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Friday
February 19, 1988

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

WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: March 24; at 9:30 a.m.
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Presidential Documents

Title 3—

The President

Proclamation 5773 of February 17, 1988

National Visiting Nurse Associations Week, 1988

By the President of the United States of America

A Proclamation

For the last century, visiting nurse associations have sent skilled and dedicated nurses to care for homebound patients throughout our country. Today, approximately 20,000 nurses in nearly 500 associations care each year for nearly a million Americans, adults and children alike. This tradition of caring service has provided indispensable help to countless people and has truly earned visiting nurses the gratitude and the esteem of their countrymen.

Visiting nurse associations have won great professional respect as well for their adherence to the highest standards in offering personalized home health care. Visiting nurses often work under adverse conditions and at personal sacrifice, working long hours and traveling great distances to minister to the sick at home and to teach people sound health practices.

The contributions of visiting nurses also help community health services meet today's demand for nursing. Patients released from acute care institutions, the chronically ill, and the physically and mentally handicapped all receive the many benefits of visiting nurses' care and services.

Many volunteers assist the work of visiting nurse associations, serving on boards of directors and offering every kind of support, from visiting patients to staffing offices to delivering meals on wheels.

The activities of visiting nurses and those who support their fine work deserve our praise, thanks, and encouragement, now and always.

The Congress, by Public Law 100–246, has designated the period of February 21 through February 27, 1988, as "National Visiting Nurse Associations Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period of February 21 through February 27, 1988, as National Visiting Nurse Associations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities in support of America's visiting nurses and their reverence and respect for the worth and the dignity of the patients for whom they care.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of February, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-3740
Filed 2-18-88; 11:22 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 673]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 673 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 19 through February 25, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 673 (§ 907.973) is effective for the period February 19 through February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, 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 the use of volume regulations on small entities as well as larger ones.

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 California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. 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 handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987–88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on February 16, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 10 to 1 vote, recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is improving.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

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

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.973 is added to read as follows: [*This section will not appear in the Code of Federal Regulations.*]

§ 907.973 Navel Orange Regulation 673.

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 19, 1988, through February 25, 1988, are established as follows:

(a) District 1: 1,530,000 cartons;
(b) District 2: 270,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: February 17, 1988.

Robert C. Keeney,

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

[FR Doc. 88–3699 Filed 2–18–88; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 601]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 601 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 285,000 cartons during the period February 21 through February 27, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 601 (§ 910.901) is effective for the period February 21 through February 27, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: 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 has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

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

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on February 16, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is improving.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.901 is added to read as follows:

[*This section will not appear in the Code of Federal Regulations.*]

§ 910.901 Lemon Regulation 601.

The quantity of lemons grown in California and Arizona which may be handled during the period February 21, 1988, through February 27, 1988, is established at 285,000 cartons.

Dated: February 17, 1988.

Robert C. Keeney,

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

[FR Doc. 88–3696 Filed 2–18–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 979

Melons Grown in South Texas; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 979 for the 1987–88 fiscal period for melons grown in South Texas. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: October 1, 1987 through September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 979 (7 CFR Part 979) regulating the handling of melons grown in South Texas. 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 final rule has been reviewed under Executive Order 12291 and Department 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 action on small entities.

While this final rule 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 published in the **Federal Register** (53 FR 413, January 7, 1988). That document contained a proposal to add § 979.210 to establish expenses and assessments for the South Texas Melon Committee. That rule provided that interested persons could file comments through January 19, 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.

This budget and assessment rate should be expedited because the committee needs to have sufficent 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 979

Marketing agreements and orders, Melons (Texas).

For the reasons set forth in the preamble, § 979.210 is added to 7 CFR Part 979 (the following section prescribes annual expenses and assessment rate and will not be published in the Code of Federal Regulations):

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

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

2. A new § 979.210 is added to read as follows:

§ 979.210 Expenses and assessment rate.

Expenses of $251,811.06 by the South Texas Melon Committee are authorized and an assessment rate of $0.05 per carton of melons is established for the fiscal period ending September 30, 1988. Unexpended funds may be carried over as a reserve.

Dated: February 16, 1988.

Robert C. Keeney,

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

[FR Doc. 88–2604 Filed 2–18–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 979

Melons Grown in South Texas; Amendment No. 7 to Continuing Handling Regulation To Remove Exemption for Black Surface Discoloration

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule eliminates the exemption for black surface discoloration from the grade requirements for melons produced in South Texas. The South Texas Melon Committee believes that this action will improve melons and make them competitive with melons from other producing areas. It is intended to provide a more appealing melon for consumers and thus improve returns to growers.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Friut and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hererinafter referreed to as the Act.

Notice was given in the December 28, 1987, **Federal Register** (52 FR 48827) providing interested persons 30 days in which to file written comments. None were filed.

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 rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such action in order that small businesses will not be unduly or disportionately 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 35 handlers of melons subject to regulation under the South Texas Melon Marketing Order and approximately 72 melon producers in the produciton area. 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 handlers and producers of South Texas melons may be classified as small entities.

This rule eliminates the exemption for black surface discoloration allowed under the current regulation. Grade requirements specify that cantaloups must meet U.S. Commercial grade and that at least half of the honeydew melons in any lot must meet U.S. Commercial grade and, in addition, contain at least eight percent sugar. Currently, black surface discoloration is not scored as a grade defect, although it is included as such in U.S. Standards for cantaloups and honeydew melons.

At the inception of the order in 1979, it was the committee's belief that emphasis should be placed on the elimination of bulk shipments and the container regulations necessary to accomplish this. Grade rerquirements from the beginning have tended to be less stringent than those of other producing areas. The industry consensus at that time was that the cost of sorting, grading, and packing would tend to remove the poorer quality melons from marketing channels, and that tighter quality standards were therefore unnecessary. Because of this, the committee believed that scoring black surface discoloration as a grade defect would cause an unnecessary hardship among handlers and recommended an exemption for this defect.

Black surface discoloration is much more prevalent on production area melons during wet growing seasons, although it can be found following a heavy rain in any season. The incidence of this defect during dry or normal years may not be high enough to attract much unfavorable attention in terminal markets, but is often present in some degree. However, during unusually wet seasons, it is not uncommon to find a significant number of melons in each lot affected with black surface discoloration to a greater or lesser extent.

The spring marketing season for South Texas melons is short, usually lasting only from May through June. During the latter part of the season, shipments from South Texas compete in the marketplace with melons produced in California and Arizona, both of which have gained reputations for shipping very high quality melons. Faced with increasing competition of high quality supplies from other producing areas, the committee has decided that upgrading the quality of South Texas melons is the most practical method of meeting the competition. Since black surface discoloration is unsigthly and significantly reduces the sales appeal of the melon, removing the exemption for it

and requiring it to be scored as a defect should noticeably improve the quality of melons shipped from the area. While this rule removes the exemption for black surface discoloration, a tolerance is provided for this type of damage. For cantaloups, there currently is a 12 percent tolerance for condition defects, including an 8 percent tolerance for serious damage. In the case of honeydew melons, the total tolerance for damage is 50 percent, which includes a 20 percent tolerance for serious damage. Given the provision of these tolerances and the fact that certain procedures can be followed by handlers in preparing the melons for market to reduce the presence of surface discoloration, it is not believed that this action will substantially affect the volume of Texas melons that could be shipped to the fresh market. In addition, any costs involved in complying with the action will be offset by the improved returns expected to be received for the higher quality melons.

Exceptions are provided to certain of these handling requirements to recognize special situations in which such requirements are inappropriate or unreasonable. Up to 120 pounds of melons may be handled each day except for resale, without regard to the requirements of this regulation. Also, shipments of melons for charity or relief are exempt, since no useful purpose would be served by regulating such shipments. Melons for canning or freezing are exempt for regulation.

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

After consideration of the information and recommendation submitted by the committee and other available information, it is found that revising § 979.304 will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

For the reasons set forth in the preamble, 7 CFR Part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

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

§ 979.304 [Amended]

2. Section 979.304 is hereby amended by removing paragraph (a)(3) and redesignating paragraph (a)(4) as (a)(3).

Dated: February 16, 1988.

Robert C. Keeney,

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

[FR Doc. 88–3605 Filed 2–18–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Changes to the Procedural and Operational Details of the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes several changes to the procedural and operational details of the Raisin Diversion Program (RDP). The changes will: (1) Limit the authorized methods of diversion to two methods (spur pruning and vine removal); (2) allow the Raisin Administrative Committee (Committee) to announce at the beginning of the annual implementation of the RDP, the eligible method(s) of diversion for that year's program; (3) provide that the Committee may deny a producer's participation in the next RDP if such producer fails to comply with the June 1 date for diversion; (4) require producers to submit two forms of documentation to verify exact acreage and vineyard locations; (5) permit producers who remove their vines after August 15 to be eligible for the next year's RDP, if a program is implemented; (6) allow the Committee to announce an increase in the diversion tonnage available to eligible producers by January 15; (7) change the redemption date for RDP certificates from February 15 to January 15; and (8) provide for RDP certificates to be issued when preliminary percentages are announced. These changes are intended to improve the program's operation.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes 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 No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget under OMB No. 0581–0156.

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 action 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 23 handlers of raisins who are subject to regulation under the marketing order for California raisins and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual 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 great majority of handlers and producers of California raisins may be classified as small entities.

The RDP, which was implemented for the first time in 1985, gives producers the means of voluntarily reducing the quantity of grapes grown for drying while receiving the equivalent quantity of raisins represented on diversion certificates to sell to handlers as though the raisins were produced in the current crop year. Producers wishing to participate in the RDP divert their grape crop from production. In return, the producer receives raisins from the previous year's reserve pool, which is represented on a diversion certificate. The producer is paid by a handler the established field price minus the harvest costs determined for that year. The

handler redeems the certificate with the Committee and receives the quantity of reserve pool raisins represented by the certificate. In 1985, 60,000 tons of raisins were diverted and in 1986 more than 100,000 tons were diverted from production. This year, the Committee has designated 30,000 tons available for diversion because raisin supplies are expected to again exceed market demand and normal carryover needs by that amount.

The changes in this rule will apply to handlers and all participants in the RDP in years when such a program is implemented. However, these changes will not affect handlers significantly because they receive reserve pool raisins to redeem RDP certificates in lieu of new crop raisins produced and delivered by a producer.

Producers are not required to participate in the program. However, if a producer decides to participate, the producer is required to comply with rules and regulations that are established to administer the program.

The first change will revise § 989.156(h)(1) to limit the authorized methods of diversion to spur pruning (which limits the amount of grape bunches a vine will produce) and vine removal. Current provisions provide for these methods and any other means which preclude grapes from being produced and harvested. For example, some producers have abandoned their acreage as a diversion method; however, this can lead to insect and disease damage to other producers' production units. The Committee's experience has shown that spur pruning and vine removal are the most effective means of diverting grapes from production. This change will also require producers who have spur pruned, but who may still have a significant quantity of bunches (more than four) on their vines, to remove the bunches within two weeks after inspection and notification by Committee representatives. This is necessary because, occasionally, vines may produce significant numbers of grape bunches even if they have been properly spur pruned. Removing excess bunches will assure the Committee that grapes on a RDP production unit will not be harvested for commercial use.

The second change will allow the Committee to limit any season's diversion program to production units on which producers agree to remove vines. The Committee requested this authority to further maximize the benefits of the RDP. When the Committee determines that removing vines will be the most effective means of accomplishing the goals of the program for a particular crop year, such a limitation will be announced at the beginning of the annual implementation of the RDP.

The third change will provide that the Committee may deny a producer's participation in the next RDP year if such producer failed to comply with the June 1 date for diverison. The proposal would have provided that the Committee could deny a producer's participation in the RDP for five years. The Committee believes this action will discourage approved applicants from abusing the June 1 deadline date. The Committee has experienced such difficulties with producers in the past. Current RDP rules and regulations provide that a lottery must be conducted when more producer applicants have applied for the program than there is tonnage available for diversion. However, when producers who are selected in the lottery subsequently do not comply with the June 1 date for diversion (apply for vine removal then change to spur pruning or do not take any measures to divert), they thereby deny other producers the opportunity to participate in the program. Comments concerning the proposed change were specifically requested in the proposed rule published in the November 12, 1987, issue of the **Federal Register** (52 FR 43340). No comments were received as to whether five years is appropriate. After careful review, it has been determined that a five-year period would be overly restrictive. In lieu thereof, it is determined that a one-year period would be appropriate, particularly in view of the other actions that are available as provided for by regulation. Currently, producers who fail to divert are not issued a diversion certificate, may be subject to liquidated damages and interest, may be subject to an injunctive action under the Act, and may be denied the opportunity to participate in future diversion programs. The proposed rule would have provided that a producer could be denied participation in the diversion program for a period of five years. This final rule specifies that the Committee may deny a producer's participation in the next RDP if such producer failed to comply with the June 1 date for diversion. In addition, conforming and clarifying changes are made to § 989.156(m). These include specific references to liquidated damages and interest and denial of the opportunity to participate in the next RDP as the basis for a producer's request for a hearing before an appeals subcommittee or review by the Committee, if requested. Such appeals could be made after the Committee had determined that a producer has not complied with the regulations. A reference to a review by the Secretary is also specified.

The fourth change will require producers to submit two forms of documentation to verify exact acreage and vineyard locations. The Committee has found that producers generally refer to production units on their RDP applications in rounded-off figures. In some cases, actual acreage figures are less due to a house, yard, or irrigation canals located on the production unit. In order to assist the Committee in the verification process the producer will be required to submit two forms of documentation. The Committee has provided a list of four documents from which producers may choose two to submit with their applications (Plot Map from County Hall of Records, irrigation tax bill, county property tax bill, or any document containing the Appraisal Parcel Number (APN)). The APN identifies a parcel of property that is registered with the applicable County Hall of Records. All of these documents are readily available to producers.

The fifth change provides that producers who remove their vines on a diverted production unit after August 15 of a particular year will be eligible to participate in a raisin diversion program for that crop year (crop years begin on August 1), if a program is implemented. In instances where an approved producer has spur pruned a production unit by the June diversion date for that season's RDP, the producer may then decide to remove the vines on the diverted production unit after August 15 of that year in order to qualify for the next year's RDP, if one is implemented. Producers whose applications are approved for diversion by spur pruning must still have vines on their production unit at the time grapes are normally harvested. It is not intended for producers to spur prune the vines on an approved production unit and to remove the vines during the same crop year. However, they may spur prune the vines on an approved production unit for one year's RDP and remove the vines for the next year's RDP. Therefore, the Committee recommended that producers who wish to pull vines on an already diverted production unit be permitted to do so after August 15.

Currently, rules and regulations provide that the Committee review specific data and announce the eligible diversion tonnage for that year's RDP on or before November 30. At that time, the Committee has available only three months of the current year's shipment reports. Since only a limited amount of information is available, the Committee generally underestimates the crop size.

The sixth change will provide the opportunity to increase diversion tonnage up to January 15. By January 15, the Committee will have available five months of shipment reports and a more accurate estimate of production for the season. The opportunity to increase the diversion tonnage will provide for a more effective diversion program and could increase the opportunity for more eligible producers to participate.

The seventh change will revise the redemption date for RDP certificates from February 15 to January 15. Current rules and regulations require handlers to redeem diversion certificates by February 15. When redeemed, the handler receives a quantity of reserve pool raisins equal to the amount of diverted raisins represented on the diversion certificate. Prompt redemption of diversion certificates will allow equity holders in the reserve pool to receive payment as early as possible for those reserve raisins utilized to redeem diversion certificates. This will also tend to decrease storage and insurance costs related to reserve pool raisins, further increasing returns to producers.

The eighth change provides for RDP certificates to be issued at the same time as the preliminary percentages are announced. Currently, RDP rules and regulations provide for the issuance of RDP certificates on or before October 5. This date corresponds with the time preliminary percentages are to be computed and announced. However, the announcement of preliminary percentages may be delayed up to five days if the crop is late. Free percentage raisins can be shipped immediately to any market, while reserve raisins must be held by handlers in a pool for the account of the Committee. The Committee has been concerned that if RDP certificates were to be issued prior to the announcement of preliminary percentages, handlers could use all of the diversion tonnage released to them. Diversion certificates are treated as if they are new crop raisins. Therefore, handlers will have a reserve pool obligation, if reserve percentages are established, on diversion raisins received from the redemption of a certificate. This action will help ensure that all current crop raisins meet any reserve pool obligations.

Notice of this action was published in the **Federal Register** (52 FR 43340) on November 12, 1987. Written comments were invited from interested persons until November 27, 1987. No comments were received.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that the amendment of § 989.156, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the RDP has already been implemented for the 1987–88 season, and these changes need to be in effect for the current season.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

For the reasons set forth in the preamble, 7 CFR Part 989 is revised as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.156 is amended by redesignating paragraph (a) to (a)(1) and revising it; adding a new paragraph (a)(2); revising the first sentence in paragraph (b); revising paragraph (h)(1); adding a new sentence to the end of paragraph (h)(2); revising paragraph (h)(3); revising the first sentence in paragraph (i); revising the last sentence in paragraph (k); and revising paragraph (m) to read as follows:

Subpart—Administrative Rules and Regulations

§ 989.156 Raisin diversion program.

(a)(1) *Quantity to be diverted.* On or before November 30 of each crop year, the Committee shall announce the quantity of raisins eligible for a raisin diversion program. On or before January 15 of each crop year, the Committee may announce an increase in the tonnage eligible for a raisin diversion program. The quantity eligible for diversion may be announced for any of the following varietal types of raisins: Natural (sun-dried) Seedless, Muscat (including other raisins with seeds), Sultana, Zante Currant, and Monukka raisins. At the same time the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. The factors to be reviewed by the Committee in determining allowable harvest costs shall include but not be limited to: Costs for picking, turning, rolling, boxing, paper trays, vineyard terracing, hauling to the handler, and crop insurance.

(2) The Committee may limit any season's diversion program to production units on which producers agree to remove the vines. Such restriction shall be announced at the time the tonnage available for that season's diversion program is announced.

(b) *Application for diversion certificates.* Any producer desiring to participate in a raisin diversion program shall file with the Committee, by certified mail, prior to December 20 of the crop year, an application on Form RAC–1000, "Application for Raisin Diversion Certificate" together with a copy of any two of the following four documents: Plot Map from County Hall of Records; irrigation tax bill; county property tax bill; or any other document containing an Appraisal Parcel Number. * * *

* * * * *

(h) *Compliance—(1) Methods of diversion.* An approved applicant shall be required to remove the vines or spur prune the vines in order to leave no canes, to preclude grapes from being produced and harvested on the production unit involved in the program: *Provided:* That, vine removal may be the only acceptable means of diversion in some seasons as determined by the Committee. Bunches which occur on vines which have been spur pruned shall be removed and destroyed before maturity. If the Committee representatives or agents determine that there is an average of more than four bunches per vine remaining on a properly spur-pruned production unit, the producer shall be notified in writing and given two weeks to remove such bunches. Grafting vines of one varietal type to another varietal type does not constitute removal of the vines under the program.

(2) * * * Producers who remove the vines on a production unit after August 15 may qualify for a diversion program for that crop year if a diversion program is announced and if diversion on that unit and vine removal after August 15 can be documented and verified.

(3) *Failure to divert.* Any raisin producer who does not take the necessary measures to remove the grapes on an approved production unit by June 1, or any raisin producer who has indicated the removal of vines or the intent to remove the vines and who does not remove such vines on an approved production unit or portion thereof by

June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the Act, and may be denied the opportunity to participate in the next diversion program, when implemented. For spur-pruned vines, this date may be extended two weeks from the date of the inspection of a producer's vineyard if more than four bunches on spur pruned vines are present at time of inspection.

(i) *Issuance of certificates.* When preliminary percentages are announced, the Committee shall issue diversion certificates to those approved applicants who have removed grapes in accordance with this section. * * *

* * * * *

(k) * * * Diversion certificates will only be valid and honored by the Committee if presented to it for redemption on or before January 15 of the crop year for which they were issued.

* * * * *

(m) *Appeals.* If a determination is made by the Committee that a producer has not complied with these regulations and is not entitled to a diversion certificate, that a producer is subject to liquidated damages and interest or that a producer is denied the opportunity to participate in the next RDP, such producer may request a hearing before an appeals subcommittee established by the Committee. If a producer disagrees with the subcommittee's decision, the producer may request the Committee to review the subcommittee's decision. If the producer disagrees with the Committee's decision upon review, the producer may, through the Committee, request the Secretary's review of the decision.

* * * * *

Dated: February 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-3606 Filed 2-18-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 171

[T.D. 88-7]

Customs Regulations Amendments Relating to Liens

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: The Tariff Act of 1930 authorizes Customs officers to refuse to permit delivery of certain merchandise when notified in writing of the existence of a lien for freight, charges, or contribution in general average until proof has been produced that the lien has been satisfied or discharged. The Trade and Tariff Act of 1984 amended the Tariff Act of 1930 to allow licensed customs brokers to file a lien for freight, charges, or contribution in general average to the same extent that a carrier may file such a lien. This document amends the Customs Regulations to implement the statutory provisions.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Entry, Licensing and Restricted Merchandise Branch (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 564, Tariff Act of 1930, as amended (19 U.S.C. 1564), provides that whenever a Customs officer is notified in writing of the existence of a lien for freight, charges or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehouse or taken possession of by him, he will refuse to permit delivery thereof from the public store or bonded warehouse until proof is produced that the lien has been satisfied or discharged.

For purposes of section 564, § 141.112(a)(1), Customs Regulations (19 CFR 141.112(a)(1)), defines "freight" to mean the carrier's charge for the transportation of the goods from the place of shipment in the foreign country to the final destination in the U.S. "Charges" are defined in § 141.112(a)(2), Customs Regulations (19 CFR 141.112(a)(2)), to mean the charges due to or assumed by the claimant of the lien which are incident to the shipment and forwarding of the goods to the destination in the U.S., but does not include the purchase price, whether advanced or to be collected, nor other claims not connected with the transportation of the goods. Section 141.112(a)(3), Customs Regulations (19 CFR 141.112(a)(3)), defines "general average" as the liability to contribution of the owners of a cargo which arises when a sacrifice of a part of the cargo has been made for the preservation of the residue or when money is expended to preserve the whole. A lien for contribution in general average only arises from actions impelled by necessity.

A customs broker is a person licensed by Customs under the provisions of section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641) and Part 111, Customs Regulations (19 CFR Part 111), to transact Customs business on behalf of importers and other persons. Section 212(b)(7), Trade and Tariff Act of 1984, Pub. L. 98-573, amended section 564 by adding a sentence to that provision which states that the section will apply to licensed brokers who otherwise possess a lien for the purposes stated in section 564 upon merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any state. By virtue of this provision Congress has authorized brokers possessing a lien for freight, charges, or contribution in general average upon merchandise held by Customs to file that lien with the proper Customs officer so that the merchandise will not be released from Customs custody until the lien is satisfied or discharged.

