–1 Payment of fees.

(a) * * *

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$CF = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

$1.23 = The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI = "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

BCPI = "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service divided by $22.04 per hundred weight and multiplied by 100; and

PPI = "Prices Paid Index" means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than $1.35 per animal unit month.

* * * * *

[FR Doc. 88–2088 Filed 2–1–88; 8:45 am]

BILLING CODE 4310–84–M

Reader Aids

Federal Register

Vol. 53, No. 21

Tuesday, February 2, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data Base Services	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

2719-2816.....1
2817-2994.....2

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5763.....2719
5764.....2814
Executive Orders:
12301 (Revoked by 12625).....2812
12625.....2812
Administrative Orders:
Memorandums:
January 28, 1988.....2816

7 CFR

272.....2817
932.....2823
Proposed Rules:
250.....2846
907.....2849
908.....2849
917.....2851
925.....2851
1421.....2759
1823.....2852
1930.....2852
1933.....2852
1942.....2852
1944.....2852
1948.....2852
1980.....2852

8 CFR

204.....2824

9 CFR

92.....2853
Proposed Rules:
51.....2759

10 CFR

Proposed Rules:
31.....2853

12 CFR

614.....2825

14 CFR

21.....2721-2733
23.....2721-2733
39.....2735-2737
1206.....2738
Proposed Rules:
21.....2761
23.....2761
39.....2763-2765

16 CFR

Proposed Rules:
453.....2767

17 CFR

Proposed Rules:
249.....2854

19 CFR

154.....2826
270.....2826
271.....2826
273.....2826
375.....2826
381.....2826
1310.....2826
Proposed Rules:
101.....2767

21 CFR

1.....2827
Proposed Rules:
12.....2767

23 CFR

645.....2829

27 CFR

9.....2834

30 CFR

934.....2837

33 CFR

203.....2841
Proposed Rules:
117.....2769

34 CFR

Proposed Rules:
669.....2918

36 CFR

222.....2978

38 CFR

Proposed Rules:
21.....2855

40 CFR

60.....2914
721.....2842, 2845
Proposed Rules:
721.....2857

41 CFR

101-1.....2738

42 CFR

59.....2922

43 CFR

4100.....2984

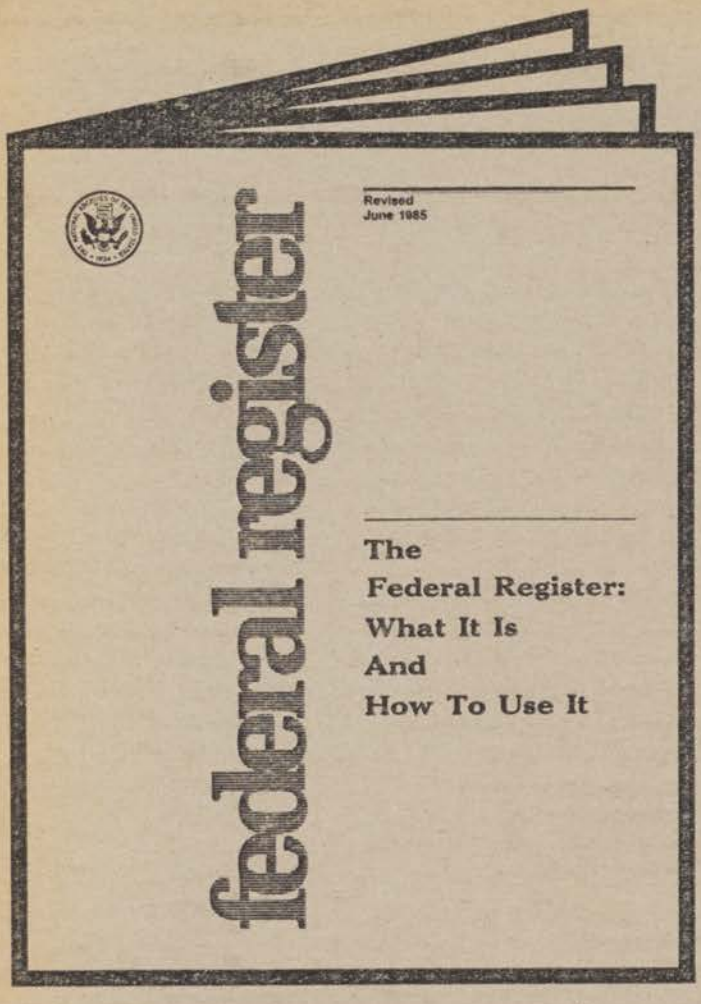
44 CFR

5.....2739
64.....2741
67.....2743

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $4.50

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐☐ – ☐

Order No. _____

Master Card and VISA accepted.

VISA MasterCard

Credit Card Orders Only

Total charges $ _____

Fill in the boxes below.

Customer's Telephone Nos.

Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month / Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday - Friday (except holidays)

Please send me _____ copies of **The Federal Register - What It Is and How To Use It,** at $4.50 per copy, Stock No. 022-003-01116-1

Please Print or Type

Name - First, Last

Company name or additional address line

Street address

City State ZIP Code

(or Country)

(Rev. 11–85)