Prior to the passage of the Trade and Tariff Act, § 564 had been limited to liens filed by carriers or their agents. By amending § 564, Congress specifically provided that brokers may file liens with Customs for the purposes stated in the law.

On February 25, 1986, Customs published a notice in the **Federal Register** (51 FR 6555), soliciting comments regarding a proposal to amend Parts 141 and 171, Customs Regulations (19 CFR Parts 141 and 171), to implement the statutory provisions.

Because the Tariff Act of 1930 was amended to place brokers in the same position as carriers with respect to filing liens, Customs proposed to define "claimant" in a new § 141.112(a)(4), Customs Regulations (19 CFR 114.112(a)(4)), as a carrier, customs broker or the successors or assigns of either. In addition, Customs proposed to amend § 141.112(a)(1), Customs Regulations (19 CFR 114.112(a)(1)), which defines "freight," by removing the reference to the "carrier's charge" and substituting, in its place, the word "charges" without any reference to whose charges they might be. Customs further proposed to amend § 141.112(b), Customs Regulations (19 CFR 114.112(b)), relating to notice of lien, and § 114.112(d), Customs Regulations (19 CFR 114.112(d)), relating to merchandise entered for immediate transportation, to remove the reference to the carrier signing the notice of lien and filing the notice of lien and substitute a reference to the claimant.

Finally, Customs proposed to correct certain clerical errors in § 171.44, Customs Regulations (19 CFR 171.44), relating to satisfaction of liens on forfeited property authorized for official

use. Section 171.44 refers to the "satisfaction of liens for freight charges and contributions in general average." Customs proposed to place a comma between the words "freight" and "charges" to reflect the statutory language and eliminate any confusion or limitation on the type of charges covered. Also, it was proposed to remove the "s' from the word "contributions."

Analysis of Comments

All of the five comments received in response to the notice were from brokers or brokers' associations.

Two commenters indicated that claims for charges against merchandise which had previously been released from Customs custody should be extended to merchandise owned by the same importer and which subsequently came into Customs possession. In other words, these commenters suggested that 19 U.S.C. 1564 is to be construed as encompassing general rather than specific liens.

Customs has not previously interpreted the statute to encompass general liens. In this regard, Headquarters Ruling Letter 218199 R, dated December 23, 1985, specifically indicates that 19 U.S.C. 1564 does not encompass general liens. Moreover, nothing in either the wording of the statute (either prior or subsequent to its most recent amendment), or in the scant legislative history regarding the amendment (Hearings Before the Committee on Ways and Means on Miscellaneous Tariff and Trade Bills, 98th Cong. 662 (November 15, 1983 and June 21, 1984)) indicates a Congressional intention that the statute encompass general liens. In this regard, General liens are not normally viewed favorably under the laws, and are usually held to exist only where specifically provided for by applicable language. Accordingly, it is our opinion that the statute in question encompasses only specific liens.

Three commenters requested that we interpret the statute in question to encompass liens for services, such as brokerage fees and fees charged for the use of a broker's bond. However, 19 U.S.C. 1564 is limited to liens for "freight, charges, or contribution in general average," all of which have previously been defined in 19 CFR 141.112. The types of fees sought to be included under the statute (*e.g.*, brokerage and bond charges) are clearly not either "freight" or "contribution in general average" as defined in 19 CFR 141.112(a)(1) and (3). Therefore, if such fees are encompassed within the statute, they fall under the category of "charges" which are defined in 19 CFR 141.112(a)(2) as:

> [T]he charges due to or assumed by the claimant of the lien which are incident to the shipment and forwarding of the goods to the destination in the U.S., but does not include the purchase price, whether advanced or to be collected, nor other claims not connected with the transportation of the goods.

In our opinion, the interpretation suggested by the commenters would expand the definition of "charges" to include almost all monies expended for services incurred in connection with the importation of merchandise. In fact, the suggested interpretation would be redundant in that the definition would encompass those items already included under 19 CFR 141.112(a) (1) and (3). Rather, we interpret the definition of "charges" to extend only to fees for services which are not freight, but which are nevertheless incident to the *transportation* of the merchandise (*e.g.*, packing charges). Brokerage fees and charges for the use of a broker's bond are clearly not incident to the transportation of merchandise, even though they may accrue in connection with the importation of merchandise. See also, the description of "charges" in 19 CFR 141.86(a)(8).

Finally, we note that had Congress wished to include brokerage charges for the use of a bond in 19 U.S.C. 1564, it surely would have used other language. The language which was added references only "the purposes stated above," and does not expand the scope of the charges for which liens are to be accepted. This position is supported by the previously cited legislative history of the amendment, which indicates that the amendment was meant only "to reverse an administrative ruling which has unjustly prohibited customs brokers from filing notice of lien * * * if the broker has paid freight or other charges on such merchandise." For the reason cited above, we are of the opinion that fees for brokerage or the use of broker's bonds are not currently encompassed within 19 U.S.C. 1564.

One commenter suggested that goods in transit, and which have not been physically released by Customs to a carrier, but which are still technically in Customs custody should be subject to a lienor's claim under 19 U.S.C. 1564. Section 141.112(e)(1), Customs Regulations (19 CFR 141.112(e)(1)), clearly indicates that notices of liens may be filed before the merchandise is released from Customs custody. Also, § 141.112(d), Customs Regulations (19 CFR 141.112(d)), indicates that notice of liens may be filed when merchandise is moving on immediate transportation entries.

After further review of the proposal, and analysis of the comments received in response to the proposal, Customs has determined that the amendments should be adopted as proposed.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirement of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Parts 141 and 171

Brokers, Customs duties and inspection, Imports, Liens.

Amendments to the Regulations

Parts 141 and 171, Customs Regulations (19 CFR Parts 141, 171), are amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.112(a)(1) is amended by removing the words "carrier's charge" and inserting, in their place, the word "charges".

3. Section 141.112(a) is further amended by adding a new paragraph (4) to read as follows:

§ 141.112 Liens for freight, charges, or contribution in general average.

(a) * * *

(4) *Claimant.* "Claimant" means a carrier, customs broker or the successors or assigns of either.

4. Sections 141.112 (b) and (d) are amended by removing the word "carrier" and, in each instance, inserting, in its place, the word "claimant".

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The general authority citation for Part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

§ 171.44 [Amended]

2. Section 171. 44 is amended by placing a comma after the word "freight" in the second sentence of the paragraph and by removing the letter "s" from the word "contributions".

Michael H. Lane,

Acting Commissioner of Customs.

Approved: February 5, 1987.

Francis A. Keating II,

Assistant Secretary of the Treasury.

[FR Doc. 88-3517 Filed 2-18-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1303, 1305, 1306 and 1311

Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances; Quotas; Order Forms; Prescriptions; Registration of Importers and Exporters of Controlled Substances; Nomenclature and Other Changes

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This action updates Parts 1301, 1303, 1305, 1306 and 1311 of Tile 21 of the Code of Federal Regulations. It contains no substantive changes in any regulation. Therefore, no comments have been solicited and the action is being issued as a final rule.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred A. Russell, Chief, Regulatory Support Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone (202) 633-1570.

SUPPLEMENTARY INFORMATION: This action changes certain form and other designations, corrects inaccurate cross-references, deletes references to obsolete forms, and changes the description of the manner in which to obtain order forms in order to accurately reflect agency procedures.

It has been determined that this is an internal management matter not requiring consultation with the Office of Management and Budget (OMB). The Deputy Assistant Administrator of DEA hereby certifies that these matters will have no significant negative impact upon small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) and delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that 21 CFR Parts 1301, 1303, 1305, 1306 and 1311 be amended as follows:

List of Subjects in 21 CFR Parts 1301, 1303, 1305, 1306 and 1311

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures, Quotas, Exports, Imports.

1. The authority citations for Parts 1301, 1303, 1305, 1306 and 1311 continue to read as follows:

List of Subjects

21 CFR Part 1301

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

21 CFR Part 1303

Authority: 21 U.S.C. 821, 826, 871(b).

21 CFR Part 1305

Authority: 21 U.S.C. 821, 828, 871(b).

21 CFR Part 1306

Authority: 21 U.S.C. 821, 829, 871(b).

21 CFR Part 1311

Authority: 21 U.S.C. 952, 956, 957, 958.

§§ 1301.22, 1301.32, 1301.44, 1301.61, 1311.32, 1311.43, and 1311.61 [Amended]

2. Paragraphs (a)(4), (b)(5) and (b)(6) of § 1301.22 are amended by removing the parenthetical remark "(other than research described in paragraph (a)(6) of this section)".

3. Sections 1301.32 (a) (1) through (6) and (a)(8), 1301.44 (a) and (b), 1301.61, 1311.32 (a), (b), and (c), 1311.43 (a) and (b) are amended by removing the parenthetical remark "(or BND)".

4. Paragraphs (b)(1), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8) of § 1301.32 are amended by removing the words "DEA (or BND) Form 227" and inserting in their place the words "DEA Form 225a".

5. Paragraphs (b)(2) and (b)(3) of § 1301.32 are amended by removing the words "DEA (or BND) Form 226" and inserting in their place the words "DEA Form 224a".

6. 21 CFR 1301.32 (b)(9) is amended by removing the words "DEA Form 364" and inserting in their place the words "DEA Form 363a".

7. 21 CFR 1301.32(c) is amended by removing the words "DEA (or BND) Forms 226 and 227" and inserting in their place the words "DEA Forms 224a, 225a and 363a".

§§ 1301.11, 1301.12, 1301.13, 1311.11 and 1311.12 [Amended]

8. 21 CFR 1301.11 (a), (b), (c), (d), (e), and (f), 1301.12, 1301.13 (a), (b), and (c), and 1311.11 (a) and (b) are amended by removing the words "fee" and "fees" and inserting in their place the words "application fee", and "application fees" respectively.

9. 21 CFR 1311.12 is revised to read as follows:

§ 1311.12 Time and method of payment; refund.

The time and method of payment of application fees and refunds of application fees shall be as provided in § 1301.12 of this chapter.

§§ 1303.12, 1305.03, 1305.05 and 1305.06 [Amended]

10. 21 CFR 1303.12(f) is amended by removing the words "DEA (or BND) Form 222(c)" and inserting in their place the words "DEA Form 222" in each place at which they appear.

11. 21 CFR 1305.03 introductory text and 1305.06(a) are amended by removing the words "DEA (or BND) Form 222c" and inserting in their place the words "DEA Form 222".

12. 21 CFR 1305.05(a) is revised to read as follows:

§ 1305.05 Procedure for obtaining order forms.

(a) Order Forms are issued in mailing envelopes containing either seven or fourteen forms, each form containing an original duplicate and triplicate copy (respectively, Copy 1, Copy 2, and Copy 3). A limit, which is based on the business activity of the registrant, will be imposed on the number of order forms which will be furnished on any requisition unless additional forms are specifically requested and a reasonable need for such additional forms is shown.

13. 21 CFR 1305.05(b) is amended by removing the phrase "on DEA (or BND) Form 222d, which may be obtained from the Registration Branch" and inserting in its place the phrase "by contacting any Division Office or the Registration Unit" and by removing the phrase "only on DEA (or BND) Form 222b, which is contained in each book of order forms" and inserting in its place the phrase "on DEA Form 222a which is mailed to a

registrant approximately 30 days after each shipment of order forms to that registrant or by contacting any Division Office or the Registration Unit of the Administration" and by removing the words "All requisitions" and inserting in their place the words "All requisition forms (DEA Form 222a)".

14. 21 CFR 1305.06(b) is amended by removing the sentence which reads "There are five lines on each order form" and inserting in its place the sentence "There are ten lines on each order form".

15. 21 CFR 1306.11(d) introductory text is amended by removing "§ 1.110" and inserting in its place "§ 290.10".

Dated: February 11, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-3520 Filed 2-18-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 42 and 43

[Docket No. R-88-1366; FR-2357]

Uniform Relocation Act Amendments of 1987

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This rule advises that HUD is making effective as of April 2, 1989, the interim rule published on December 17, 1987, by the Department of Transportation implementing certain amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 made by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

DATES: The revision of Part 42 and the removal of Part 43 will be effective on April 2, 1989. Comments must be received on or before April 19, 1988.

ADDRESS: Comments should be sent to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Melvin J. Geffner, Relocation and Real Estate Division, Office of Urban Rehabilitation, Department of Housing and Urban Development, Room 7174, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-6336. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development (HUD) is making effective the interim final rule on this subject published by DOT on December 17, 1987 (52 FR 47994). As of April 2, 1989, HUD anticipates making effective all the rule changes necessary to implement amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) made by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments). Because of statutory restrictions requiring legislative review of HUD rules, HUD could not publish a rule on December 17, 1987, as had been done (under the auspices of DOT) by all other agencies affected by the Uniform Act and the 1987 Amendments.

The Department explained its inability to publish this document before today in a "Notice of Intent" published on December 17, 1987 (52 FR 48030). In part, the Department stated in the December 17, 1987, Notice that:

> The Department had intended to publish a separate preamble to go along with the interim rule, published elsewhere in today's edition of the **Federal Register** by DOT, that would have discussed the application of the interim rule to, and the rule's impact on, HUD's programs and existing regulations. That separate preamble is not being published today, however, because under applicable law (see sec. 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)), HUD must submit to the responsible congressional committees an agenda of all its rules that are under development. Any rule that is on that agenda "may not be published for comment prior to or during the first period of 15 calendar days of continuous session of Congress [and,] [i]f within such period, either Committee notifies the Secretary * * * that it intends to review any rule * * * on the agenda, the Secretary shall submit * * * such rule * * * at least 15 calendar days of continuous session prior to its being published for comment in the **Federal Register**."
>
> HUD identified this rule as one in its proposed stage, in the Department's Semiannual Regulatory Agenda published on October 26, 1987 (see 52 FR 40358, 40386), and the Committees requested the rule for review. As a consequence, the preamble that HUD would have published today as part of DOT's rule cannot be published until the statutory 15-day period has expired. On the expiration of that period, HUD will publish a separate agency-specific preamble referencing DOT's rule.
>
> 52 FR 48030.

The 15-day period has now expired (the period was tolled during the adjournment of Congress; Congress reconvened on January 25, 1988, and the 15-day period expired on February 8, 1988), thereby permitting this document's publication.

DOT's interim final rule makes changes that will impact programs administered by HUD. For administrative reasons, however, and to achieve a smoother transition to the 1987 Amendments, HUD believes it more practical to defer implementation of all changes mandated by the 1987 Amendments until the statutory deadline of April 2, 1989.

All HUD program activities affected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) will continue, through April 1, 1989, to be covered by the previously issued government-wide common rule at 24 CFR Part 42. (As of April 2, 1989, all HUD activities affected by the Uniform Act and the 1987 Amendments will be covered by the final government-wide single rule that DOT will issue, to be codified at 49 CFR Part 24.)

For the convenience of the reader, HUD is listing in this document those HUD programs, and the citation to the regulations under which they are currently covered, that will be affected by the 1987 Amendments and the regulations that will be issued by DOT to implement those Amendments:

Name of HUD program	Current part number under title 24 [1]
Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.	Part 42.
Provision of Replacement Housing Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Part 43.
Rent Supplement Payments	Part 215.
Mortgage Insurance and Interest Reduction Payments for Rental Projects.	Part 236.
Management and Disposition of HUD-owned Multifamily Housing Projects.	Part 290.
Section 312 Rehabilitation Loan Program.	Part 510.
Rental Rehabilitation Grant Program	Part 511.
Community Development Block Grants (CDBG).	Part 570.
Urban Development Action Grants (UDAG).	Part 570.
Community Development Block Grants for Indian Tribes and Alaskan Native Villages.	Part 571.
Emergency Shelter Grants Program	Part 575.
Definition of Income, Income Limits Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs and Related Programs.	Part 813.
Housing Development Grants	Part 850.
Section 8 Housing Assistance Payments Program for New Construction.	Part 880.
Section 8 Housing Assistance Payments Program for Substantial Rehabilitation.	Part 881.

Name of HUD program	Current part number under title 24 [1]
Section 8 Housing Assistance Payments Program—Moderate Rehabilitation.	Part 882.
Section 8 Housing Assistance Payments Program—State Housing Agencies.	Part 883.
Section 8 Housing Assistance Payments Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects.	Part 884.
Loans for Housing for the Elderly or Handicapped.	Part 885.
Indian Housing	Part 905.
Definition of Income, Income Limits Rent and Reexamination of Family Income for the Public Housing and Indian Housing Programs.	Part 913.
Public Housing Development	Part 941.
Comprehensive Improvement Assistance Program.	Part 968.
Public Housing Program—Demolition or Disposition of Public Housing Projects.	Part 970.

[1] Except for Parts 42 and 43, where the regulatory text will be removed completely (as of April 2, 1989), and replaced with the revised textual language cross-referencing 49 CFR Part 24, revision to the other parts will involve amending only a section or paragraph within a part, not the entire part.

This rule also will remove 24 CFR Part 43, which implemented section 215 of the Uniform Act. Section 215 authorized the provision of loans for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing to meet the needs of persons displaced by Federal projects and federally assisted projects. Under the authority of the President's memorandum of January 4, 1971 to the heads of departments and agencies concerning the Uniform Act, the criteria and procedures stated in Part 43 were made applicable to all Federal agencies administering Federal projects or providing Federal assistance to State agencies carrying out activities that cause displacement of persons. However, Part 43 will be removed as of April 2, 1989, since under section 213(a)(1) of the Uniform Act, as amended by the 1987 Amendments, DOT is empowered to issue "such regulations as may be necessary to carry out this Act", and DOT will be issuing the government-wide rule that will cover all matters relating to the Uniform Act.

The removal of Part 43, as with the amendment to those other sections listed here that are affected by the 1987 Amendments, will be addressed again in the proposed rule to be issued later by DOT, and readers once again will be invited to comment on the action being taken here.

List of Subjects

24 CFR Part 42

Administrative practice and procedure, Community development, Grant programs: housing and community development, Loan programs: housing and community development, Mobile homes, Relocation assistance, Real property acquisition.

24 CFR Part 43

Loan programs: housing and community development, Relocation assistance, Seed-money loans.

Title 24 of the Code of Federal Regulations is amended as set forth below.

Dated: December 22, 1987.

Samuel R. Pierce, Jr.,

Secretary.

1. Part 42 is revised to read as follows:

PART 42—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 42.1 Uniform relocation and real property acquisition.

Regulations and procedures applicable to all HUD-assisted programs subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. These regulations and procedures are effective as of April 2, 1989.

PART 43—[REMOVED AND RESERVED]

2. Part 43 is removed and reserved.

[FR Doc. 88-3593 Filed 2-18-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8173]

Definition of Highly Compensated Employee and Compensation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the scope and meaning of the terms "highly compensated employee" in section 414(q) and "compensation" in section 414(s) of the Internal Revenue Code of 1986. They reflect changes made by the Tax Reform Act of 1986 (TRA '86) and conform the regulations to sections 1114(a) and 1115 of the Tax Reform Act of 1986 (100 Stat. 2448 and 2453). These regulations will provide the public with guidance necessary to comply with the law and would affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and certain other employee benefit plans. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking that appears in the Proposed Rules Section of this issue of the **Federal Register**.

DATE: In general, these regulations apply to years beginning on or after January 1, 1987, except as otherwise specified in TRA '86.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3938) (no a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) by adding new §§ 1.414(q)-1T and 1.414(s)-1T to provide guidance with respect to the definitions of highly compensated employee and compensation within the meaning of Internal Revenue Code section 414 (q) and (s).

Amendments to Qualified Plans

Generally, subsections (q) and (s) of section 414 are definitional provisions that do not, of themselves, require plan

amendments or impose operational requirements. However, in order to meet the requirements for qualification, plans are required to contain provisions designed to meet certain statutory requirements that rely on these definitions. Therefore, amendments will generally be necessary to conform plans to these definitions.

The definitions contained in subsections (q) and (s) of section 414 are generally effective for years beginning on or after January 1, 1987. Nevertheless, subject to certain conditions, a plan will not be disqualified solely because it is not amended to the extent necessary to conform to these definitions prior to the close of the amendment period contained in section 1140 of TRA '86. This delayed date for conforming amendments is conditioned on a requirement that such plan amendments are adopted retroactively to the later of the first day of the first plan year beginning after December 31, 1986, or the relevant effective date for the plan provisions to which these definitions are applicable. In addition, plans must satisfy the statutory requirements of applicable sections that incorporate these definitions in operation, beginning with the effective date for such requirements, notwithstanding the absence of plan provisions. For example, a plan to which the nondiscrimination tests of section 401(k)(3) or 401(m)(2) apply must satisfy these tests on the basis of comparisons between the group of highly compensated employees as defined in section 414(q) and the group of all other employees beginning with plan years beginning after December 31, 1986, except to the extent that the optional transition rule of § 1.414(q)–1T Question and Answer (A) 15 is applicable. In contrast, the provisions of the coverage requirements of section 410(b), as amended by section 1112(a) of the TRA '86, which provisions contain tests based in part on groups of employees who are highly compensated employees within the meaning of section 414(q), are generally effective for plan years beginning after December 31, 1988.

Amendment Date for Elective Provisions

These temporary regulations with respect to sections 414(q) and (s) provide for certain elections that require corresponding plan provisions. Any amendments necessary to adopt such plan provisions may be made by the section 1140 delayed effective date in the same manner as amendments required with respect to TRA '86.

Optional Transition Rule for 1987 and 1988

A–15 of § 1.414(q)–1T provides that certain employers with plans subject to the nondiscrimination requirements of section 401(k)(3) or plans that are subject to section 401(m)(2) may elect an optional transition rule in determining the group of "highly compensated employees" for purposes of applying these requirements to plan years beginning in 1987 or 1988. This elective rule is applicable solely to the transition period ending before the first plan year beginning on or after January 1, 1989. Thus, this elective rule may be used for the 1987 and 1988 determination year calculations and the corresponding 1986 and 1987 look-back year calculations for the 1987 and 1988 determination years. It may not, however, be used for the 1989 determination year calculation or the 1988 look-back year calculation with respect to the 1989 determination year. This rule is designed to reduce the potential administrative difficulties employers might experience in attempting to reconstruct data and initiate new compensation reporting systems for the transition period.

Definition of Highly Compensated Employees

These temporary regulations under section 414(q) provide rules for determining which employees are "highly compensated employees". This term is used in various Code sections relating to qualified retirement plans, qualified cash or deferred arrangements, and certain other employee benefit plans for the purpose of determining whether these plans discriminate in favor of such employees. The term is also used in Code provisions that impose specific tax consequences on highly compensated employees. *See, e.g.*, sections 402(b)(2) and 89(a)(1). This definition is generally applicable only to sections that incorporate the new definition of highly compensated employees by reference.

This regulation provides for two categories of highly compensated employees: highly compensated active employees and highly compensated former employees. The determination of whether such employees are active or former employees is made on the basis of whether or not the individual performed services for the employer during the determination year. Generally, the group of highly compensated active employees consists of individuals who, at any time during the determination year, or the preceding year, were either: 5-percent owners of the employer; compensated by the employer in an amount above $75,000; compensated by the employer in an amount above $50,000 and within the top 20 percent of employees ranked by compensation paid by the employer; or officers of the employer whose compensation is above a certain level. The definition of highly compensated employees set forth in A–2(b) of these regulations anticipates that a technical correction indexing the threshold $75,000 and $50,000 dollar amounts at the same time and in the same manner as the section 415(b)(1)(A) dollar limitation for defined benefit plans will be enacted, with retroactive effect. Applying this rule, the indexed thereshold dollar amounts for 1988 are $78,353 and $52,235 respectively. An elective special rule is provided for purposes of administrative simplicity in determining whether employees who left employment prior to the effective date of section 414(q) are highly compensated former employees. The regulations state that highly compensated active and former employees are to be identified on an employer-wide basis, taking into account the aggregation rules of section 414(b), (c), (m), and (o) and the rules with respect to leased and other deemed employees contained in section 414 (n) and (o). The regulations further provide that the threshold dollar amounts used in determining who is highly compensated employee are indexed to reflect changes in the cost of living at the same time and in the same manner as the section 415(b)(1)(A) limitation with respect to defined benefit plans.

Special rules are provided in the regulations for making determinations with respect to; (1) Which employees are officers and includible as highly compensated employees; (2) the manner in which the determination of highly compensated employees is made for the current year; (3) former employees; and (4) family aggregation.

The regulations do not include rules applicable to the identification of the highly compensated employees when there are changes in the composition of the employer due to mergers, acquisitions, divisive reorganizations, and similar business transactions. The Internal Revenue Service requests comments and suggestions with respect to the application of section 414(q) and these regulations to such situations. The Service plans to issue proposed rules on such situations later this year.

The regulations provide, where appropriate, that the definitions provided herein apply only to the definition of highly compensated employees in section 414(q) and these regulations. In addition, the specific rules with respect to family aggregation and the inclusion or exclusion of certain categories of employees (e.g. former employees and employees covered under a collective bargaining agreement) apply only to the extent not otherwise

provided in regulations prescribed under sections that incorporate the definition of highly compensated employees.

Relationship to Title I of ERISA

The primary purpose of section 414(q) of the Internal Revenue Code is to provide objective rules for identifying those employees of an employer who are to be treated as highly compensated employees in determining whether an employer-maintained retirement or other employee benefit plan impermissibly discriminates in favor of highly compensated employees. Nondiscrimination is a condition to many of the tax advantages provided with respect to such plans.

Some have inquired about whether section 414(q) is applicable with respect to the determination under sections 201(2), 301(a)(3), and 401(a)(1) of ERISA when an employee benefit plan is "maintained by an employer primarily for the purposes of providing deferred compensation for a select group of management or highly compensated employees." The Department of Labor has jurisdiction over the interpretation of these provisions. However, the Department of the Treasury would like to clarify its understanding that section 414(q) is not determinative with respect to provisions of Title I of ERISA, other than those provisions that explicitly incorporate such section by reference (e.g., section 408(b)(1)(B) of ERISA). The Departments of Treasury and Labor concur in the view that a broad extension of section 414(q) to determinations under sections 201(2), 301(a)(3), and 401(a)(1) of ERISA would be inconsistent with the tax and retirement policy objectives of encouraging employers to maintain tax-qualified plans that provide meaningful benefits to rank-and-file employees.

Definition of Compensation

Generally, the term "compensation" as defined in section 414(s) means compensation, other than qualified or previously qualified deferred compensation, received for services performed for the employer that is currently includible in gross income for income tax purposes. This definition is generally applicable for Part I of Subchapter D of the Code, sections 401 through 419A, for purposes of applying the nondiscrimination rules (including the actual deferral percentage limits for cash or deferred arrangements and for employee and employer matching contributions). This section 414(s) definition of compensation is not applicable to sections that provide for another definition of compensation. For example, provisions to which this definition is not applicable include section 414(q) and section 415 for purposes of applying the section 415 limits on contributions and benefits except to the extent applicable to the section 415(c)(6) special rule with respect to employee stock ownership plans. A definition of compensation with respect to self-employed individuals is provided in A–2. These regulations also provide exceptions and alternatives to the section 414(s) definition of compensation in A–3 and A–4 of these regulations. Included among these alternatives is a provision permitting use of the section 415(c) definition of compensation. In this context, the Service contemplates revising the regulations with respect to section 415(c) and invites comment with respect to the section 415(c) definition of compensation as amended by TRA '86. The regulations also provide a delegation of authority to the Commissioner to provide for additional alternative definitions of compensation for purposes of section 414(s). It is anticipated that this delegation to the Commissioner will be exercised in the form of revenue rulings, Internal Revenue Bulletin notices or other Internal Revenue Service publications of general applicability.

Effective Date of These Regulations

These regulations are generally effective for plan years beginning on or after January 1, 1987, except as otherwise specified in TRA '86.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is Nancy J. Marks of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–0—1.425–1

Income taxes, Employee benefit plans, Pensions.

Adoption of Amendments to the Regulations

Accordingly 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805, * * * section 1.414(s)–1T is also issued under 26 U.S.C. 414(s).

Par 2. There are inserted immediately after § 1.414(1)–1 the following new §§ 1.414(q)–1T and 1.414(s)–1T to read as follows:

§ 1.414(q)–1T Highly compensated employee (Temporary).

The following questions and answers relate to the definition of "highly compensated employee" provided in section 414(q). The definitions and rules provided in these questions and answers are provided solely for purposes of determining the group of highly compensated employees.

Table of contents.

Q–1: To what employee benefit plans and statutory provisions is the definition of highly compensated employee contained in section 414(q) applicable?

A–1: (a) *In general.* This definition is applicable to statutory provisions that incorporate the definition by reference.

(b) *Qualified retirement plans*—(1) *In general.* Generally, this definition is incorporated in many of the nondiscrimination requirements applicable to pension, profit-sharing, and stock bonus plans qualified under section 401(a). *See, e.g.*, the nondiscrimination provisions of sections 401(a) (4) and (5), 401(k)(3), 401(l), 401(m), 406(b), 407(b), 408(k), 410(b) and 411(d)(1). The definition is also incorporated by certain other provisions with respect to such plans, including the aggregation rules of section 414(m) and section 4975 (tax on prohibited transactions).

(2) *Not applicable where not incorporated by reference.* This definition is not applicable to qualified plan provisions that do not incorporate it. *See, e.g.*, section 415 (limitations on contributions and benefits), with the exception of section 415(c)(3)(C) and 415(c)(6) (special rules for permanent and total disability and employee stock ownership plans respectively).

(c) *Other employee benefit plans or arrangements.* This definition is incorporated by various sections relating to employee benefit provisions. *See, e.g.*, section 89 (certain other employee benefit plans), section 106 (accident and health plans), 117(d) (qualified tuition reduction), section 125 (cafeteria plans), section 129 (dependent care assistance programs), section 132 (certain fringe benefits), section 274 (certain entertainment, etc. expenses), section 423(b) (employee stock purchase plan provisions), section 501(c) (17) and (18) (certain exempt trusts providing benefits to employees), and section 505 (certain exempt organizations or trusts providing benefits to individuals). See the respective sections for the applicable effective dates.

(d) *ERISA.* This definition is not determinative with respect to any provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), unless it is explicitly incorporated by reference (e.g., section 408(b)(1)(B)).

Q–2: Who is a highly compensated employee?

A–2: The group of employees (including former employees) who are highly compensated employees consists of both highly compensated active employees (see A–3 of this § 1.414(q)–1T) and highly compensated former employees (see A–4 of this § 1.414(q)–1T). In many circumstances, highly compensated active employees and highly compensated former employees are considered separately in applying the provisions for which the definition of highly compensated employees in section 414(q) is applicable. Specific rules with respect to the treatment of highly compensated active employees and highly compensated former employees will be provided in the regulations with respect to the sections to which the definition of highly compensated employees is applicable.

Q–3: Who is a highly compensated active employee?

A–3: (a) *General rule.* For purposes of the year for which the determination is being made (the determination year), a highly compensated active employee is any employee who, with respect to the employer, performs services during the determination year and is described in any one or more of the following groups applicable with respect to the look-back year calculation and/or determination year calculation for such determination year. See A–14 for rules relating to the periods for which the look-back year calculation and determination year calculation are to be made.

(1) *Look-back year calculation.*

(i) *5-percent owner.* The employee is a 5-percent owner at any time during the look-back year (i.e., generally, the 12-month period immediately preceding the determination year; see A–14. (See A–8 of this § 1.414(q)–1T.)

(ii) *Compensation above $75,000.* The employee receives compensation in excess of $75,000 during the look-back year.

(iii) *Compensation above $50,000 and top-paid group.* The employee receives compensation in excess of $50,000 during the look-back year and is a member of the top-paid group for the look-back year. (See A–9 of this § 1.414(q)–1T.)

(iv) *Officer.* The employee is an "includible officer" during the look-back year. (See A–10 of this § 1.414(q)–1T.)

(2) *Determination year calculation.*

(i) *5-percent owner.* The employee is a 5-percent owner at any time during the determination year. (See A–8 of this § 1.414(q)–1T.)

(ii) *Top-100 employees.* The employee is both (A) described in paragraph (a)(1)(i), (ii) and/or (iv) of this A–3, when such paragraphs are modified to substitute the determination year for the look-back year, and (B) one of the 100 employees who receive the most compensation from the employer during the determination year.

(b) *Rounding and tie-breaking rules.* In making the look-back year and determination year calculations for a determination year, it may be necessary for an employer to adopt a rule for rounding calculations (e.g., in determining the number of employees in the top-paid group). In addition, it may be necessary to adopt a rule breaking ties among two or more employees (e.g., in identifying those particular employees who are in the top-paid group or who are among the 100 most highly compensated employees). In such cases, the employer may adopt any rounding or tie-breaking rules it desires, so long as such rules are reasonable, nondiscriminatory, and uniformly and consistently applied.

(c) *Adjustments to dollar thresholds*—(1) *Indexing of dollar thresholds.* The dollar amounts in paragraph (a)(1) (i) and (ii) of this A–3 are indexed at the same time and in the same manner as the section 415(b)(1)(A) dollar limitation for defined benefit plans.

(2) *Applicable dollar threshold.* The applicable dollar amount for a particular determination year or look-back year is the dollar amount for the calendar year in which such determination year or look-back year begins. Thus, the dollar amount for purposes of determining the highly compensated active employees for a particular look-back year is based on the calendar year in which such look-back year begins, not the calendar year in which such look-back year ends or in which the determination year with respect to such look-back year begins.

(d) *Employees described in more than one group.* An individual who is a highly compensated active employee for a determination year, by reason of being described in one group in paragraph (a) of this A–3, under either the look-back year calculation or the determination year calculation, is not disregarded in determining whether another individual is a highly compensated active employee by reason of being described in another group under paragraph (a). For example, an individual who is a highly compensated active employee for a determination year, by reason of being a 5-percent owner during such year, who receives compensation in excess of $50,000 during both the look-back year and the determination year, is taken into account in determining the group of employees who are highly compensated active employees for such determination year by reason of receiving more than $50,000, and being in the top-paid group under either or both the look-back year calculation or determination year calculation for such determination year.

(e) *Examples.* The following examples, in which the determination year and look-back year are the calendar year, are illustrative of the rules in paragraph (a) of this A–3. For purposes of these examples, the threshold dollar amounts in paragraph (a)(1) (ii) and (iii) of this A–3 are not increased pursuant to paragraph (c) of this A–3.

Example (1). Employee A, who is not at any time a 5-percent owner, an officer, or a member of the top-100 within the meaning of paragraph (a)(1) (i), or (iv), or (a)(2) (i) or (ii), but who was a member of the top-paid group for each year, is included in or excluded from the highly compensated groups as specified below for the following years:

Year	Compensation	Status	Comments
1986	$45,000	N/A	Although prior to 414(q) effective date, 1986 constitutes the look-back year for purposes of determining the highly compensated group for the 1987 determination year.
1987	80,000	Excl	Excluded because A was not an employee described in paragraph (a)(1) (ii) or (iii) of this A-3 for the look-back year (1986).
1988	80,000	Incl	Included because A was an employee described in paragraph (a)(1) (ii) or (iii) of this A-3 for the look-back year (1987).
1989	45,000	Incl	Included because A was an employee described in paragraph (a)(1) (ii) or (iii) of this A-3 for the look-back year (1988).
1990	45,000	Excl	Excluded because A was not an employee described in paragraph (a)(1) (ii) or (iii) of this A-3 for the look-back year (1989).

Example (2). Assuming the same facts as those given in *Example (1)*, except that A is a member of the top-100 employees within the meaning of paragraph (a)(2)(ii) of this A-3 for the 1987 year and 1990 year, the results are as follows:

Year	Compensation	Status	Comments
1986	$45,000	N/A	Although prior to 414(q) effective date, 1986 constitutes the look-back year for purposes of determining the highly compensated group for the 1987 determination year.
1987	80,000	Incl	Included because A was an employee described in paragraph (a)(1)(ii) or (iii) of this A-3 for the determination year (1987) and was described in paragraph (a)(2)(ii) of this A-3 in that year.
1988	80,000	Incl	Included because A was an employee described in paragraph (a)(1)(ii) or (iii) of this A-3 for the look-back year (1987).
1989	45,000	Incl	Included because A was an employee described in paragraph (a)(1)(ii) or (iii) of this A-3 for the look-back year (1988).
1990	45,000	Excl	Excluded even though in top-100 employees during 1990 determination year because A was not an employee described in paragraph (a)(1)(ii) or (iii) of this A-3 for the look-back year (1989) or for the determination year (1990).

A-4: Who is a highly compensated former employee?

Q-4: (a) *General rule.* Except to the extent provided in paragraph (d) of this A-4, a highly compensated former employee for a determination year is any former employee who, with respect to the employer, had a separation year (as defined in A-5 of this § 1.414(q)-1T) prior to the determination year and was a highly compensated active employee as defined in A-3 of this § 1.414(q)-1T for either such employee's separation year or any determination year ending on or after the employee's 55th birthday. Thus, for example, an employee who is a highly compensated active employee for such employee's separation year, by reason of receiving over $75,000 during the look-back year, is a highly compensated former employee for determination years after such employee's separation year.

(b) *Special rule for employees who perform no services for the employer in the determination year.* For purposes of this rule, employees who perform no services for an employer during a determination year are treated as former employees. Thus, for example, an employee who performed no services for the employer during a determination year, by reason of a leave of absence during such year, is treated as a former employee for such year.

(c) *Dollar amounts for pre-1987 determination years.* For determination years beginning before January 1, 1987, the dollar amounts in paragraph (a)(1)(B) and (C) of A-2 of this § 1.414(q)-1T are $75,000 and $50,000 respectively.

(d) *Special rule for employees who separated from service before January 1, 1987*—(1) *Election of special rule.* Employers may elect to apply paragraph (d)(2) of this A-4 in lieu of paragraph (a) of this A-4 in determining whether former employees who separated from service prior to January 1, 1987, are highly compensated former employees. If this election is made with respect to any qualified plan, it must be provided for in the plan. If the employer makes this election with respect to any employee benefit plan, such election must be used uniformly for all purposes for which the section 414(q) definition is applicable. The election, once made, cannot be changed without the consent of the Commissioner.

(2) *Special definition of highly compensated former employee.* A highly compensated former employee includes any former employee who separated from service with the employer prior to January 1, 1987, and was described in any one or more of the following groups during either the employee's separation year (or the year preceding such separation year) or any year ending on or after such individual's 55th birthday (or the last year ending before such employee's 55th birthday):

(i) *5-percent owner.* The employee was a 5-percent owner of the employer at any time during the year.

(ii) *Compensation amount.* The employee received compensation is excess of $50,000 during the year.

The determinations provided for in this paragraph (b)(2) may be made on the basis of the calendar year, the plan year, or any other twelve month period selected by the employer and applied on a reasonable and consistent basis.

(e) *Rules with respect to former employees*—(1) *In general.* For specific provisions with respect to the treatment of former employees and of highly compensated former employees, refer to the rules with respect to which the section 414(q) definition of highly compensated employee is applicable.

(2) *Former employees excluded in determining top-paid group, top-100 employees and includible officers.* Former employees are not included in the top-paid group, the group of the top-100 employees, or the group of includible officers for purposes of applying section

414(q) to active employees. In addition, former employees are not counted as employees for purposes of determining the number of employees in the top-paid group.

Q–5: What is a separation year for purposes of section 414(q)?

A–5: (a) *Separation year*—(1) *In general.* The separation year generally is the determination year during which the employee separates from service with the employer. For purposes of this rule, an employee who performs no services for the employer during a determination year will be treated as having separated from service with the employer in the year in which such employee last performed services for the employer. Thus, for example, an employee who performs no services for the employer by reason of being on a leave of absence throughout the determination year is considered to have separated from service with the employer in the year in which such employee last performed services prior to beginning the leave of absence.

(2) *Deemed separation.* An employee who performs services for the employer during a determination year may be deemed to have separated from service with the employer during such year pursuant to the rules in paragraph (a)(3) of this A–5. Such deemed separation year is relevant for purposes of determining whether such employee is a highly compensated former employee after such employee actually separates from service, not for purposes of identifying such employee as either an active or former employee. Because employees to whom the provisions of paragraph (a)(2) of this A–5 apply are still performing services for the employer during the determination year, they are treated as active employees. Thus, for example, an employee who has a deemed separation year in 1989, a year during which he was a highly compensated employee, who continues to work for the employer until he retires from employment in 1995, is an active employee of the employer until 1995 and is either highly compensated or not highly compensated for any determination year during such period based on the rules with respect to highly compensated active employees. For determination years after the year of such employee's retirement, such employee is a highly compensated former employee because such employee was a highly compensated active employee for the deemed separation year.

(3) *Deemed separation year.* An employee will be deemed to have a separation year if, in a determination year prior to attainment of age 55, the employee receives compensation in an amount less than 50% of the employee's average annual compensation for the three consecutive calendar years preceding such determination year during which the employee received the greatest amount of compensation from the employer (or the total period of the employee's service with the employer, if less).

(4) *Leave of absence.* The deemed separation rules contained in paragraph (a)(2) and (3) of this A–5 apply without regard to whether the reduction in compensation occurs on account of a leave of absence.

(b) *Deemed resumption of employment.* An employee who is treated as having a deemed separation year by reason of the provisions of paragraph (a) of this A–5 will not be treated as a highly compensated former employee (by reason of such deemed separation year) after such employee actually separates from service with the employer if, after such deemed separation year, and before the year of actual separation, such employee's services for and compensation from the employer for a determination year increase significantly so that such employee is treated as having a deemed resumption of employment. The determination of whether an employee who has incurred a deemed separation year has an increase in services and compensation sufficient to result in a deemed resumption of employment will be made on the basis of all the surrounding facts and circumstances pertaining to each individual case. At a minimum, there must be an increase in compensation from the employer to the extent that such compensation would not result in a deemed separation year under the tests in paragraph (a)(2) of this A–5 using the same three-year period taken into account in such paragraph.

(c) *Examples.* Paragraphs (a) and (b) of this A–5 are illustrated by the following examples based on calendar years. For purposes of these examples the threshold dollar amounts in A–5(a) of this § 1.414(q)–1T have not been increased pursuant to A–5(b) of this § 1.414(q)–1T.

Example (1). Assume that in 1990 A is a highly compensated employee of X by reason of having earned more than $75,000 during the 1989 look-back year. In 1987, 1988 and 1989, A's years of greatest compensation received from X, A received $76,000, $80,000 and $79,000 respectively. In February of 1990, A received $30,000 in compensation. Because A's compensation during the 1990 determination year is less than 50% of A's average annual compensation from X during A's high three prior determination years, A is deemed to have a separation year during the 1990 determination year pursuant to the provisions of paragraph (a) of this A–5. Since A is a highly compensated employee for X in 1990, A's deemed separation year, A will be treated as a highly compensated former employee after A actually separates from service with the employer unless A experiences a deemed resumption of employment within the meaning of paragraph (b) of this A–5.

Example (2). Assume that in 1990 A is a highly compensated employee by reason of having been an officer (with annual compensation in excess of the section 415(c)(1)(A) dollar limitation) during the 1989 look-back year. A's compensation from X during 1990 is $37,000. A's average compensation from X for the three-year period ending with or within January, 1990, was $60,000. A's compensation during the 1990 determination year is not less than 50% of the compensation earned during the test period. Therefore, A is not deemed to have a separation year under paragraph (a)(2)(i) of this A–5.

Example (3). Assume that in 1990 C is 35 and a highly compensated employee of Z for the reasons given in *Example (1)* with the same compensation set forth in that example. During 1990, C leaves C's 40 hour a week position as director of the actuarial division of Z and starts working as an actuary for the same division, producing actuarial reports approximately 15 to 20 hours a week, approximately half of these hours at home. C contemplates returning to full-time employment with Z when C's child enters school. During the 1990 determination year, C's compensation is less than 50% of C's compensation during her high three preceding determination years. Therefore, C has a deemed separation year during the 1990 determination year. In 1991 C commences working 32 hours a week for X at X's place of business and receives compensation in an amount equal to 80 percent of her average annual compensation during her high three prior determination years. The C's increased compensation, considered in conjunction with the reasons for the reduction in service, the nature and extent of the services performed before and after the reduction in services, and the lack of proximity of C's age to age 55 at the time of the reduction are sufficient to establish that C has a deemed resumption of employment within the meaning of paragraph (b) of this A–5. Therefore, when C separates from service with the employer, C will not be treated as a highly compensated former employee by reason of C's deemed separation year in 1990.

Q–6: Who is the employer?

A–6: (a) *Aggregation of certain entities.* The employer is the entity employing the employees and includes all other entities aggregated with such employing entity under the aggregation requirements of section 414(b), (c), (m) and (o). Thus, the following entities must be taken into account as a single employer for purposes of determining the employees who are "highly

compensated employees" within the meaning of section 414(q):

(1) All corporations that are members of a controlled group of corporations (as defined in section 414(b)) that includes the employing entity.

(2) All trades or businesses (whether or not incorporated) that are under common control (as defined in section 414(c)) which group includes the employing entity.

(3) All organizations (whether or not incorporated) that are members of an affiliated service group (as defined in section 414(m)) that includes the employing entity.

(4) Any other entities required to be aggregated with the employing entity pursuant to section 414(o) and the regulations thereunder.

(b) *Priority of aggregation provisions.* The aggregation requirements of paragraph (a) of this A–6 and of A–7(b) of this section with respect to leased employees are applied before the application of any of the other provisions of section 414(q) and this section.

(c) *Line of business rules.* The section 414(r) rules with respect to separate lines of business are not applicable in determining the group of highly compensated employees.

Q–7: Who is an employee for purposes of section 414(q)?

A–7: (a) *General rule.* Except as provided in paragraph (b) of this A–7, the term "employee" for purposes of section 414(q) refers to individuals who perform services for the employer and are either common-law employees of the employer or self-employed individuals who are treated as employees pursuant to section 401(c)(1). This rule with respect to the inclusion of certain self-employed individuals in the group of highly compensated employees is applicable whether or not such individuals are eligible to participate in the plan or benefit arrangement being tested.

(b) *Leased employees*—(1) *In general.* The term "employee" includes a leased employee who is treated as an employee of the recipient pursuant to the provisions of section 414(n)(2) or 414(o)(2). Employees that an employer treats as leased employees under section 414(n), pursuant to the requirements of section 414(o), are considered to be leased employees for purposes of this rule.

(2) *Safe-harbor exception.* For purposes of qualified retirement plans, if an employee who would be a leased employee within the meaning of section 414(n)(2) is covered in a safe-harbor plan described in section 414(n)(5) (a qualified money purchase pension plan maintained by the leasing organization), and not otherwise covered under a qualified retirement plan of the employer, then such employee is excluded from the term "employee" unless the employer elects to include such employee pursuant to the provisions of paragraph (4) of this paragraph (b).

(3) *Other employee benefit plans.* The exception in paragraph (b)(2) of this A–7 is not applicable to the determination of the highly compensated employee group for purposes of the sections enumerated in section 414(n)(3)(C). Thus, for example, a leased employee covered by a safe-harbor plan is considered to be an employee in applying the nondiscrimination provisions of section 89 to statutory benefit plans. Consequently, an employer with leased employees covered in a safe-harbor plan may have 2 groups of highly compensated employees, one with respect to its retirement plans and another with respect to its statutory benefit plans.

(4) *Election with respect to leased employee exclusion.* An employer may elect to include the employees excepted under the provisions of paragraph (b)(2) of this A–7 in determining the highly compensated group with respect to an employer's retirement plans. Thus, for example, by electing to forego the exception in paragraph (b)(2) of this A–7, an employer may achieve more uniform highly compensated employee groups for purposes of its retirement plans and welfare benefit plans. The election to include such employees must be made on a reasonable and consistent basis and must be provided for in the plan.

Q–8: Who is a 5-percent owner of the employer?

A–8: An employee is a 5-percent owner of the employer for a particular year if, at any time during such year, such employee is a 5-percent owner as defined in section 416(i)(B)(i) and § 1.416–1 A T–17&18. Thus, if the employer is a corporation, a 5-percent owner is any employee who owns (or is considered as owning within the meaning of section 318) more than 5 percent of the value of the outstanding stock of the corporation or stock possessing more than 5 percent of the total combined voting power of all stock of the corporation. If the employer is not a corporation, a 5-percent owner is any employee who owns more than 5 percent of the capital or profits interest in the employer. The rules of subsections (b), (c), and (m) of section 414 do not apply for purposes of determining who is a 5-percent owner. Thus, for example, an individual who is a 5-percent owner of a subsidiary corporation that is part of a controlled group of corporations within the meaning of section 414(b) is treated as a 5-percent owner for purposes of these rules.

Q–9: How is the "top-paid group" determined?

A–9: (a) *General rule.* An employee is in the top-paid group of employees for a particular year if such employee is in the group consisting of the top 20 percent of the employer's employees when ranked on the basis of compensation received from the employer during such year. The identification of the particular employees who are in the top-paid group for a year involves a two-step procedure:

(1) The determination of the number of employees that corresponds to 20 percent of the employer's employees, and

(2) The identification of the particular employees who are among the number of employees who receive the most compensation during this year.

Employees who perform no services for the employer during a year are not included in making either of these determinations for such year.

(b) *Number of employees in the top-paid group*—(1) *Exclusions.* The number of employees who are in the top-paid group for a year is equal to 20 percent of the total number of active employees of the employer for such year. However, solely for purposes of determining the total number of active employees in for a year, the employees excluded in paragraphs (i), (ii), and (iii) of this paragraph (b)(1) are disregarded.

(i) *Age and service exclusion.* The following employees are excluded on the basis of age or service absent an election by the employer pursuant to the rules in paragraph (b)(2) of this A–9:

(A) Employees who have not completed 6 months of service by the end of such year. For purposes of this paragraph (A), an employee's service in the immediately preceding year is added to service in the current year in determining whether the exclusion is applicable with respect to a particular employee in the current year. For example, given a plan with a calendar determination year, if employee A commences work August 1, 1989, and terminates employment May 31, 1990, A may be excluded under this paragraph (b)(1)(i)(A) in 1989 because A completed only 5 months of service by December 31, 1989. However, A cannot be excluded pursuant to this rule in 1990 because A has completed 10 months of service, for purposes of this rule, by the end of 1990.

(B) Employees who normally work less than 17½ hours per week as defined in paragraph (d) of this A–9 for such year.

(C) Employees who normally work during less than 6 months during any year as defined in paragraph (e) of this A–9 for such year.

(D) Employees who have not had their 21st birthdays by the end of such year.

(ii) *Nonresident alien exclusion.* Employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer that constitutes income from sources within the United States (within the meaning of section 861(a)(3)) are excluded.

(iii) *Collective bargaining exclusion*—(A) *In general.* Except as provided in paragraph (B) of this paragraph (b)(1)(iii), employees who are included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer, which agreement satisfies section 7701(a)(46) and § 301.7701–17T (Temporary), are included in determining the number of employees in the top-paid group.

(B) *Percentage exclusion provision.* If 90 percent or more of the employees of the employer are covered under collective bargaining agreements that the Secretary of Labor finds to be collective bargaining agreements between employee representatives and the employer, which agreements satisfy section 7701(a)(46) and § 301.7701–17T (Temporary), and the plan being tested covers only employees who are not covered under such agreements, then the employees who are covered under such collective bargaining agreements are not counted in determining the number of noncollective bargaining employees who will be included in the top-paid group for purposes of testing such plan. In addition, such employees are not included in the top-paid group for such purposes. Thus, if the conditions of this paragraph (b)(1)(iii)(B) are satisfied, a separate calculation is required to determine the number and identity of noncollective bargaining employees who will be highly compensated employees by reason of receiving over $50,000 and being in the top-paid group of employees for purposes of testing those plans that cover only noncollective bargaining employees.

(2) *Alternative exclusion provisions*—(i) *Age and service exclusion election.* An employer may elect, on a consistent and uniform basis, to modify the permissible exclusions set forth in paragraph (b)(1)(i) (A), (B), (C), and (D) of this A–9 by substituting any shorter period of service or lower age than that specified in such paragraph. These exclusions may be modified to substitute a zero service or age requirement.

(ii) *Election not to apply percentage exclusion provision.* An employer may elect not to exclude employees under the rules in paragraph (b)(1)(iii)(B) of this A–9.

(iii) *Method of election.* The elections in this paragraph (b)(2) must be provided for in all plans of the employer and must be uniform and consistent with respect to all situations in which the section 414(g) definition is applicable to the employer. Thus, with respect to all plan years beginning in the same calendar year, the employer must apply the test uniformly for purposes of determining its top-paid group with respect to all its qualified plans and employee benefit plans and for purposes of the line of business rules set forth in section 414(r). If either election is changed during the determination year, no recalculation of the look-back year based on the new election is required, provided the change in election does not result in discrimination in operation.

(c) *Identification of top-paid group members.* With the exception of the paragraph (b)(1)(iii) of this A–9 exclusion for certain employees covered by collective bargaining agreements, the exclusions in paragraph (b)(1) of this A–9 are not applicable for purposes of identifying the particular employees in the top-paid group. Thus, for example, even if an employee who normally works for less than 17½ hours is excluded in determining the number of employees in the top-paid group such employee may be a member of the top-paid group. Similarly, if during a determination year, employee A receives over $75,000 and is one of the top-100 employees ranked by compensation, then employee A is a highly compensated active employee for such determination year. This is true even though employee A has worked less than six months and thus may be excluded in determining the number of persons in the top-paid group for the determination year.

(d) *Example.* Paragraphs (b) and (c) of this A–9 are illustrated by the following example:

Example. Employer X has 200 active employees during the 1989 determination year, 100 of whom normally work less than 17½ hours per week during such year and 80 of whom normally work less than 15 hours per week during such year. X elects to exclude all employees who normally work less than 15 hours per week in determining the number of employees in the top-paid group. Thus, X excludes 80 employees in determining the number of employees in the top-paid group. X's top-paid group for the 1989 determination year consists of 20% of 120 or 24 employees. All 200 of X's employees must then be ranked in order by compensation received during the year, and the 24 employees X paid the greatest amount of compensation during the year are top-paid employees with respect to X for the 1989 determination year.

(e) *17½ hour rule*—(1) *In general.* The determination of whether an employee normally works less than 17½ hours per week is made independently for each year based on the rules in paragraph (e)(2) and (3) of this A–9. In making this determination, weeks during which the employee did not work for the employer are not considered. Thus, for example, if an employee normally works twenty hours a week for twenty-five weeks during the fall and winter school quarters, 10 hours a week for the 12 week spring quarter, and does not work for the employer during the three-month summer quarter, such employee is treated as normally working more than 17½ hours per week under the rule of this paragraph (e).

(2) *Deemed above 17½.* An employee who works 17½ hours a week or more, for more than fifty percent of the total weeks worked by such employee during the year, is deemed to normally work more than 17½ hours a week for purposes of this rule.

(3) *Deemed below 17½.* An employee who works less than 17½ hours a week for fifty percent or more of the total weeks worked by such employee during the year is deemed to normally work less than 17½ hours a week for purposes of this rule.

(4) *Application.* The determination provided for in paragraph (e)(1), (2), and (3) of this A–9 may be made separately with respect to each employee, or on the basis of groups of employees who fall within particular job categories as established by the employer on a reasonable basis. For example, under the rule of this paragraph (e)(4) an employer may exclude all office cleaning personnel if, for the year in question, the employees performing this function normally work less than 17½ hours a week. This is true even though one or more employees within this group normally work in excess of 17½ hours. The election to make this determination on the basis of individuals or groups is operational and does not require a plan provision.

(5) *Application based on groups.* (i) Groups of employees who perform the same job are not required to be considered as one category for purposes

of the rule in paragraph (e)(4) of this A–9. Thus, for example, an employer supermarket may determine its highly compensated employees by excluding part-time grocery checkers if such personnel normally work less than 17½ hours a week while continuing to include full-time personnel performing this function. In general, 80 percent of the positions within a particular job category must be filled by employees who normally work less than 17½ hours a week before any employees may be excluded under this rule on the basis of their membership in that job category.

(ii) Alternatively, an employer may exclude employees who are members of a particular job category if the median number of hours of service credited to employees in that category during a determination or look-back year is 500 or less.

(f) *6-month rule*—(1) *In general.* The determination of whether employees normally work during not more than 6 months in any year is made on the basis of the facts and circumstances of the particular employer as evidenced by the employer's customary experience in the years preceding the determination year. An employee who works on one day during a month is deemed to have worked during that month.

(2) *Application of prior year experience.* In making the determination under this paragraph (f), the experience for years immediately preceding the determination year will generally be weighed more heavily than that of earlier years. However, this emphasis on more recent years is not appropriate if the data for a particular year reflects unusual circumstances. For example, if fishermen working for employer X worked 9 months in 1987 and 1988, 8 months in 1989, and then, because of abnormal ice conditions, worked only 5 months in 1990, such fishermen could not be excluded under this rule in 1990. Furthermore, the data with respect to 1990 would not be weighed more heavily in making a determination with respect to subsequent years.

(3) *Individual or group basis.* This determination may be made separately with respect to each employee or on the basis of groups of employees who fall within particular job categories in the manner set forth in paragraph (e)(4) of this A–8.

Q–10. For purposes of determining the group of highly compensated employees, which employees are officers and which officers must be included in the highly compensated group?

A–10: (a) *In general.* Subject to the limitations set forth in paragraph (b) of this A–10 and the top-100 employee rule set forth in A–2, an employee is an includible officer for purposes of this section and is a member of the group of highly compensated employees if such employee is an officer of the employer (within the meaning of section 416(i) and § 1.416–1 A–T 13 & A–T 15) at any time during the determination year or look-back year and receives compensation during such year that is greater than 150 percent of the dollar limitation in effect under section 415(c)(1)(A) for the calendar year in which the determination or look-back year begins. In addition, an officer who does not meet the 415(c)(1)(A) dollar limitation requirement may be an includible officer based on the minimum inclusion rules set forth in paragraph (c) of this A–10.

(b) *Maximum limitation*—(1) *In general.* Nor more than 50 employees (or, if lesser, the greater of 3 employees or 10 percent of the employees without regard to any exclusions) shall be treated as officers for purposes of this provision in determining the group of highly compensated employees for any determination year or look-back year.

(2) *Total number of employees.* The total number of employees for purposes of the limitation in this paragraph (b) is the number of employees the employer has during the particular determination year or look-back year. For purposes of this A–10, employees include only those individuals who perform services for the employer during the determination or look-back year. The exclusions applicable for purposes of determining the number of employees in the top-paid group are not applicable for purposes of the limitations in this paragraph (b).

(3) *Inclusion ranking.* If the number of the employer's officers who satisfy paragraph (a) of this A–10 during either the determination year or the look-back year exceeds the limitation under this paragraph (b), then the officers who will be considered as includible officers for purposes of this rule are those who receive the greatest compensation from the employer during such determination or look-back year. The definition of compensation in A–13 is to be used for this purpose.

(c) *Minimum inclusion rule.* This paragraph (c) is applicable when no officer of the employer satisfies the compensation requirements of paragraph (a) of this A–10 during either a determination year or look-back year. In such case, the highest paid officer of the employer for such year is treated as a highly compensated employee by reason of being an officer, without regard to the amount of compensation paid to such officer in relation to the section 415(c)(1)(A) dollar amount for the year. This is true whether or not such employee is also a highly compensated employee on any other basis. Thus, for example, if no officer of employer X meets the compensation requirements of paragraph (a) of this A–10 during the 1989 look-back year, and employee A is both the highest paid officer during such year and a 5-percent owner, employee A is treated as an includible officer satisfying the minimum inclusion rules of this paragraph.

(d) *Separate application.* The maximum and minimum officer inclusion rules of paragraphs (b) and (c) of this A–10 apply separately with respect to the determination year calculation and the look-back year calculation. Thus, for example, if no officer of employer X receives compensation above the threshold amount in paragraph (a) of this A–10 during either the determination year or look-back year, application of the minimum inclusion rule would result in the officer of employer X who received the greatest compensation during the look-back year being treated as a highly compensated employee and, in addition, the officer of employer X who receives the most compensation during the determination year would be included in the highly compensated group if such officer is also in the top-100 employees of employer X for such year. Thus, two officers may be treated as highly compensated active employees for a determination year by reason of the provisions of the minimum inclusion rule.

Q–11: To what extent must family members who are employed by the same employer be aggregated for purposes of section 414(q)?

A–11: (a) *Family aggregation*—(1) *In general.* Aggregation is required with respect to an employee who is, during a particular determination year or look-back year, a family member (as defined in A–12) of either (i) a 5-percent owner who is an active or former employee or (ii) a highly compensated employee who is one of the ten most highly compensated employees ranked on the basis of compensation paid by the employer during such year.

(2) *Aggregation of contributions or benefits.* As prescribed in regulations under the provisions to which section 414(q) is applicable, a family member and a 5-percent owner or top-10 highly compensated employee aggregated under this rule are generally treated as a single employee receiving an amount of compensation and a plan contribution or benefit that is based on the compensation, contributions, and benefits of such family member and 5-

percent owner or top-10 highly compensated employee.

(b) *Exclusion status irrelevant.* Family members are subject to this aggregation rule whether or not they fall within the categories of employees that may be excluded for purposes of determining the number of employees in the top-paid group and whether or not they are highly compensated employees when considered separately.

(c) *Order of determination*—(1) *Determination of highly compensated employees.* The determination of which employees are highly compensated employees and which highly compensated employees are among the ten most highly compensated employees in making the look-back year calculation or the determination year calculation for a determination year will be made prior to the application of the rules in paragraph (a) of this A–11.

(2) *Determination of top-paid group and top-100 employees.* The determination of the number and identity of employees in the top-paid group under the look-back year calculation or the determination year calculation for a determination year and the identity of individuals in the top-100 employees under the determination year calculation for a determination year is made prior to application of the rules in paragraph (a) of this A–11.

(d) *Determination period.* The rules under paragraph (a) of this A–11 apply separately to the determination year and the look-back year. Thus, assuming there are no 5-percent owners, if employees A, B, C, D, E, F, G, H, I and J are the top 10 highly compensated employees in the 1988 look-back year, and employees F, G, H, I, J, K, L, M, N and O are the top 10 highly compensated employees in the 1989 determination year, then family aggregation would be required with respect to all fifteen of such employees (i.e. employees A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O).

Q–12: Which individuals are family members for purposes of the aggregation rules in section 414(a)(6)(A) and A–11?

A–12: (a) *Definition of family member.* Individuals who are family members for purposes of these provisions include, with respect to any employee or former employee, such employee's or former employee's spouse and lineal ascendants or descendants and the spouses of such lineal ascendants and descendants. In determining whether an individual is a family member with respect to an employee or former employee, legal adoptions shall be taken into account.

(b) *Test period.* If an individual is a family member with respect to an employee or former employee on any day during the year, such individual is treated as a family member for the entire year. Thus, for example, if an individual is a family member with respect to an employee on the first day of a year, such individual continues to be a family member with respect to such employee throughout the year even though their relationship changes as a result of death or divorce.

Q–13: How is "compensation" determined for purposes of determining the group of "highly compensated employees."

A–13: (a) *In general.* For purposes of section 414(q), the term "compensation" means compensation within the meaning of section 415(c)(3) without regard to sections 125, 402(a)(8), and 402(h)(1)(B) and, in the case of employer contributions made pursuant to a salary reduction agreement, without regard to section 403(b). Thus, compensation includes elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement or tax-sheltered annuity.

(b) *Determination period.* For purposes of determining the group of highly compensated employees, compensation must be calculated on the basis of the applicable period for the determination year and look-back year respectively.

(c) *Compensation taken into account.* Only compensation received by an employee during the determination year or during the look-back year is considered in determining whether such employee is a highly compensated active employee under either the look-back year calculation or determination year calculation for such determination year. Thus, compensation is not annualized for purposes of determining an employee' compensation in the determination year or the look-back year in applying the rules of paragraph (a) of this A–13.

Q–14: What periods must be used for determining who is a highly compensated employee for a determination year?

A–14: (a) *Determination year and look-back year*—(1) *In general.* For purposes of determining the group of highly compensated employees for a determination year, the determination year calculation is made on the basis of the applicable year of the plan or other entity for which a determination is being made and the look-back year calculation is made on the basis of the twelve month period immediately preceding such year. Thus, in testing plans X and Y of an employer, if plan X has a calendar year plan year and plan Y has a July 1 to June 30 plan year, the determination year calculation and look-back year calculation for plan X must be made on the basis of the calendar year. Similarly, the determination year calculation and look-back year calculation for plan Y must be made on the basis of the July 1 to June 30 year.

(2) *Applicable year.* For purposes of this A–14, the applicable year is the plan year of the qualified plan or other employee benefit arrangement to which the definition of highly compensated employees is applicable as defined in the written plan document or otherwise identified in regulations pursuant to sections to which the definition of highly compensated employees is applicable. To the extent that the definition of highly compensated employees is applicable to entities of other arrangements that do not have an otherwise identified plan year, then either the calendar year of the employer's fiscal year may be treated as the plan year.

(3) *Look-back year.* The look-back year is never less than a twelve month period.

(b) *Calendar year calculation election*—(1) *In general.* An employer may elect to make the look-back year calculation for a determination year on the basis of the calendar year ending with or within the applicable determination year (or, in the case of a determination year that is shorter than twelve months, the calendar year ending with or within the twelve-month period ending with the end of the applicable determination year). In such case, the employer must make the determination year calculation for the determination year on the basis of the period (if any) by which the applicable determination year extends beyond such calendar year (i.e., the lag period). If the applicable year for which the determination is being made is the calendar year, the employer still may elect to make the calendar year calculation election under this A–14(b). In such case, the look-back year calculation is made on the basis of the calendar year determination year and, because there is no lag period, a separate determination year calculation under A–3(a)(2) of this § 1.414(q)–1 is not required.

(2) *Lag period calculation.* In making the determination year calculation under A–3(a)(2) of this § 1.414(q)–1 on the basis of the lag period, the dollar amounts applicable under A–3(a)(1) (B) and (C) of this § 1.414(q)–1 are to be adjusted by multiplying such dollar amounts by a fraction, the numerator of which is the number of calendar months that are included in the lag period and the denominator of which is twelve.

(3) *Determination of active employees.* An employee will be considered an active employee for purposes of a determination year for which the calendar year calculation election is in effect so long as such employee performs services for the employer during the applicable year for which the determination is being made. This is the case even if such employee does not perform services for the employer during the lag-period for such determination year.

(4) *Election requirement.* If the employer elects to make the calendar year calculation election with respect to one plan, entity, or arrangement, such election must apply with respect to all plans, entities, and arrangements of the employer. In addition, such election must be provided for in the plan.

(c) *Change in applicable years.* Where there is a change in the applicable year for which a determination is being made with respect to a plan entity, or other arrangement that is not subject to the calendar year calculation election, the look-back year calculation for the short applicable year is to be made on the basis of the twelve month period preceding the short applicable year (i.e., generally, the old applicable year) and the determination year calculation for the short applicable year is to be made on the basis of the short applicable year. In addition, the dollar amounts under A-3(a)(1) (B) and (C) are to be adjusted for such determination year calculation as if the short applicable year were a lag period under paragraph (b)(2) of this A-14.

(d) *Example.* The following examples illustrates the rules of this A-14:

Example 1.

Employer X has a single plan (Plan A) with an April 1 to March 31 plan year. Employer X makes no election to use the calendar year for the determination period. Therefore, in determining the group of highly compensated employees for the April 1, 1989 to March 31, 1990 plan year, the determination year is the plan year ending March 31, 1990 and the look-back year is the plan year ending March 31, 1989.

Example 2.

Assume the same facts given above. With respect to the plan year beginning in 1990, employer X elects to use the calendar year for the determination period. Therefore, in determining the group of highly compensated employees for the April 1, 1990 to March 31, 1991 plan year, the lag-period determination year is the period from January 1, 1991, through March 31, 1991, and the applicable look-back year is the 1990 calendar year.

Example 3.

Employer Y has a single plan (Plan B) with a calendar plan year. With respect to the plan year beginning in 1990, employer Y elects to make the look-back year calculation for the 1990 determination year on the basis of the calendar year ending with or within the 1990 determination year. Because employer Y's determination year is the 1990 calendar year there is no lag period and employer Y determines the group of highly compensated employees for purposes of the 1990 calendar plan year on the basis of such plan year alone.

Q-15: Is there any transition rule in determining the group of highly compensated employees for 1987 and 1988?

A-15: (a) *In general.* Solely for purposes of section 401(k)(3) and (m)(2) and solely for twelve-month plan years beginning in 1987 and 1988, an eligible employer may elect to define the group of highly compensated employees as the group consisting of 5-percent owners of the employer at any time during the plan year and employees who receive compensation in excess of $50,000 during the plan year. This rule would apply in lieu of the look-back year calculation and determination year calculation otherwise applicable under A-3(a) of this § 1.44(q)-1. In addition, an eligible employer may elect to make the determinations permitted under this transition rule on the basis of the calendar year ending in the plan year and the period by which such plan year extends beyond such calendar year, in accordance with the rules of A-14(b), in lieu of making the determinations under this transition rule on the basis of the plan year for which the determinations are being made.

(b) *Eligible employers.* An employer is an eligible employer under this A-15 if such employer satisfies both of the following requirements:

(1) The employer does not maintain any top-heavy plan within the meaning of section 416 at any time during 1987 and 1988; and

(2) Under each plan of the employer to which section 401(k)(3) or 401(m)(2) is applicable, the group of eligible employees that comprises the highest 25% of eligible employees ranked on the basis of compensation includes at least one employee whose compensation is $50,000 or below. This requirement must be met separately with respect to each such plan of the employer.

(c) *Uniformity requirement.* An eligible employer may not make the election under paragraph (a) of this A-15 unless the election applies to all of the plans maintained by the employer to which section 401(k)(3) or 401(m)(2) applies.

(d) *Election requirements.* This election is operational and does not require a plan provision.

§ 1.414(s)-1T Compensation.

The following questions and answers relate to the definition of compensation provided in section 414(s). The definitions and rules provided in these questions and answers are provided solely for purposes of defining "compensation" under this section.

Table of Contents

Q-1: What is the basic definition of compensation for purposes of section 414(s) and when is this definition applicable

A-1: (a) *In general.* For purposes of section 414(s), the term "compensation" means compensation received during the applicable period by the employee from the employer, other than compensation in the form of qualified or previously qualified deferred compensation, that (taking into account the provisions of this chapter) is currently includible in gross income for income tax purposes. *See* A-3 and A-4 of this § 1.414(s)-1 for adjustments and alternatives to this basis definition.

(b) For purposes of this section, the "applicable period" is the period of time specified under the particular rule for which the section 414(s) definition of compensation is applicable. Thus, the regulations applicable to a particular rule that utilizes the section 414(s) definition of compensation will specify the applicable period under section 414(s) for purposes of such rule.

(c) *Applicability.* The definition in paragraph (a) of this A-1 is generally applicable for purposes of applying the nondiscrimination rules of sections 401 through 419A (including the actual deferral percentage test for a cash or deferred arrangement and the actual contribution percentage test for employee and employer matching contributions contained in section 401(k)(3) and 401(m)(3) respectively). However, the definition of compensation in paragraph (a) of this A-1 does not apply to sections that specifically define compensation in a different manner. Examples of provisions for which the section 414(s) definition of compensation is not applicable include, but are not limited to, the definition of highly compensated employees contained in section 414(q), the limitations on benefits and contributions set forth in section 415, and the

deduction provisions of section 404(a) and (b).

Q–2: How is compensation determined for self-employed individuals within the meaning of section 401(c)(1)?

A–2: The basis definition of compensation, for purposes of self-employed individuals, is earned income (as defined in section 401(c)(1)) for the applicable period (as defined in A–1(c) of this § 1.414(s)–1) derived from such individual's trade or business.

Q–3: May an employer elect to treat certain deferrals as compensation?

A–3: Yes. An employer may elect to include in the basic definition of compensation all elective contributions made by the employer on behalf of its employees that are not includible in the gross income of an employee under sections 125, 402(a)(8), 402(h), or 403(b). This election must be made on a consistent and uniform basis with respect to all employees and all plans of the employer for any particular year, must be made on a reasonable and consistent basis from year to year, and must be provided for in the plan. The employer may change this election provided such change does not result in discrimination in favor of highly compensated employees.

Q–4: What, if any, alternative definitions of compensation may be used by an employer?

A–4: (a) *Alternative basic definitions.* For applicable periods beginning in 1987 and 1988, an employer may elect to use the following alternative definitions of compensation in lieu of the basic definition set forth A–1 of this section. Any such election must be provided for in the plan and made on a reasonable and consistent basis from year to year. An employer may change an election made under this A–4(a) provided such change does not result in discrimination in favor of highly compensated employees.

(1) *W–2 compensation.* Compensation received during the applicable period (as defined in A–1(c) of this § 1.414(s)–1) by the employee from the employer that is required to be reported as wages on the employee's Form W–2 for income tax purposes. This election may include or exclude all amounts that are not currently includible in the employee's gross income by reason of the application of sections 125, 402(a)(8), 402(h)(1)(B) or 402(b), provided such total inclusion or exclusion is made on a consistent and uniform basis with respect to all plans of the employer for any particular year, made on a reasonable and consistent basis from year to year, and provided for in the plan. The employer may change this inclusion or exclusion election provided such change does not result in discrimination in favor of highly compensated employees.

(2) *Section 415 compensation.* Compensation as defined in § 1.415–2(d)(1)&(2) received during the applicable period (as defined in A–1(c) of this § 1.414(s)–1) by the employee from the employer.

(b) *Alternative definitions*—(1) *In general.* In lieu of the basic definition of compensation set forth in A–1 of this § 1.414(s)–1 (and in lieu of the alternative basic definitions set forth in (a) of this A–4), an employer may elect to use an alternative definition of compensation. Any such alternative definition is permissible under section 414(s) only if it is described in A–4(b)(2) and satisfies the nondiscrimination rule set forth in A–4(b)(3).

(2) *Available alternative definitions of compensation*—(i) *Regular or base salary or wages.* Regular or base salary or wages (excluding overtime and bonuses) received during the applicable period (defined in A–1(c) of this § 1.414(s)–1) by the employee from the employer.

(ii) *Regular or base salary or wages plus overtime and/or bonuses.* Regular or base salary or wages, plus either or both overtime and/or bonuses, received during the applicable period (defined in A–1(c) of this § 1.414(s)–1) by the employee from the employer.

(iii) *Commissioner may make additional definitions available.* The Commissioner may, consistent with the provisions of this section, make additional definitions of compensation available under this A–4(b). Any such additional definition is permissible under section 414(s) only if such definition satisfies the nondiscrimination rule set forth in A–4(b)(3).

(3) *Nondiscrimination rule.* An alternative definition of compensation described in A–4(b)(2) satisfies this rule only if the compensation percentage for the employer's highly compensated employees is not greater than the compensation percentage for the employer's other employees. The compensation percentage for a group of employees is calculated by averaging the separately calculated compensation ratios for each employee in the group. An employee's compensation ratio is calculated by dividing the amount of the employee's compensation that is included in the alternative definition by the amount of such employee's compensation that is included in the basic definition of compensation (set forth in A–1 of this § 1.414(s)–1 or (a) of this A–4) for the applicable period (defined in A–1(c) of this section).

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) or section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: January 27, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–3416 Filed 2–18–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 910, 922, 933, and 939

Federal Surface Coal Mining and Reclamation Operations, Georgia, Michigan, North Carolina and Rhode Island

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

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior (DOI) is making a technical amendment to the final rule, published on April 24, 1987, updating Federal programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to reflect section numbering changes and rule content revisions made in OSMRE's permanent program rules during regulatory reform. The amendment removes section numbers in four Federal programs that cross-reference superceded or otherwise removed regulatory sections in the OSMRE permanent regulations. A typographical correction is also made.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Block, Branch of Federal and Indian Programs, Room 115, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–4553.

SUPPLEMENTARY INFORMATION:

I. Background

On March 13, 1979, OSMRE promulgated permanent program regulations to implement SMCRA (44 FR 14902). OSMRE subsequently promulgated Federal programs in nine states where no State-administered regulatory program was developed (Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington). These Federal programs use cross-reference to the permanent programs regulations which set the substantive standards for surface coal mining and reclamation operations.

In 1983, OSMRE published revised permanent program regulations in which many sections were removed or otherwise superceded. As a result of these revisions, some of the citations in the regulations for each of the nine Federal programs, which cross-reference the permanent program regulations, became incorrect. To remedy this, OSMRE promulgated revisions to the Federal program regulations on April 24, 1987 (52 FR 13802), to correct, by deletion or renumbering, the incorrect cross-references to the revised permanent program. This rulemaking included a table which listed Federal program section numbers to be removed. However, some sections that should have been removed were inadvertently omitted from the listing.

II. Discussion of Amendment

The purpose of this amendment is to remove 30 CFR sections 910.782, 922.786, 933.826, 939.770, and 939.771. These sections are being removed because they cross-reference removed or superceded permanent program regulations and were inadvertently omitted from the listing of removed Federal program sections in the April 24, 1987 rulemaking.

This amendment also corrects a typographical error in 30 CFR Part 910—Georgia, § 910.772(a). This section should read as follows: Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations. The word "conduct" was omitted from the phrase "seeks to [conduct] coal exploration." This amendment corrects the wording of § 910.772(a) by inserting the word "conduct" between the words "seeks to" and "coal exploration."

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

OSMRE has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because the rule is an administrative correction and has no economic effect on the public. The DOI has also determined that this document will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act.

National Environmental Policy Act

This rulemaking is not a major Federal action, but an administrative rule covered under previous rulemakings. Therefore, an environmental assessment is not required for this rulemaking which is covered under the environmental assessment and environmental impact statement prepared for the previous rulemakings.

Federal Paperwork Reduction Act

It has been determined that the information collection requirements do not change due to the corrections of this rulemaking and therefore, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by the Office of Management and Budget.

List of Subjects in 30 CFR Parts 910, 922, 933, and 939

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Accordingly, OSMRE is amending 30 CFR Parts 910, 922, 933, and 939 as set forth below.

Date: February 11, 1988.

J. Steven Griles,

Assistant Secretary—Land and Mineral Management.

Subchapter T—[Amended]

PART 910—GEORGIA

1. The Authority citation for Part 910 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

§ 910.782 [Removed]

2. Section 910.782 is removed and § 910.772 is amended by revising paragraph (a) to read as follows:

§ 910.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

* * * * *

PART 922—MICHIGAN

3. The authority citation for Part 922 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

§ 922.786 [Removed]

4. Section 922.786 is removed.

PART 933—NORTH CAROLINA

5. The authority citation for Part 933 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

§ 933.826 [Removed]

6. Section 933.826 is removed.

PART 939—RHODE ISLAND

7. The authority citation for Part 939 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

§§ 939.770 and 939.771 [Removed]

8. Sections 939.770 and 939.771 are removed.

[FR Doc. 88–3450 Filed 2–18–88; 8:45 am]
BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Decrease in Amount of Time VA Will Allow Loan Holder To Begin Terminating Defaulted Loans

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) is amending its loan guaranty regulations (38 CFR Part 36) to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA. The amendment will decrease from 2 months to 30 days the amount of time the VA will allow a loan holder to begin termination proceedings when establishing a date after which interest on, and charges to, the loan may not be included in the computation of the guaranty claim. Reducing the time allowed to begin proceedings will facilitate the termination of loans with insoluble defaults and consequently reduce the average dollar amount per claim paid on these loans by the Administrator of Veterans Affairs. It will also reduce veterans debts to the VA resulting from the claims.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3668.

SUPPLEMENTARY INFORMATION: On May 15, 1987, the VA published in the **Federal Register** (52 FR 18401) a proposed regulatory amendment to 38 CFR 36.4319(f). Public comments were requested on a proposal to decrease from 2 months to 30 days the time the VA will allow a loan holder to begin terminating a defaulted VA guaranteed home loan when establishing a date after which interest on, and charges to, the loan may not be included in the computation of the guaranty claim.

The VA received one comment on the proposal. The commenter stated that in several States preliminary matters which are necessary to begin foreclosure, such as obtaining a title report, can take more than 30 days to complete. The commenter noted that in these States the lender would be unable to begin termination proceedings during the 30 day period. The VA's position is that the legal preliminaries necessary to begin foreclosure are considered part of the termination process. The VA regional offices allow time for completion of loan terminations, including necessary legal preliminary actions, when establishing a date under 38 CFR 36.4319(f). The amendment merely reduces the amount of time which holders are allowed to begin the termination process but has no effect on the time normally needed to complete the process. Therefore, the VA is making the proposed rule final without change.

The Administrator hereby certifies that this final regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The provision concerning the amount of time the VA will allow a loan holder to begin termination proceedings will affect guaranty claims in those cases in which the loan holder fails to take timely action to terminate loans when defaults have become insoluble. When a default is insoluble, and there is no reasonable alternative to foreclosure, prudent loan servicing practice dictates that action be taken to terminate the loan without delay. The loan holder is responsible for foreclosure and is able to avoid unnecessary delays. In addition, only a relatively small percentage of VA guaranteed loans are held by small entities. For these reasons, this proposed regulatory amendment will not significantly affect small entities. Pursuant to 5 U.S.C. 605(b), this regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Administrator has also determined that the final amendment is not a "major rule" within the meaning of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers or individual industries; nor will it have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

This amendment is made final under the authority granted the Administrator by sections 210(c), 1816(c)(1)(D), and 1820 of title 38, United States Code.

Approved: January 25, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, *Loan Guaranty*, is amended as follows:

PART 36—[AMENDED]

1. The authority citation for §§ 36.4300 through 36.4375 continues to read:

Authority: Secs. 36.3400 through 36.4375 insured under 72 stat. 1114 (38 U.S.C. 210).

2. In § 36.4319, the first sentence of paragraph (f) is revised to read as follows:

§ 36.4319 Legal proceedings.

* * * * *

(f) If following a default the holder does not begin appropriate action within 30 days after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator may at his or her option intervene in, or begin and prosecute to completion any action or proceeding, in his or her name or in the name of the holder, which the Administrator deems necessary or appropriate, and may fix a date beyond which no further charges may be included in the computation of the guaranty claim or an insured loss. * * *

[FR Doc. 88-3599 Filed 2-18-88 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 87-447, FCC 88-6]

Common Carrier Services; Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Statement of policy.

SUMMARY: The Commission has instituted a one-time, five-year amortization of the depreciation reserve imbalances of all local exchange carriers subject to Commission depreciation prescriptions that have not previously been granted amortization authority. The amortization is effective January 1, 1987. A carrier need not demonstrate the concurrence of state regulatory authorities to be included in this program.

DATE: The *Report and Order* is effective January 21, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert W. Spangler, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Report and Order* in CC Docket 87-447, FCC 88-6, adopted January 13, 1988 and released January 21, 1988. The full text of the FCC's decision is available for inspection and copying in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text of this document may be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

The FCC prescribes depreciation rates and practices for the larger local exchange carriers (LECs). The Commission reviews the rates every three years and, if necessary, prescribes new rates based on changes in service life estimates and salvage values. The depreciation reserve is the accumulation of all past depreciation accruals net of plant retirements. When a carrier's actual "book" depreciation reserve

differs from its theoretical reserve (the reserve that would exist if service lives and salvage values had been accurately forecast in the past), a reserve imbalance exists. The FCC estimates that the LEC's total reserve imbalance as of January 1, 1987 is a deficiency of approximately $13 billion.

In the Notice of Proposed Rulemaking released October 5, 1987, the FCC proposed to amortize the LECs' reserve deficiency, rather than rely solely on remaining-life procedures, to eliminate the deficiency. After reviewing the comments filed in response to that proposal, the Commission has instituted, for all LECs now subject to depreciation rate prescriptions and for which amortization has not been authorized previously, a five-year amortization effective January 1, 1987. The Commission determined that it should act now to eliminate the deficiency through an amortization because amortization will allow the LECs' rates to reflect actual costs incurred in providing services more quickly than use of remaining-life methods alone. The five-year amortization is the best balance of the LECs' need for speedy recovery of capital costs against the potential rate impact for ratepayers. Also, low inflation and changes in the tax laws permit more rapid reduction of the deficiency with less rate impact. The Commission found that because the LECs operate in a rapidly changing technological environment, it could not be certain that the marketplace forces that they may face in the future would permit them to recover a deficiency at that time. It would not be prudent to ignore these potential risks when present conditions allow prompt elimination of the source of the problem.

The Commission concluded that the amortization should be uniform and apply to all carriers, not just to carriers whose state regulatory commission concurred in the request. State concurrence, which was previously required for amortization, is no longer necessary in light of *Louisiana Public Service Commission* v. *F.C.C.*, 106 S.Ct. 1890 (1986). The Commission stated that uniformity of policy is necessary because the reserve deficiency problem existed for the industry, which had been subject to service lives shorter than those upon which depreciation expenses were set. A uniform amortization policy is also important in the administration of pooled interstate access charges. The Commission found that amortization will better match depreciation costs with the time period in which the associated plant was used, and rejected comments that this procedure requires ratepayers to make capital contributions to the carrier.

The Commission determined that the reserve deficiency should be amortized over five years, effective January 1, 1987. It stated that a five-year period is an appropriate balance between speed of recovery of the deficiency and impact on ratepayers, and rejected proposals for a shorter period or for carrier flexibility in choosing an amortization period. The Commission found that January 1, 1987 is an appropriate effective date because many carriers filed proposed depreciation rate changes with that effective date and it is important for the amortization to be uniform. The Commission emphasized that this action is a one-time amortization of the deficiency, and that it will rely on remaining-life depreciation procedures to eliminate reserve imbalances that may arise in the future.

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clause

Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151(i), 151(j), 220 and 403, that the policy changes set forth herein are adopted, effective upon release of this *Report and Order.*

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-3521 Filed 2-18-88; 8:45 am]

BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 702, 733, and 750

[AIDAR Notice 88-2]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The A.I.D. Acquisition Regulation is being amended to revise our presentation of OMB Control Numbers and incorporate a newly approved information collection; to expand on and move information on delegations for contracting authority of heads of contracting activities from Part 702 to Part 701, Subpart 701.6, which deals specifically with contracting authority; to establish guidance for submission of protests to A.I.D.; and to simplify the standards for approving informal commitments under our extraordinary contractual relief procedures.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The changes being made by this Notice are not considered significant rules subject to FAR 1.301 or Subpart 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85-7. This Notice will not have an impact on a substantial number of small entities per the Regulatory Flexibility Act. The information collection established by the new protest procedure has been reviewed and approved by OMB in accordance with the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 701, 702, 733, and 750

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 701, 702, 733, and 750 continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

2. Section 710.105 is revised as follows:

701.105 OMB Approval under the Paperwork Reduction Act.

The following information collection and recordkeeping requirements established by the AIDAR have been approved by OMB, and assigned OMB Control Number 0412-0520 (expiration date April 30, 1990, except for 733.7003(c), which has an expiration date of December 31, 1988):

709.104-3(c)	731.205-6(a)(3)
731.205-6(a)(2)	731.371(c)

731.722(c)
733.7003(c)
737.270(e)
752.209–70
752.219–8
752.228–70(b)
752.245–70
752.245–71
752.7001(a)
752.7001(b)
752.7002(a)
752.7002(b)
752.7003(b)
752.7004
752.7013(a)
752.7016
752.7020
752.7027(a)
752.7027(b)
752.7028
752.7031(b)

Subpart 701.6—Contracting Authority and Responsibility

3. Section 701.601 is revised as follows:

701.601 General.

(a) Except as otherwise prescribed, the head of each contracting activity (as defined in 702.170) is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his or her activity. The heads of A.I.D. contracting activities are vested with broad authority to carry out the programs and activities for which they are responsible. This authority includes authority to execute contracts and the establishment of procurement policies, procedures, and standards appropriate for their programs and activities, subject to Government-wide and A.I.D. requirements and restrictions (see 701.376–4).

(b) The authority of heads of contracting activities to execute contracts are limited as follows:

(1) Director, Office of Procurement. Unlimited authority to execute contracts. May issue warrants for small purchase authority up to $25,000 to qualified individuals on his or her staff.

(2) Director, Office of U.S. Foreign Disaster Assistance. Authority to execute contracts for disaster relief purposes during the first 72 hours of a disaster in a cumulative total amount not to exceed $500,000 (A.I.D. Handbook 8, Chapter 5). Authority to execute small purchases up to $25,000 at any time. May issue warrants for small purchase authority up to $25,000 to qualified individuals on his or her staff.

(3) Director, Office of Management Operations. Authority to execute small purchases up to $25,000 for supplies and services, except professional non-personal services and personal services. Unlimited authority when ordering against GSA or other established U.S. Government ordering agreements. May issue warrants for small purchase authority up to $25,000 to qualified individuals on his or her staff.

(4) Director, Office of International Training. Authority to execute small purchases up to $10,000. Unlimited authority for procuring participant training based on published catalog prices using M/SER/PPE approved forms. May issue warrants for small purchases up to $10,000 to qualified individuals on his or her staff.

(5) Overseas heads of contracting activities. Authority to sign contracts where the cumulative amount of the contract, as amended, does not exceed $250,000 (or local currency equivalent) for personal services contracts or $100,000 (or local currency equivalent) for all other contracts. May issue warrants for small purchases up to $25,000 to qualified individuals on his or her staff.

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

4. Section 702.170–10 is revised as follows:

702.170–10 Head of the contracting activity.

(a) The heads of A.I.D. contracting activities are listed below. The limits of their contracting authority are set forth in 701.601.

(1) A.I.D./Washington Heads of Contracting Activities:

(i) Director, Office of Procurement;

(ii) Director, Office of Management Operations;

(iii) Director, Office of U.S. Foreign Disaster Assistance; and

(iv) Director, Office of International Training.

(2) Overseas Heads of Contracting Activities:

Each Mission Director or principal A.I.D. officer at post (e.g. A.I.D. Representative, A.I.D. Affairs Officer, etc.)

(b) Individuals serving in the positions listed in (a)(1) and (a)(2) of this section in an "Acting" capacity may exercise the authority delegated to that position.

5. Part 733 is revised as follows:

PART 733—PROTESTS, DISPUTES, AND APPEALS

Subpart 733.70—A.I.D. Procedures for Protests

Sec.

Subpart 733.71—A.I.D. Procedures for Disputes and Appeals

Authority: Sec. 621, Pub. L. 87–195, 73 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12173, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp. p. 435.

Subpart 733.70—A.I.D. Procedures for Protests

733.7001 Scope of subpart.

A.I.D. follows the protest procedures in FAR Subpart 33.1, as implemented and supplemented by this Subpart.

733.7002 Definitions.

(a) "Interested party" is defined in FAR 33.101.

(b) "Head of the Contracting Activity" ("HCA") is defined in AIDAR 702.170–10.

(c) All "days" referred to in this Subpart are deemed to be "working days" of the federal government. In computing a period of time under this Subpart, the time shall begin to run on the first working day after the occurrence of the event which is designated as the beginning of the time period in 733.7004(a)(2) or 733.7008(a). Time for filing any document with the HCA expires at 5:30 p.m. local time on the last day on which such filing may be made.

(d) The term "filed" means receipt of the protest submission by the HCA.

733.7003 Filing of protest.

(a) An interested party may protest to A.I.D. a solicitation issued by A.I.D. for the procurement of goods or services, or the proposed award or the award of such a contract, except that if an interested party protests a particular procurement or proposed procurement to the General Accounting Office, or initiates litigation before a court of competent jurisdiction with respect to such procurement, that procurement or proposed procurement may not be the subject of a protest to A.I.D.

(b) Protests must be in writing and addressed to the HCA.

(c) A protest shall:

(1) Include the name, address, and telephone number of the protestor;

(2) Identify the issuing Mission or office and the solicitation and/or contract number;

(3) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents;

(4) Specifically request a decision by A.I.D.; and

(5) State the relief requested.

(d) An adverse decision on the protest may be made by the HCA for failure of the protest to comply with any of the requirements of this section.

733.7004 Time for filing.

(a) (1) Protests based upon alleged improprieties and/or deficiencies in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.

(2) In cases other than those covered by paragraph (a)(1) of this section, protests shall be filed not later than 10 days after the basis of the protest is known or should have been known, whichever is earlier.

(b) The HCA, for good cause shown, may consider a protest which is not timely filed.

733.7005 Notice of protest.

(a) When a protest against the making of an award is received and the HCA decides to withhold the award pending disposition of the protest, the offerors whose offers might become eligible for award may be notified of this protest and may be requested to extend the time for acceptance of their offers to avoid the need for resolicitation.

(b) Material submitted by a protestor will not be withheld from any interested party outside the government or from any government agency if the HCA decides to release such material, except to the extent that the withholding of such information is permitted or required by law or regulation.

733.7006 Protests excluded from consideration.

(a) *Contract administration.* Disputes between a contractor and A.I.D. are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978

(b) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration.

(c) *Procurement under section 8(a) of the Small Business Act.* Contracts are let under section 8(a) of the Small Business Act to the Small Business Administration solely at the discretion of the contracting officer, and are not subject to review.

(d) *Determinations of responsibility by the Contracting Officer.* A determination by the Contracting Officer that a bidder or offeror is or is not capable of performing a contract will not be reviewed by the HCA.

(e) *Protests filed in the General Accounting Office (GAO).* Protests filed with the GAO will not be reviewed.

(f) *Procurements funded by A.I.D. to which A.I.D. is not a party.* No protest of a procurement funded by A.I.D. shall be reviewed unless A.I.D. is a party to the acquisition agreement.

(g) *Subcontractor protests.* Subcontractor protests will not be considered.

(h) *Judicial proceedings.* Protests will not be considered when the matter involved in the subject of litigation before a court of competent jurisdiction or when the matter involved has been decided on the merits by a court of competent jurisdiction.

733.7007 Withholding of award and suspension of contract performance.

(a) When a protest is timely filed, an award shall not be made until the matter is resolved unless the HCA first determines that one of the following applies:

(1) The supplies or services to be contracted for are urgently required;

(2) Delivery or performance will be unduly delayed by failure to make award promptly;

(3) A prompt award will otherwise be advantageous to the Government.

(b) When a protest is received after award, the HCA need not suspend contract performance or terminate the awarded contract unless it appears likely that an award may be invalidated and a delay in receiving the supplies or services would not be prejudicial to the Government's interest. In this event, the contracting officer shall consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

733.7008 Time for and notification of the decision on the protest.

(a) The HCA shall issue a decision on a protest within 45 days from the date a proper protest is filed unless the HCA determines that a longer period is necessary to resolve the protest, and so notifies the protestor in writing.

(b) The HCA shall notify the protestor of his or her decision in writing, which decision shall constitute the final decision of the Agency.

Subpart 733.71—A.I.D. Procedures for Disputes and Appeals

733.7101 Designation of Armed Service Board of Contract Appeals (ASBCA) to hear and determine appeals under A.I.D. contracts.

(a) The ASBCA is hereby designated the authorized representative of the Administrator of the Agency for International Development (A.I.D.) in hearing, considering, and determining as fully and finally as might the Administrator, appeals by contractors from decisions on disputed questions taken pursuant to the provisions of contracts requiring the determination of such appeals by the Administrator or his/her duly authorized representative or Board.

(b) In acting under this designation, the ASBCA will follow such rules and procedures as are or may be prescribed for the conduct of Defense Department contract appeal cases, except for the rules entitled "Forwarding of Appeals" (Rule 3) and "Duties of the Contracting Officer" (Rule 4), which subjects will be governed by procedures to be promulgated by the General Counsel of A.I.D. with approval of the Chairman of the ASBCA.

(c) The General Counsel of A.I.D. will assure representation of the interests of the Government in proceedings before the ASBCA.

(d) All officers and employees of A.I.D. will cooperate with the ASBCA and Government counsel in the processing of appeals so as to assure their speedy and just determination.

733.7102 Special Procedures Regarding Contract Disputes Appeals Promulgated Pursuant to Paragraph 2 of the Administrator's Designation.

(a) The following rules will apply, in lieu of Rules 3 and 4(a) of the ASBCA, to contract dispute appeals to the Administrator of the A.I.D. or his/her authorized representative which are docketed with that Board.

(b) Rule 3 (A.I.D.). Forwarding of Appeals. When a notice of appeal in any form has been received by the contracting officer, he/she shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board with a copy to the A.I.D. General Counsel in Washington, DC. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, and the A.I.D. General Counsel will be promptly advised of its receipt, and the contractor will be furnished a copy of these rules.

(c) Rule 4 (A.I.D.). Preparation, Contents, Organization, Forwarding, and Status of Appeal File (Supersedes Rule 4, "Duties of Contracting Officer" of the ASBCA rules in effect on April 1, 1980).

(d) Duties of Contracting Officer. Within 30 days of receipt of an appeal or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the A.I.D. General Counsel in Washington, DC, two copies of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) All transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(e) The General Counsel will compile the appeal file from such documents, which file must contain the items enumerated in (d) (1) through (5) of this section and will promptly, and in any event within 65 days after the appeal is docketed by the Board, transmit the appeal file to the Board. The General Counsel will notify the appellant when he/she has compiled the appeal file, will provide him/her with a list of its contents, and will afford him/her an opportunity to examine the complete file at the office of the Board and, if the General Counsel deems it appropriate, at any overseas location, for the purpose of satisfying himself/herself as to the contents, and furnishings or suggesting any additional documentation deemed pertinent to the appeal. After receipt of the foregoing file, as it may be augmented at the time of receipt, the Board will promptly advise the parties.

PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 750.71—Extraordinary Contractual Actions to Protect Foreign Policy Interests of the United States

6. Paragraph (d) of section 750.7107 is revised as follows:

750.7107 Limitations upon exercise of authority.

* * * * *

(d) No informal commitment shall be formalized unless:

(1) A request for payment has been filed within six months after arranging to furnish or furnishing property or services in reliance upon the commitment;

(2) A.I.D. has received the services satisfactorily performed, or has accepted property furnished in reliance on the commitment;

(3) The A.I.D. employees alleged to have made the informal commitment have accepted responsibility for making the informal commitment in question; and

(4) A.I.D. has taken appropriate action to prevent recurrence.

Date: February 11, 1988.

John F. Owens,

Procurement Executive.

[FR Doc. 88-3509 Filed 2-18-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 657

[Docket No. 71145-8018]

Atlantic Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Fishery Management Plan for Atlantic Salmon (FMP). The FMP establishes a management program for the U.S. Atlantic salmon resource to complement the existing management programs of the New England States, and to complement Federal management authority over salmon of domestic origin on the high seas conferred to the United States as a member of the North Atlantic Salmon Conservation Organization (NASCO). The FMP prohibits the possession of Atlantic salmon taken from Federal waters, thereby preventing the interception of migratory salmon on their return to natal waters. This action is intended to bring U.S. management in line with that of other signatory nations.

EFFECTIVE DATE: March 17, 1988.

ADDRESS: Copies of the FMP, the environmental assessment, and the regulatory impact review/regulatory flexibility analysis are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Jr. (Northest Region, NMFS) 617-281-3600, ext. 232.

SUPPLEMENTARY INFORMATION: The FMP, prepared by the New England Fishery Management Council (Council), complements the international management program for Atlantic salmon (*Salmo salar*) established under the aegis of the Convention for the Conservation of Salmon in the North Atlantic (NASCO Convention), to which the United States became a signatory nation in March 1982. The FMP prohibits the possession of Atlantic salmon from the exclusive economic zone (EEZ), and in so doing, reinforces the Atlantic salmon restoration programs established by individual State agencies within the United States and by other countries.

The notice of availability of the FMP was published on October 28, 1987 (52 FR 41486). A proposed rule to implement the FMP was published on November 17, 1987 (52 FR 43925). Comments were invited until December 28, 1987. Four comments were received.

In the preamble of the proposed rule, NOAA noted that the Council's definition of the FMP's management unit as including all anadromous salmonids was broader than the FMP analysis, which addressed only the single species of Atlantic salmon, and encouraged comments on this particular matter. A complete discussion of NOAA's concerns can be found in the preamble section of the proposed rule.

Comments and Responses

Written comments were received from the Council; Mr. Hal Lyman, Publisher Emeritus of *Salt Water Sportsman* magazine, Director of the Atlantic Salmon Federation, and a member of the U.S. Section of NASCO; the U.S. Coast Guard; and the U.S. Department of the Interior (DOI).

Comment: Noting NOAA's concerns on the management unit, the Council explained in its comment that the purpose of the FMP is to assure that no commercial fishery for Atlantic salmon develop in Federal waters and believes that this goal could be jeopardized or negated through misidentification of Atlantic salmon at sea. Therefore, the Council had defined the management unit broadly, to include all anadromous salmonids. The Council's comment clarified the Council's intent, showing that the Council had intended that the management unit of the FMP be consistent with NASCO's definition and the Atlantic Salmon Convention Act of 1982.

Response: In its approval of the FMP, NOAA noted the Council's clarification

of its intent that salmonids, other than trout, comprise the management unit. This action does not require the final regulations to differ from the proposed regulations. The proposed regulations were drafted to be consistent with the FMP analysis, and thus are consistent with the Council's clarification of its intent concerning the management unit.

Comment: Mr. Lyman strongly supports the FMP and suggests that in light of NOAA's concerns the management unit be limited solely to Atlantic salmon.

Response: NOAA believes that the clarification of the Council's intent that the management unit be consistent with the Convention, as shown by in the Council's comment above, is more appropriate.

Comments from the DOI and the U.S. Coast Guard support approval of the FMP.

Changes from the Proposed Rule

Several of the prohibitions in § 657.4 have been reworded for clarification. The changes are technical and non-substantive.

Classification

The Director, Northeast Region, NMFS, has determined that the FMP as approved is necessary for the conservation and management of the Atlantic salmon resource and that it is consistent with the Magnuson Act and other applicable law. Copies of the FMP and its associated documents are available from the Council (see ADDRESS).

The Council prepared an environmental assessment for this FMP. The NOAA Assistant Administrator for Fisheries concluded that there will be no significant environmental impact on the human environment as a result of this rule.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council prepared a regulatory impact review which demonstrated that this rule would have no economic effects since commercial fishing for Atlantic salmon in the EEZ is not known to exist. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule contains no information collection requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and New York agreed with this determination. Rhode Island failed to comment within the statutory period of time.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 657

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 16, 1988.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

For the reasons stated in the preamble, a new 50 CFR Part 657 is added as follows:

PART 657—ATLANTIC SALMON FISHERY

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 657.1 Purpose and scope.

This part implements the Fishery Management Plan for Atlantic Salmon prepared by the New England Fishery Management Council in consultation with the U.S. Fish and Wildlife Service of the U.S. Department of the Interior. These regulations govern the conservation and management of Atlantic salmon.

§ 657.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Area of custody means any vessel, building, vehicle, pier or dock facility where fish might be found.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee.

Atlantic salmon means *Salmo salar.*

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish aboard a vessel.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing or *To Fish* means any activity, other than scientific research conducted by a scientific research vessel, which involves

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish, to enter a port with fish, or to transfer fish to another vessel.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Operator, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Owner, with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing for finfish which does not result in their barter, trade, or sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, or a designee.

Retain aboard means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce, or a designee.

Vessel of the United States means

(a) Any vessel documented under Chapter 121 of Title 46, United States Code;

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 657.3 Relationship to other laws.

(a) Fishing vessel operators will exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(b) Nothing in these regulations will supersede more restrictive State or local management measures for Atlantic salmon.

§ 657.4 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from the EEZ;

(2) Transfer directly or indirectly, or attempt to transfer, to any vessel any Atlantic salmon taken from the EEZ;

(3) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, or export any Atlantic salmon taken, retained, or imported in violation of the Magnuson Act, this part, or any other regulation of the Magnuson Act;

(4) Throw or dump into the water, or otherwise dispose of, any Atlantic Salmon, or the contents of any pail, bag, barrel, or any matter whatsoever, after being signaled by an authorized officer, before the authorized officer has inspected the same;

(5) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvest, landing, purchase, sale, possession, or transfer of any Atlantic salmon;

(6) Refuse to permit an authorized officer to board a fishing vessel or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(7) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(6) of this section;

(8) Resist a lawful arrest for any act prohibited by this part;

(9) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(10) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search by an authorized officer while enforcing this part; or

(11) Fail to comply immediately with enforcement and boarding procedures specified in § 657.5.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

§ 657.5 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF–FR, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.— .—)[1], is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.—. —.— — —.—. — .— —) means "you should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (...— —.—...— —) means "you should stop or heave to; I am going to board you."

(4) "L" (.—..) means "you should stop your vessel instantly."

[1] Period (.) means a short flash of light. Dash (—) means long flash of light.

§ 657.6 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 657.20 Prohibition on possession.

(a) *Incidental catch.* All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption.* The possession of Atlantic salmon will be *prima facie* evidence that such Atlantic salmon were taken in violation of these regulations. Evidence that such fish were harvested in State waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

[FR Doc. 88-3574 Filed 2-18-88, 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 33
Friday, February 19, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Eligibility of District of Columbia Government Employees for Superior Qualifications Appointments

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing its proposal to revise the regulations under which agencies may appoint candidates who possess superior qualifications to positions at grades GS–11 and above at rates above the base of the grade. The proposed regulations, published August 12, 1987 (52 FR 29862) would have permitted agencies to appoint employees of the Government of the District of Columbia at advanced rates under the same conditions as other candidates. OPM issued the proposed regulations to ensure that agencies would be able to match the pay of highly qualified DC employees who were paid under the personnel system established pursuant to the Home Rule Act. The Department of Justice has since determined that salaries earned with the DC Government are still to be considered in accordance with 5 U.S.C. 5334, which permits matching employees' highest previous pay rate. Therefore, no additional authority to match DC Government pay rates is needed.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 632–6817.

Office of Personnel Management

Constance Horner,

Director.

[FR Doc. 88–3490 Filed 2–18–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 4595S]

General Administrative Regulations-Standards for Approval; Agency Sales and Service Contract

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to issue a new Subpart M in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to contain the Standards for Approval; Agency Sales and Service Contract combining the standards for financial approval (7 CFR Part 400, Subpart C) with provisions for operational standards, effective with the 1989 Contract Year beginning on July 1, 1988, and for each succeeding contract year. The intended effect of this rule is to set forth standards for financial approval and provisions of operational standards which must be met in order for a private entity to be eligible for an Agency Sales and Service Contract with FCIC.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than March 21, 1988, to be sure of consideration.

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1993.

Edward D. Hews, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, September 19, 1986, FCIC published a Final Rule in the **Federal Register** at 51 FR 33237, to revise and reissue the Standards for Approval—Agency Sales and Service Contract (7 CFR Part 400, Subpart C).

The published standards set forth financial requirements to be met by private entities under an Agency Sales and Service Contract with FCIC.

It is proposed to issue a new 7 CFR Part 400, Subpart M, to include with minor language changes those financial standards contained in 7 CFR Part 400, Subpart C, and combine them with standards for operational approval which must be met by private entities wishing to contract with FCIC under an Agency Sales and Service Contract. It is further proposed to issue the new Subpart M to be effective for the 1989 contract year on those Agency Sales and Service contracts starting on July 1, 1988, and for each succeeding contract year thereafter.

The provisions contained in 7 CFR Part 400, Subpart C, the present Standards for Approval; Agency Sales and Service Contract published on September 19, 1986, at 51 FR 33237, will remain in effect until June 30, 1988.

As defined in § 400.208 of this part, the contract will continue from year to year with an annual renewal date of July 1 for each succeeding year unless the Corporation or the Contractor gives at least ninety (90) days advance notice in writing to the other party that the contract is not to be renewed.

The new contract to be offered, effective July 1, 1988 for the 1989 and subsequent contract years, will incorporate the requirements with respect to electronic transmission and receiving of information concerning the original executed crop insurance documents.

In order to effectively administer the electronic system requirements, FCIC has determined that, in accordance with the contract continuation provisions of § 400.208, at least 90 days advance notice in writing will be given to present contractors that the present contract for the 1988 contract year will not be renewed and that the new contract will be available on a continuing basis to all present contractors and other interested private entities meeting the standards and requirements set forth in this Part.

A notice was published on Friday, October 30, 1987, in the **Federal Register** at 52 FR 41723, setting forth FCIC's intention not to renew the present contract under the conditions outlined above.

In order for the reader to refer to financial standard approval provisions contained in 7 CFR, Subpart C, FCIC herewith provides a re-designation table to indicate the relocation of such previous provisions in the proposed 7 CFR Part 400, Subpart M:

Old (7 CFR Part 400, subpart C)	New (7 CFR Part 400, subpart M)
§ 400.27 Applicability of Standards	§ 400.201
§ 400.28 Definitions	§ 400.202
§ 400.29 Certification of submission	§ 400.203
§ 400.30 Notification of deviation from standards	§ 400.204
§ 400.31 Denial or termination of contract, and administrative reassignment of business	§ 400.205
§ 400.32 Financial qualifications for acceptability	§ 400.206
§ 400.33 Representative licensing and certification	§ 400.207
§ 400.34 Term of the Contract	§ 400.208
§ 400.35 Minimum level of business	§ 400.209
§ 400.36 OMB control numbers	§ 400.211

The principal effect of the proposed operational standards for approval is to provide for the electronic transmitting and receiving of information to and from FCIC with respect to the original executed crop insurance document.

In addition, the proposed rule adds fire insurance and allied lines to the types of licenses which a contractor's representative may hold as a current license before selling crop insurance.

The proposed rule also requires Contractors to certify sales of crop insurance contracts of at least $500,000 as measured by base premium generated during the period July 1 through June 30 immediately prior to the contract year.

Each of the present Agency Sales and Service Contractors whose contracts began on July 1, 1987, have been made aware of FCIC's intention to institute an electronic transmission and receiving system and many contractors have begun to utilize such a system. Sufficient time is provided for other private entities seeking an Agency Sales and Service Contract with FCIC to provide for such a system.

Under the provisions of the Agency Sales and Service Contract, the contractor will be required to electronically transmit and receive information relative to the original executed crop insurance document.

Before transmitting or receiving electronic information, the Contractor's electronic system is tested and certified by FCIC. Each Contractor must hold a current system certification.

The proposed rule herein sets forth the requirements for operational approval of the electronic transmission and receiving system described above.

FCIC is soliciting comments on this proposed rule for 30 days following publication in the **Federal Register**.

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

All written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Crop insurance, Agency sales and service contract, Standards for approval.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to issue a new Subpart M in Chapter IV of Title 7 of the Code of Federal Regulations, to be known as 7 CFR Part 400, Subpart M—General Administrative Regulations—Standards for Approval; Agency Sales and Service Contract, proposed to be effective for the contract year beginning July 1, 1988, and for each succeeding contract year.

§§ 400.27 through 400.36 [Removed]

1. Subpart C, consisting of § 400.27 through § 400.36, is removed.

2. Subpart M is added to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

Subpart M—Agency Sales and Service Contract—Standards for Approval

Sec.

Subpart M—Agency Sales and Service Contract—Standards for Approval

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 400.201 Applicability of standards.

Federal Crop Insurance Corporation will offer an Agency Sales and Service Contract to private entities meeting the requirements set forth in this subpart under which the Corporation will insure producers of agricultural commodities. The Agency Sales and Service Contract will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and the provisions of the regulations of the Corporation found at Chapter IV of Title 7 of the Code of Federal Regulations. The Standards contained herein must be met in order for an entity to be a contractor under an Agency Sales and Service Contract (Contract).

§ 400.202 Definitions.

For the purpose of these Standards:

"Agency Sales and Service Contract (Contract)" means the contract between the Federal Crop Insurance Corporation (Corporation) and a private entity (Contractor) for the purpose of selling and servicing Federal Crop Insurance policies;

"BELL 208B (or compatible) modem"—means a modem meeting the standards developed by BELL Laboratories for dial-up, half-duplex, 4800 or 9600 bits per second (bps) transmission of data utilizing 3780 (or 2780) protocol.

"Contract" includes (but is not limited to) the following documents:

(1) The Agency Sales and Service Contract;

(2) Any Appendix to the Agency Sales and Service Contract issued by the Corporation;

(3) The annual approved Plan of Operation; and

(4) Any amendment adopted by the parties.

"Contractors electronic system (system)" means the data processing hardware and software, data communications hardware and software, and printers utilized with the system.

"CPA" means a Certified Public Accountant who is licensed as such by the State in which the CPA practices.

"CPA Audit" means a professional examination conducted in accordance with generally accepted auditing standards of a Financial Statement on the basis of which the CPA expresses an independent professional opinion respecting the fairness of presentation of the Financial Statement.

"Current Assets" means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operation cycle of the business or within one year if the operation cycle is shorter than one year.

"Current Liabilities" means those liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time, usually one year.

"Financial Statement" means the documents submitted to the Corporation by a private entity which portray the financial information of the entity. The financial statement must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and reflect the financial position in the Statement of Financial Condition or Balance Sheet; and the result of operations in the Statement of Profit and Loss or Income Statement.

"Minimum level of business" means that a company under an Agency Sales and Service Contract must be able to show sales of Federal Crop Insurance contracts of at least $500,000 as measured by base premium generated for the period July 1 through June 30 immediately prior to the contract year.

"Processing representative" means a person or organization designated by the Contractor to be responsible for data entry and electronic transmission of data contained on crop insurance documents.

"Sales" means new applications and renewals of FCIC policies.

"Suspended Data Notice" means a notification of a temporary stop or delay in the processing of data transmitted to the Corporation by the Contractor because the same is incomplete, non-processable, obsolete, or erroneous.

"3780 protocol"—means the data communications protocol (standard) that is a binary synchronous communications (BSC), International Business Systems (IBM)-defined, byte controlled communications protocol, using control characters and synchronized transmission of binary coded data.

§ 400.203 Financial statement and certification.

(a) An entity desiring to become or continue as a contractor shall submit to the Corporation a financial statement which is as of a date not more than eighteen (18) months prior to the date of submission.

(b) The financial statements submitted shall be audited by a CPA (CPA Audit); or if CPA audited financial statement are not available, the statements submitted to the Corporation shall be accompanied by a certification of;

(1) The owner, if the business entity is a sole proprietor ship; or

(2) At least one of the general partners, if the business entity is a partnership; or

(3) The Chief Executive Officer and Treasurer, if the business entity is a Corporation, that said statements fairly represent the financial condition of the entity on the date of such certification to the Corporation.

If financial statements as certified by the Chief Executive Officer and Treasurer, partner, or owner are submitted, CPA audited financial statements must be submitted if subsequently available.

§ 400.204 Notification of deviation from standards.

A Contractor shall advise the Corporation immediately if the Contractor deviates from the requirements of these standards. The Corporation may require the Contractor to show compliance with these standards during the contract year if the Corporation determines that such submission is necessary.

§ 400.205 Denial or termination of contract, and administrative reassignment of business.

Non-compliance with these standards shall be grounds for:

(a) The denial of a Contract; or

(b) Termination of an existing Contract. In the event of denial or termination of the Contract, all crop insurance policies of the Corporation sold by the Contractor and all business pertaining thereto may be assumed by the Corporation and may be administratively reassigned by the Corporation to another Contractor.

§ 400.206 Financial qualifications for acceptability.

The financial statements of an entity must show total allowable assets in excess of liabilities and the ability of the entity to meet current liabilities by the use of current assets.

§ 400.207 Representative licensing and certification.

(a) A Contractor must maintain twenty-five (25) licensed and certified Contractor Representatives.

(b) A Contractor's Representative who solicits, sells and services FCIC policies or represents the Contractor in solicitation, sales or service of such policies must hold a license as issued by the State or States in which the policies are issued, which license authorizes the sales of insurance, in any one or more of the following lines:

(1) Multiple peril crop insurance;

(2) Crop hail insurance;

(3) Casualty insurance;

(4) Property insurance;

(5) Liability insurance; or

(6) Fire insurance and allied lines.

The Contractor must submit evidence, satisfactory to the Corporation, verifying the type of State license held by each Representative and the date of expiration of each license.

(c) A Contractor's Representative must have achieved certification by the Corporation for each crop upon which the Representative sells and services insurance.

§ 400.208 Term of the contract.

(a) The term of the Agency Sales and Service Contract shall commence on July 1 or when signed. The contract will continue from year to year with an annual renewal date of July 1 for each succeeding year unless the Corporation

or the Contractor gives at least ninety (90) days advance notice in writing to the other party that the contract is not to be renewed. Any breach of the contract, or failure to comply with these Standards, by the Contractor, may result in termination of the contract by the Corporation upon written notice of termination to the Contractor. That termination will be effective thirty (30) days after mailing of the notice of termination to the Contractor.

(b) A Contractor who elects to continue under the Agency Sales and Service Contract for a subsequent year will be required during the month of June to submit a completed Plan of Operation which includes the Certifications as required by section 400.203 of this subpart. The Contractor may not perform under the contract until the Plan of Operation is approved by the Corporation.

§ 400.209 Minimum level of business.

Any Contractor who enters into an Agency Sales and Service Contract will be required to maintain a minimum level of business in order to be eligible for any Agency Sales and Service Contract which may be offered by the Corporation the following contract year.

§ 400.210 Electronic transmission and receiving system.

Any Contractor under an Agency Sales and Service Contract with the Corporation is required to:

(a) Adopt a plan for the purpose of transmitting and receiving electronically information to and from the Corporation concerning the original executed crop insurance documents;

(b) Maintain an electronic system which must be tested and approved by the Corporation;

(c) Maintain Corporation approval of the electronic system as a condition to the electronic transmission and reception of data by the Contractor;

(d) Utilize the Corporation approved automated data processing and electronic data transmission capabilities to process crop insurance documents as required herein; and

(e) Establish and maintain the electronic equipment and computer software program capability to:

(1) Receive and store actuarial data electronically via telecommunications utilizing 3780 protocol and utilizing a BELL 208B or compatible modem at 4800 bits per second (bps) (The Corporation may approve other compatible specifications if accepted by the Corporation and is requested by the Contractor);

(2) Enter and store information from original crop insurance documents into electronic format;

(3) Verify electronically stored information recorded from crop insurance documents with electronically stored actuarial information;

(4) Compute and print the data elements in the Summary of Protection;

(5) Transmit crop insurance data electronically, via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps;

(6) Receive electronic acknowledgements, error messages, and other data via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps, and relate error messages to original crop insurance documents; and

(7) Store backup data and physical documents.

§ 400.211 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

Done in Washington, DC on February 9, 198.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-3572 Filed 2-18-88; 8:45 am]

BILLING CODE 3410-08-M

Soil Conservation Service

7 CFR Part 652

Surface Mining Specifications for Soil Removal, Stockpiling, Replacement, and Reconstruction for Surface Coal Mining and Reclamation Operations on Prime Farmland

AGENCY: Soil Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Soil Conservation Service (SCS) of the U.S. Department of Agriculture (USDA) seeks comments on this proposed rule which establishes the specifications for soil handling (removal, stockpiling, replacement, and reconstruction) in relation to mining activities on prime farmland, as provided for in section 515(b)(7) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, 30 U.S.C. 1265(b)(7).

DATES: Comments must be submitted on or before April 19, 1988. Public Hearings: Upon request, SCS will hold public hearings on the proposed rule in Washington, DC; Champaign, Illinois; Lexington, Kentucky; Bismarck, North Dakota; and Columbus, Ohio. SCS will accept requests for public hearings until 5:00 p.m., ET on April 19, 1988.

FOR FURTHER INFORMATION CONTACT: Gary A. Margheim, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013. Phone: 202-382-1870. For copies of the proposed rule as it applies to one of the identified states contact: Ernest V. Todd, state conservationist, 665 Opelika Road, Auburn, Alabama 36830; Albert E. Sullivan, state conservationist, Federal Office Building, Suite 2405, 700 West Capitol Avenue, Little Rock, Arkansas 72201; John J. Eckes, state conservationist, Springer Federal Building, 301 North Randolph Street, Champaign, Illinois 61820; Robert L. Eddleman, state conservationist, Corporate Square-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224; J. Michael Nethery, state conservationist, 693 Federal Building, 210 Walnut Styreet, Des Moines, Iowa 50309; James N. Habiger, state conservationist, 760 South Broadway, Salina, Kansas 67401; Randall W. Giessler, state conservationist, 333 Waller Avenue, Room 305, Lexington, Kentucky 40504; Perlie S. Reed, state conservationist, Hartwick Buildng, Room 522, 4321 Hartwick Road, College Park, Maryland 20740; Russell Mills, acting state conservationist, 555 Vandiver Drive, Columbia, Missouri 65202; Charles Mumma, acting state conservationist, Federal Building, Rosser Avenue and Third Avenue, P.O. Box 1458, Bismarck, North Dakota 58502-1458; Roger A. Hansen, acting state conservationist, 200 North High Street, Room 522, Columbus, Ohio 43215; C. Budd Fountain, state conservationist, USDA-Agricultural Center Building, Stillwater, Oklahoma 74074; James H. Olson, state conservationist, 228 Walnut Street, Room 820, Harrisburg, Pennsylvania 17108-0985; Lawrence Nieman, acting state conservationist, Federal Buildng, 200 4th Street SW., Huron, South Dakota 57350-2475; Harry W. Oneth, state conservationist, W. R. Poage Federal Buildng, 101 South Main Street, Temple, Texas 76501-7682; or Rollin N. Swank, state conservationist, 75 High Street, Room 301, Morgantown, West Virginia 26505.

ADDRESSES: Comments, requests for a public hearing, and copy of testimony in advance may be mailed or hand-delivered to the Soil Conservation Service, Land Treatment Program Division, Room 6036-S, 12th Street and Independence Avenue, Washington, DC 20013.

SUPPLEMENTARY INFORMATION:

Public Hearings

SCS will hold public hearings on the proposed rule only on request. The time, dates, and addresses for the hearings at the five locations specified above will be announced in the **Federal Register** at least 7 days before any hearings. Any person requesting a hearing at a particular location should inform Dr. Gary A. Margheim (see "FOR FURTHER INFORMATION, CONTACT") in writing of the desired hearing location by 5:00 p.m., ET on April 19, 1988.

If only a few people express an interest in a public hearing, a public meeting rather than a hearing may be held and the results included in the administrative record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, SCS requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist SCS in providing useful information and addressing relevant concerns, SCS also requests that persons who plan to testify submit to SCS a copy of their testimony in advance of the hearing (See **"ADDRESSES"**).

Procedural Matters

A complete local version of the proposed specifications for soil-handling is available for each of the following States: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, and West Virginia. Copies may be obtained from the SCS state conservationist of any of the above States (see "FOR FURTHER INFORMATION, CONTACT"). This field office version contains the basic planning considerations and specifications and those additional items that are applicable within a particular State. The field office version is written in a format that each SCS state staff has determined will assure effective implementation.

Coal mining is now being carried out or could be carried out in several States other than those mentioned above, including Alaska, Arizona, Colorado, Georgia, Maryland, Montana, New Mexico, Tennessee, Utah, Virginia, Washington, and Wyoming. However, specifications for soil-handling are not now needed because surface coal mining is not currently being carried out on prime farmland. When mining affects prime farmland in these States local versions of soil-handling specifications will be developed. Until such time, the specifcations set forth by this rule will be used.

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule that would require submittal to the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The U.S. Department of Agriculture has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. This determination is in accord with the determination of the U.S. Department of the Interior with regard to the final rule for the permanent regulatory program for surface coal mining and reclamation operations. See 48 FR 24649 (June 1, 1983).

Regulatory Flexibility Act

The U.S. Department of Agriculture also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. This too, is in accord with the determination of the U.S. Department of the Interior regarding the permanent regulatory program. See 48 FR 24649 (June 1, 1983).

National Environmental Policy Act

SCS has determined that the potential environmental effects of the proposed rule are adequately addressed by the existing environmental impact statement, "Final Environmental Impact Statement, OSM–EIS–1: Supplement," and that the preparation of additional environmental documents under sec. 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), is not required.

Background

Section 515(b)(7) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201, 1265(b)(7) authorizes the U.S. Secretary of Agriculture to establish specifications for soil removal, storage, replacement, and reconstruction for all prime farmland, as identified in sec. 507(b)(16) of the Act, 30 U.S.C. 1257(b)(16), that is to be mined and reclaimed. This function was delegated to SCS by the U.S. Secretary of Agriculture in 7 CFR 2.62(a)(9).

SCS has determined that national specifications for soil handling must allow for consideration of the wide diversity of soils, geology, climate, mining equipment, and crops in coal mining areas across the nation. Also, some differences may exist between the laws, programs, and policies of individual States. The differences are recognized in the permanent program regulations published by the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, specifically in 30 CFR 823.4(a) which provides that "SCS within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction." Accordingly, the specifications set forth in this proposed rule have been developed so as to ensure that local and site-specific factors are considered. Within the individual States, each state conservationist of SCS will maintain and have available a field office version of these specifications that incorporates the general criteria set forth in this rule and any modifications made for the respective State.

In Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, and West Virginia, SCS staff specialists and agricultural specialists and the State regulatory authorities (SRA's) have developed proposed specifications for soil-handling. They were assisted by individuals from the mining industry and others who had knowledge and concern about soil restoration. To the fullest possible extent, the basic specifications and the applicable modifications for individual States reflect the latest scientific information and experience regarding reclamation techniques.

During the development of the proposed State specifications, certain general guidelines were provided by SCS national headquarters to assist the SCS state staffs in developing the required specifications. These guidelines were set out in the advance notice of the proposed rulemaking published on August 26, 1985 (50 FR 34490).

Proposed National and Local Specifications Format

The regulations proposed in this rule consist of two elements: general planning considerations and specifications. The general planning considerations are informational, providing guidance on how soil-handling for surface mining on prime farmland should be planned so as to assure compliance with the required specifications and to achieve the satisfactory reclamation of the mined prime farmland to restore agricultural productivity. The specifications are the

required actions or soil conditions and/or characteristics that must be achieved in order to comply with the reclamation objectives of the Act.

Each SCS field office located in an area where the surface mining of coal will affect prime farmland will maintain a local version of these planning considerations and specifications, including the particular specifications applicable to the individual State. The text and format of the field office versions have been developed by the SCS state staff with the cooperation of the appropriate State regulatory agencies, members of the affected industry and others. Notwithstanding variations in wording or format, the field office versions are based upon and controlled by the specifications set forth in this proposed rule.

List of Subjects in 7 CFR Part 652

Prime farmland, Surface coal mining and reclamation operations, Specifications for soil handling.

For the reasons set forth in the preamble, Title 7, Subtitle B, Chapter VI of the Code of Federal Regulations is proposed to be amended by adding a new Part 652 to read as follows:

PART 652—SOIL REMOVAL, STOCKPILING, AND RECONSTRUCTION SPECIFICATIONS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON PRIME FARMLAND

Sec.

Authority: 30 U.S.C. 1265(b)(7); 7 CFR 2.62 (a)(9).

§ 652.1 Purpose, scope, and applicability.

The purposes of these specifications are to protect and to restore soil productivity of prime farmland that is affected by surface coal mining. The specifications of this section apply to the removal, stockpiling, and reconstruction of soil materials during surface coal mining and reclamation operations on prime farmland regulated under the Act of 1977, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.* They supplement the special performance standards of the Office of Surface Mining Regulation and Enforcement, U.S. Department of the Interior, which are set forth in 30 CFR Part 823. The land areas to which these specifications apply are prime farmland historically used for cropland, unless excluded by the provisions of 30 CFR 785.17 or 823.11.

§ 652.2 Soil removal.

(a) *Planning considerations.* (1) Use a soil survey, as specified in 30 CFR 785.17(c)(1), to identify and locate the map units that qualify as prime farmland.

(2) If the boundaries of prime farmland areas are not apparent on the site, consider marking these boundaries with flags before the earthmoving operation begins.

(3) Note the overall surface relief of prime farmland to be mined.

(4) Note surface and internal drainage conditions, flooding frequency, and surface or subsurface drainage systems used.

(5) Review the description of the representative (typical) soil profile for the county where the named map units qualify as prime farmland on which soil is to be removed. Refer to the published soil survey (see 30 CFR 785.17(c)(1)) or soil description provided by a qualified soil scientist.

(6) Note soil properties such as color, texture, reaction, density, content and size of coarse fragments, and thickness of soil layers from the soil descriptions. These properties will serve as a basis by which to determine whether the reclamation is achieving comparable quality in the final, replaced soil or substitute material.

(7) Note soil moisture and temperature conditions under which earthmoving operations would minimize compaction.

(8) Consider using substitute materials for topsoil only if the reconstructed soil would have a greater productive capacity than the original soil before mining.

(9) Consider removing B horizons with C horizons or other layers if it can be demonstrated that the mix would be equal to or more favorable for plant growth than the B horizon.

(10) When determining quantity of soil to be removed to meet the depth requirements for soil reconstruction, recognize that soil losses may occur during handling.

(11) Consider using equipment for soil removal and reconstruction that will allow effective segregation of soil layers and will minimize compaction.

(b) *Specifications.* (1) Use a soil survey, as specified in 30 CFR 785.17(c)(1), to identify and locate areas of prime farmland.

(2) Clear trees, logs, brush, rubbish, and other undesirable materials from the areas to be mined.

(3) Keep all earthmoving work within the boundaries of the permit area.

(4) Document the bulk density of the prime farmland soils before mining and include the documentation in the reclamation plan. These densities can be obtained either by testing samples from each mapping unit by soil layers or by using estimates provided for each soil series by SCS.

(5) Stockpile the soil in designated areas if not used immmediately for reconstruction.

(6) Soil removal will be accomplished by:

(i) Removing the topsoil layer (A, Ap, AE, AB, E horizons and, where appropriate, dark noncalcareous Bw and Bt horizons) or suitable soil material and moving it to a designated stockpile area. If the natural topsoil layer is less than 6-inches thick, remove the top 6 inches and treat as topsoil; topsoil from all prime farmland areas in the permit area may be stockpiled together;

(ii) Removing the B horizon, and/or C horizon and/or other strata which have been determined to be equal or more favorable for plant growth than the B horizon; or

(iii) Removing the Bk (formerly Cca horizon and the C horizon) above a depth of 48 inches and transporting it to a designated area. The C horizon of prime and non-prime farmland may be mixed if the chemical and physical properties are similar; that is, if after mixing, the sodium adsorption ratio (SAR), electroconductivity (Ec), and texture are within the range of the characteristics of the prime farmland soil that was identified before removal.

§ 652.3 Soil stockpiling.

(a) *Planning considerations.* (1) Use a soil survey to evaluate soils being considered as sites for stockpiling. Note the surface relief, percent of slope, surface and internal drainage conditions, susceptibility to slippage or flooding, and the presence of springs or seeps on hillsides.

(2) Consider the season of year, duration of stockpiling, and general wetness conditions of the area to be used for stockpiling in order to reduce compaction potential.

(3) Consider the effects of stockpiling on any prime farmland soils used as stockpile sites and attempt to avoid or mitigate any adverse effects.

(4) Consider measures to control erosion and offsite movement of soil materials.

(5) Consider the importance of adequate surface drainage on the top of the stockpile so that ponding, which would contribute to soil wetness, does not take place.

(b) *Specifications.* (1) Stockpiling is not appropriate and should not be used where the method of mining allows the soil removal and reconstruction

operations to be carried out concurrently.

(2) Sites subject to flooding or slippage are to be avoided as sites for stockpiling. The soil map and interpretations for the proposed stockpiling site are to be used to determine soils that may be subject to flooding or slippage.

(3) Remove all woody vegetation and other materials that may interfere with placement or removal of stockpiled soil.

(4) Stockpile the topsoil separately from other excavated soil and spoil materials.

(5) Stockpile the B and/or C horizons or other approved substitute soil materials in a location separate from all other excavated soil and spoil materials.

(6) If stockpiled soil material will not be used for reconstruction within 30 calendar days, protect the stockpiles from erosion in accordance with 30 CFR 816.22 or 817.22.

§ 652.4 Soil reconstruction.

(a) *Planning considerations.* (1) Use of a soil survey to determine chemical and physical properties of the soil that exist prior to removal.

(2) Consider the use of specialized earthmoving equipment and other techniques that minimize soil compaction and create a favorable physical soil condition.

(3) Consider the use of chiseling, ripping, or equivalent treatment in the upper part of the B horizon before topsoil replacement to reduce compaction and to increase porosity.

(4) Consider alternatives for reconstruction that will result in a better drained, less erodible, and more productive soil than existed prior to mining.

(5) Minimize compaction by implementing reconstruction within favorable soil moisture ranges.

(6) Consider monitoring and correcting the density of lower layers while they can still be reached with ripping or chiseling equipment.

(7) Consider adding lime to the replaced B and/or C horizons to establish or improve the natural pH balance of the soil. Mixing by ripping or chiseling could improve the quality of the reconstructed soil if the natural pH is less than 6.2.

(b) *Specifications.* (1) Soil reconstruction of the topsoil, B and C horizons must be completed to a minimum depth of 48 inches or to the depth of the original Cr (soft rock) or R (bedrock) horizons if either was less than 48 inches.

(2) In circumstances where the pre-mining depth to the Cr or R horizons was more than 48 inches and the quantities of stockpiled topsoil, B and C horizons are insufficient to reconstruct the original elevation, graded spoil material may be used to achieve the pre-mining elevation. The B and C horizon material must be placed on such graded spoil at a uniform thickness.

(3) Topsoil or an approved substitute soil material must be returned to the mined area and placed on the B and C horizons at a thickness not less than that of the pre-mined topsoil or to a mimimum of 6 inches, if the surface layer before mining was less than 6-inches thick.

(4) The texture and reaction (pH) of the major horizons of the reconstructed soil must be within the range of characteristics of the pre-mined soil.

(5) Final grading of the reconstructed soil must provide positive surface drainage and uniform slopes. The average slope gradient must be within the range of the pre-mined prime farmland map units.

(6) Use the specifications found in Section IV of the local SCS Field Office Technical Guide for seeding, mulching, and other erosion control measures after replacement of the topsoil.

(7) The porosity of the topsoil and B and C horizons after reconstruction must permit root penetration.

(8) Seeding, mulching, and other erosion control measures must be completed as soon as weather conditions permit after replacement of the topsoil.

(9) Before spreading topsoil, the regraded areas must be scarified or otherwise treated in order to eliminate slippage surfaces and promote root penetration.

(10) Earthmoving and grading equipment traffic, which increases compaction, reduced porosity, and makes root penetration more difficult, must be kept to a minimum.

(11) The reconstructed subsoil of fragipan soils should meet the high capability root-medium requirements of State law if any.

(12) The topsoil, B horizon material, and C horizon material that are not used for reconstruction concurrently with mining or placed in stockpiles must be spread within the permit boundaries in accordance with 30 CFR 816.22 or 817.22.

Galen S. Bridge,

Deputy Chief for Programs.

[FR Doc. 88-3538 Filed 2-18-88; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Compensation of Officials

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: Pursuant to its regulatory review program, the NCUA Board proposes changes to § 701.33 of the NCUA Rules and Regulations. The proposed changes clarify statutory limits on compensation of officials and provide authority and guidelines for indemnification of officials and employees.

DATE: Comments must be received on or before May 19, 1988.

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

FOR FURTHER INFORMATION CONTACT: Robert Fenner, General Counsel, Allan Meltzer, Assistant General Counsel, or Julie Tamuleviz, Staff Attorney, Office of General Counsel, at the above address, or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: In accordance with its policy to review existing regulations every three years, the NCUA Board has reviewed § 701.33 of the NCUA Rules and Regulations, "Compensation of Officials," and is proposing several amendments. Comments are requested on the proposed amendments.

Prior to 1982, section 112 of the FCU Act, 12 U.S.C. 1761a, provided that, with the exception of the treasurer, no board officer of an FCU could be compensated as such. In 1982, Congress amended the Act to allow FCU's to determine, and specify in their bylaws, which board officer (director) would be compensated. Section 701.33(a) of the NCUA Rules and Regulations currently provides that the treasurer is the only FCU official who may be compensated. The NCUA Board is proposing that § 701.33(a) be amended to conform to section 112 of the FCU Act, and that this section be redesignated as § 701.33(b)(1).

Section 111(c) of the FCU Act, 12 U.S.C. 1761(c), and § 701.33 (a) and (b) of the NCUA Rules and Regulations currently state that no member of the board of directors or of any other committee can, as such, be compensated, except that reasonable health, accident, and similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position, would not be considered compensation.

The question has repeatedly arisen whether it is permissible under section 111(c) for an FCU to reimburse officials for pay or leave (e.g., annual leave, leave without pay) lost while attending a meeting of the board of directors, or of the supervisory or credit committees. The NCUA Board requests comment on whether, under certain circumstances, the reimbursement of officials for lost pay or leave should be permitted.

Services performed by officials are prerequisite to the success of FCU's. An official's ability to serve, however, may be limited or discouraged by the attendant loss of pay or leave. To encourage voluntary service and fair treatment of officials, therefore, the Board proposes to amend § 701.33(b).

Proposed § 701.33(b)(2)(i) clarifies that where an official is required to use leave time to attend meetings of the board of directors, or of the supervisory or credit committees, or will not be paid by the officials's employer while attending such meetings, reimbursement for pay and leave actually lost in proper. Where the employer permits an official to attend such meetings without the loss of pay or leave, or where the official is self-employed or cannot establish actual loss, reimbursement is not proper. Further, the proposed amendment would not permit reimbursement for lost pay or leave incurred while attending credit union conferences or similar events. (Payment or reimbursement of reasonable and proper costs of attending such events is, of course, permissible.)

The Board also proposes regulatory guidance on indemnification of officials and employees. As in the case of reimbursement for lost pay and leave, the NCUA Board believes that indemnification and the purchase of insurance to provide for indemnification can help encourage voluntary service.

An FCU has the authority pursuant to section 107(2) of the FCU Act, 12 U.S.C. 1757(2) (the authority to sue and be sued), and section 107(16) (the incidental powers clause) to indemnify its officials and employees. NCUA has in the past interpreted these provisions as authorizing an FCU to provide for indemnification of its officials and employees under limited circumstances. However, the neither section 107 nor any other provision of law or regulation provides specific guidance on the circumstances under which indemnification may be allowed. Proposed § 701.33(c) is designed to provide that guidance.

The Board believes that permitting indemnification in accordance with state corporate law would be proper under traditional federalism principles, as set forth in Executive Order 12612 (52 FR 41685 (October 30, 1987)), which reflects a policy of minimum Federal regulatory preemption of state laws. The Board has further taken into account that state corporate law is readily accessible to FCU's and their counsel, and that the ability to follow state law guidelines should lessen the cost for FCU's choosing to implement indemnification provisions.

Although a diversity of law exists regarding indemnification among the states, NCUA's review has not uncovered anything which would be inconsistent with the powers and responsibilities of FCU's. State law and the Model Business Corporation Act would not allow indemnification for reckless, wanton, dishonest, or fraudulent conduct, or actions taken in bad faith. Only an FCU and its legal counsel can determine whether an FCU is included within the parameters of a state statute, but the Board wishes to caution that the courts, not the Board, would be the final arbiter as to the validity of an indemnification provision under state law.

The proposal would give FCU's the additional option of using the standards set forth in the Model Business Corporation Act, both because the Act provides an extremely clear and compelling set of standards and because many state statutes, at least on their face, do not apply directly to FCU's. An alternative would be for NCUA to establish its own regulatory standards. That action does not appear to be either necessary or advisable, in view of the flexibility afforded by the Model Act and the various state laws. For convenience of commenters, the relevant portions of the Model Business Corporation Act are set forth as an Appendix to this proposal. (The Appendix is not intended as a part of the proposal.)

FCU's would be able to elect to have no indemnification or to follow *either* the Model Act *or* the relevant state law. The election must be contained in an FCU charter or bylaw amendment, or in a contract or board resolution. Failure to make an election will be considered a determination by the FCU not to provide indemnification.

The proposal would specifically exclude indemnification of officials and employees for expenses, penalties or other payments incurred in an administrative proceeding brought by the National Credit Union Administration unless the official substantially prevails on the merits. To allow indemnification under such circumstances would lessen the deterrent effect of administrative actions.

Section 701.33(c)(2) would make clear that, while an FCU may choose to follow the indemnification provisions of either state law or the Model Business Corporation Act, NCUA's procedural requirements regarding charter or bylaw amendments would still apply. Thus, a particular state statute providing for indemnification *only* through a charter amendment voted by the members would be inconsistent with NCUA procedures, which provides only for a vote of members to *recommend* a charter amendment to the NCUA Board for approval. This should not be an impediment to indemnification since the proposal would allow FCU's to follow the provisions of the Model Business Corporation Act, and FCU's choosing to follow state law in states which do not require specific procedures may choose to provide indemnification by means of an employment contract or board resolution, neither of which require NCUA approval.

Section 701.33(c)(3) clarifies that FCU's are free to purchase insurance, such as directors and officers liability insurance, that protects officials and employees against liability asserted against them and arising out of the performance of their official duties. Credit unions customarily have purchased this insurance as a method of providing indemnification.

Finally, the proposal would add a new § 701.33(a), defining the term "official" for purposes of § 701.33 as a current or former member of the board of directors, credit committee or supervisory committee. The definition would clarify which individuals an FCU may indemnify. The inclusion of former FCU officials would allow an FCU to continue indemnification of an individual who is no longer an official but is sued for activities relating to official FCU duties performed as an official. Similarly, the proposal would permit indemnification of former employees.

Consistent with its statutory and regulatory responsibilities, NCUA monitor indemnification provisions both for consistency with the indemnification standards chosen and for the safety and soundness implications for the institution. Also it is emphasized that the power of an FCU's board to provide for indemnification implies the responsibility to determine whether, under the particular circumstances, indemnification is appropriate.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendments will not have a significant economic impact on a substantial number of small credit unions because the changes are directed at clarification and reduction of regulatory confusion and interpretive burdens, rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The proposed amendments do not contain any collection of information requirements.

List of Subjects in 12 CFR Part 701

Credit unions, Compensation of officials, Idemnification.

By the National Credit Union Administration Board on February 10, 1988.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA proposes to amend 12 CFR Part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755, 12 U.S.C. 1756, 12 U.S.C. 1757, 12 U.S.C. 1759, 12 U.S.C. 1761, 12 U.S.C. 1761a, 12 U.S.C. 1761b, 12 U.S.C. 1766, 12 U.S.C. 1767, 12 U.S.C. 1782, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1789, and 12 U.S.C. 1798.

2. It is proposed that § 701.33 be revised to read as follows:

§ 701.33 Compensation of officials; indemnification of officials and employees.

(a) *Official.* An "official" is a person who is or was a member of the board of directors, credit committee or supervisory committee.

(b) *Compensation.* (1) Only one board officer may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term "compensation" specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment) for reasonable and proper costs, including pay or leave actually lost due to attendance at meetings of the board of directors, or of the supervisory or credit committee, incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed;

(ii) Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union: *Provided,* That such insurance protection must exclude life insurance; must be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by reason of carrying out the duties or responsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; and

(iii) Indemnification and related insurance consistent with paragraph (c) of this Section.

(c) *Indemnification.* (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.

(2) Indemnification shall be consistent either with the general standards of corporate law in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act, but may in no event permit indemnification for expenses, penalties, or other payments incurred in an administrative proceeding brought by the National Credit Union Administration, unless the official or employee substantially prevails on the merits. A Federal credit union that elects to provide indemnification shall specify whether it will follow the Model Business Corporation Act or the relevant state law. Failure to elect to provide indemnification will be considered a decision not to provide it. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with procedural requirements of applicable state law or the Model Business Corporation Act. A charter or bylaw amendment must be approved by the National Credit Union Administration.

(3) A Federal credit union may purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by applicable state law or the Model Business Corporation Act.

Note.—The following Appendix will not appear in the Code of Federal Regulations.

Appendix—Model Business Corporation Act, Subchapter E Indemnification

Section 8.50 Subchapter definitions.

In this subchapter:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (i) When used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in section 8.56, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

Section 8.51 Authority to indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual, made a party to a proceeding because he is or was a director, against liability incurred in the proceeding if:

(1) He conducted himself in good faith; and

(2) He reasonably believed:

(i) In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(ii) In all other cases, that his conduct was at least not opposed to its best interests; and

(3) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants and beneficiaries of the plan is conduct that satifies the requirement of subsection (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Section 8.52 Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Section 8.53 Advance for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in section 8.51;

(2) The director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this subchapter.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 8.55.

Section 8.54 Court-ordered indemnification.

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(1) The director is entitled to mandatory indemnification under section 8.52, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in section 8.51 or was adjudged liable as described in section 8.51(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

Section 8.55 Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under section 8.51 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in section 8.51.

(b) The determination shall be made:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

(3) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or

(ii) If a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

(4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

Section 8.56 Indemnification of officers, employees, and agents.

Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation who is not a director is entitled to mandatory indemnification under section 8.52, and is entitled to apply for court-ordered indemnification under section 8.54, in each case to the same extent as a director;

(2) The corporation may indemnify and advance expenses under this subchapter to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorportion, bylaws, general or specific action of its board of directors, or contract.

Section 8.57 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under section 8.51 or 8.52.

Section 8.58 Application of subchapter.

(a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this subchapter. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This subchapter does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

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12 CFR Parts 790 and 791

Description of Office, Disclosure of Official Records, Availability of Information, Promulgation of Regulations; Rules of Board Procedure

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: The NCUA Board proposes to amend Part 791 of its Rules to (1) streamline and clarify Board procedure, and (2) set forth updated provisions concerning the issuance of NCUA regulations. Concurrently, it is proposed that § 790.10 of NCUA's Rules and a related Appendix be repealed. Section 790.10 and the Appendix contain outdated provisions related to issuing regulations.

DATE: Comments must be received on or before May 19, 1988.

ADDRESS: Send comments to Becky Baker, Secretary, National Credit Union Administration Board, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary, NCUA Board, regarding Rules of Board Procedure, or Julie Tamuleviz, Staff Attorney, regarding the issuing of NCUA Rules and Regulations, at the above address or telephone (202) 357-1100 (Ms. Baker) or (202) 357-1030 (Ms. Tamuleviz).

SUPPLEMENTARY INFORMATION: Section 790.10 of NCUA Rules and regulations sets forth NCUA's procedures for issuing regulations. The NCUA Board believes that the substance of this section would be more appropriately located in Part 791 covering "Rules of Board Procedure." In addition, § 790.10 is outdated and unclear. The Board is therefore proposing to delete § 790.10 and to add a new § 791.8 that will address this subject. The title of part 790 and its Scope section (§ 790.1) would be revised to reflect the proposed deletion of § 790.10, and the Scope section has been rewritten in plain words.

The Board also proposes to delete Appendix A to Part 790 entitled "Final Report In Response to Executive Order No. 12044: Improving Government Regulations." The Appendix has been superseded by NCUA Policy Statement 87-2, which contains current procedures for developing and reviewing regulations.

Under the proposed amendments, current Part 791 is divided into two subparts. Subpart A contains Rules of Board Procedure. Subpart B sets forth procedural requirements for issuing regulations.

Rules of Board Procedure

Section 102(d) of the Federal Credit Union Act, 12 U.S.C. 1752a(d), grants the NCUA Board the discretion to adopt such rules as it sees fit for the transaction of its business. Proposed Rules of Board Procedure were adopted at the first NCUA Board Meeting in September 1979. A final rule was adopted in March 1980. The purpose of these proposed amendments is to update and streamline the Rules of Board Procedure, based on the experience of the past seven years, current and changing needs, and the desire to provide flexibility for the Board in carrying out its responsibilities.

Section 791.2 ("Number of Votes Required for Board Action"), would be amended by inserting the word "any" between the words "for" and "action". This amendment clarifies that both notation votes and votes at Board meetings are subject to the two-of-three majority rule.

Subsection (a) of § 791.4 ("Notation Voting"), is redesignated as § 791.4(b). Conversely, § 791.4(b) ("Board Meetings") is redesignated as Section (a). This change emphasizes that the primary method of acting is through action taken at Board meetings; the secondary method is action taken by notation voting. For purposes of clarification, reference to Subpart C of Part 790, Public Observation of Board Meetings, has been added to § 791.4(a)(1).

Proposed § 791.4(b) ("Notation Voting") would amend the definition of notation voting contained in current § 791.4(a) to provide that notation voting is the circulation of written memoranda and voting sheets to the *office* of each Board member. The present requirement that each Board member must personally receive the written memoranda and voting sheet is difficult to accomplish in the case of out-of-town or out-of-reach Board members.

For clarification purposes, proposed § 791.4(b)(2) would revise current § 791.4(a)(2) to provide for the use of a Notation Vote Sheet to record actions taken by notation vote. The first sentence of the current section, which provides for an "approval with suggested administrative changes" option on the notation vote sheet, has been deleted as unnecessary.

It is proposed that current § 791.4(a)(3)(ii) be deleted. The history of Board operations has shown that the failure of any Board member to respond to a notation vote within the prescribed time frame is not a good indication the member wants the matter considered at a Board meeting. Experience has been that the Board member has been on travel or otherwise unavailable. With the deletion of current § 791.4(a)(3)(ii), current § 791.4(a)(3)(i) would become § 791.4(b)(3). The title of proposed § 791.4(b)(3) would become "Veto of Notation Voting."

History has shown that the business to come before the Board can be accomplished, with few exceptions, at a monthly meeting. Past experience bears out that the scheduling of Board meetings on a day certain is not a feasible plan. The Board proposes that § 791.5 ("Scheduling of Board Meetings"), which requires that meetings be held each Thursday, be amended to provide that regular meetings be held monthly.

Section 791.6(a) ("Subject Matter of a Meeting") has been changed to show that the Chairman has final responsibility for the agenda.

Promulgation of NCUA Rules and Regulations

Subpart B of Part 791 pertains to the promulgation of NCUA Rules and Regulations. Proposed § 791.8 sets forth the procedures the Board will follow in promulgating rules and regulations, including procedures regarding publication of notices of proposed rulemaking in the Federal Register § 791.8(b) and (d)), public participation in the rulemaking process § 791.8(c)), and the effective date of substantive rules § 791.8(e)). These procedures are largely prescribed by the Federal Administrative Procedure Act. (5 U.S.C. 551 *et seq.*)

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and hereby certifies that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed amendments do not contain any collection of information requirements.

List of Subjects in 12 CFR Part 791

Procedures, NCUA Board meetings, Promulgation of NCUA rules and regulations.

By the National Credit Union Administration Board on February 10, 1988.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA proposes that its regulations be amended as follows:

1. The authority section for Part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f. Subpart A is also issued under 5 U.S.C. 552. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

2. The heading of Part 790 is revised to read as follows:

PART 790—DESCRIPTION OF OFFICE, DISCLOSURE OF OFFICIAL RECORDS, AVAILABILITY OF INFORMATION

3. Section 790.1(b) is revised to read as follows:

§ 790.1 Scope and application.

* * * * *

(b) The rules contained in this Part are promulgated pursuant to the Federal Administrative Procedure Act (5 U.S.C. 551 *et seq.*). This Part includes a description of NCUA's offices and the places and method of obtaining information from NCUA. This Part contains rules relating to types of information available to the public, fee schedules, and determinations on requests by the Administration, as provided by the Freedom of Information Act (5 U.S.C. 552). Regulations relating to rules of procedure are contained in Part 791 of this chapter.

§ 790.10 [Removed]

Appendix A to Part 790—[Removed]

4. Section 790.10 and Appendix A to Part 790 are removed.

5. Part 791 is revised to read as follows:

PART 791—RULES OF BOARD PROCEDURE AND PROMULGATION OF NCUA RULES AND REGULATIONS

Subpart A—Rules of Board Procedure

Sec.

Subpart B—Promulgation of NCUA Rules and Regulations

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789 and 5 U.S.C. 552.

Subpart A—Rules of Board Procedure

§ 791.1 Scope.

The rules contained in this Subpart are the rules of procedure governing how the Board conducts its business. These rules concern the Board's exercise of its authority to act on behalf of NCUA; the conduct, scheduling and subject matter of Board meetings; and the recording of Board action.

§ 791.2 Number of votes required for Board action.

The agreement of at least two of the three Board members is required for any action by the Board.

§ 791.3 Voting by proxy.

Proxy voting shall not be allowed for any action by the Board.

§ 791.4 Methods of acting.

(a) *Board Meetings*—(1) *Applicability of the Sunshine Act.* The Government in the Sunshine Act (5 U.S.C. 552b, "Sunshine Act") requires that joint deliberations of the Board be held in accordance with its open meeting provisions (5 U.S.C. 552 (b) to (f)). (Subpart C of Part 790 contains NCUA's regulations implementing the Sunshine Act).

(2) *Presiding Officer.* The Chairman is the presiding officer, and, in the Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings with the right of the objector to request a Board ruling.

(b) *Notation Voting.* Notation voting is the circulation of written memoranda and voting sheets to the office of each Board member and the tabulation of the responses.

(1) *Matters that may be decided by Notation Voting.* Notation voting may be used only for routine matters, which normally will not include decisions on proposed and final rules, adjudications, and formal Board interpretations and policy statements.

(2) *Notation Vote Sheets.* Notation vote sheets will be used to record the vote tally on a notation vote. The Secretary of the Board has administrative responsibility over notation voting, including the authority to establish deadlines for voting, receive notation vote sheets, count votes, and determine whether further action is required.

(3) *Veto of Notation Voting.* In view of public policy for openness reflected in the Sunshine Act, each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus require that the matter be placed on the agenda of a Board meeting.

(4) *Disclosure of Results.* A record is to be maintained of Board transactions by use of the notation voting procedure. Public disclosure of this record is determined by the provisions of the Freedom of Information Act (5 U.S.C. 552).

§ 791.5 Scheduling of Board meetings.

(a) *Meeting Calls*—(1) *Regular Meetings.* The Board will hold regular meetings each month unless there is no business or a quorum is not available. The Secretary of the Board will coordinate the dates for meetings.

(2) *Special Meetings.* The Chairman shall call special meetings either on the

Chairman's own initiative or at the request of any Board member.

(b) *Notice of Meetings*—(1) *Notifying the Public.* The Sunshine Act sets forth the procedures for notifying the public of Board meetings.

(2) *Notifying Board Members*—(i) *Special Meetings.* Except in cases of emergency as determined by a majority of the Board, each Board member is entitled to receive notice of any special meeting at least twenty-four hours in advance of such meeting. The notice shall set forth the place, day, hour, and nature of business to be transacted at the meeting.

(ii) *Regular Meetings.* Each Board member is entitled to receive notice of the agenda and/or notice of any changes in the subject matter of such meetings concurrent with the public release of such notices under the Sunshine Act. Each Board member shall be entitled to at least twenty-four hours advance notice of the consideration of a particular subject matter, except in cases of emergency as determined by a majority of the Board.

§ 791.6 Subject matter of a meeting.

(a) *Agenda.* The Chairman is responsible for the final determination of each meeting agenda.

(b) *Submission of Agenda Items.* Agenda items may be submitted to the Secretary of the Board by each Board member, the Executive Staff (which includes all Office Directors and President of the Central Liquidity Fund), and Regional Directors.

Subpart B—Promulgation of NCUA Rules and Regulations

§ 791.7 Scope.

The rules contained in this Subpart B pertain to the promulgation of NCUA Rules and Regulations.

§ 791.8 Promulgation of NCUA rules and regulations.

(a) The Administration's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and the Administration's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87–2.

(b) *Proposed rulemaking.* Notices of proposed rulemaking are published in the **Federal Register** except as specified in paragraph (d) or as otherwise provided by law. These notices will include:

(1) A statement of the nature of the rulemaking proceedings;

(2) Reference to the authority under which the rule is proposed; and

(3) Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(c) *Public participation.* After publication of notice of proposed rulemaking, interested persons will be afforded the opportunity to participate in the making of the rule through the submission of written data, views, or arguments, delivered within the time prescribed in the notice of proposed rulemaking, to the Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456. Interested persons may also petition the Board for the issuance, amendment, or repeal of any rule by mailing such petition to the Secretary of the Board at the address given in this section.

(d) *Exceptions to notice.* The following are not subject to the notice requirement contained in paragraph (b) of this section:

(1) Matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts;

(2) When persons subject to the proposed rule are named and either personally served or otherwise have actual notice thereof in accordance with law;

(3) Interpretive rules, general statements of policy, or rules of agency organization, procedure or practice, unless notice or hearing is required by statute; and

(4) If the Board for good cause finds (and incorporates the finding and a brief statement therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, unless notice or hearing is required by statute.

(e) *Effective dates.* No substantive rule issued by the Administration shall be effective less than 30 days after its publication in the **Federal Register** except that this requirement may not apply to (1) rules which grant or recognize an exemption or relieve a restriction; (2) interpretive rules and statements of policy; or (3) any substantive rule which the Board makes effective at an earlier date upon good cause found and published with such rule.

[FR Doc. 88–3404 Filed 2–18–88; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 128 and 143

Proposed Rule Relating to Procedures for Clearance of Cargo Carried by Express Consignment Operators or Carriers

AGENCY: Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning a proposal to amend the Customs Regulations relating to the informal entry procedures applicable to the entry and clearance of cargo carried by the various entities which comprise the express consignment industry. On December 16, 1987, Customs published a notice in the **Federal Register** (52 FR 47729), proposing to add a new Part 128 to the Customs Regulations (19 CFR Part 128), to set forth revised special informal entry procedures applicable to the express consignment industry which recognize the needs of this growing industry. The proposed new regulations would incorporate the current provisions of §§ 143.21(1) and 143.29, Customs Regulations (19 CFR 143.21(1), 143.29), with the following modifications. They provide for the filing of a written application and a process for Customs approval of express consignment and hub facilities; establish advance manifest requirements; establish bond requirements; generally raise the informal entry ceiling to $1,250 for those qualifying to use the procedures; eliminate the distinction between shipments valued at $250 or less and those valued in excess thereof; raise the value level of shipments which must be segregated if an advance manifest is used, from $5.00 to $25.00; streamline informal and formal entry procedures; require all entry numbers be furnished to Customs in a Customs approved bar coded readable format; and permit the district director to waive production of entry documentation in certain cases. The district director's authority to require the consolidation of shipments under one entry would be extended. These amendments would further promote uniform, fair, and consistent treatment of the various courier and express services and make the procedures available to all operators, carriers, and other entities that can meet the criteria, while at the same time better assuring the protection

of the revenue in accord with all applicable laws and regulations.

Comments on this proposal were to have been received on or before February 16, 1988. Customs has received a request to extend the comment period an additional 30 days. In view of the complexity of issues involved we agree that some additional time for the preparation of responsible comments is appropriate. We, however, note that the proposal has been pending almost 60 days and that the processing of express consignment shipments is causing a significant impact on Customs resources and our ability to properly discharge our responsibilities. Accordingly, we are granting a limited extension of time to submit comments.

DATE: Comments are requested on or before March 1, 1988.

ADDRESS: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the above address.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Vincent Dantone, Office of Inspection and Control, (202) 566–5354

Legal aspects: Ken Paley, Entry Rulings Branch, Office of Regulations and Rulings (202) 566–2938 or (202) 566–5856.

Dated: February 12, 1988.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 88–3526 Filed 2–18–88; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

26 CFR Part 1

[EE–129–86]

Definitions of "Highly Compensated Employee" and "Compensation"; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the scope and meaning of the terms "highly compensated employee" in section 414(q) and "compensation" in section 414(s) of the Internal Revenue Code of 1986. They reflect changes made by the Tax Reform Act of 1986 (TRA '86). The text of those temporary regulations also serves as the text for this Notice of Proposed Rulemaking. These regulations will provide the public with guidance necessary to comply with the law and would affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and certain other employee benefit plans.

DATE: Written comments and requests for a public hearing must be delivered or mailed April 19, 1988. In general, these regulations apply to years beginning on or after January 1, 1987, except as otherwise specified in TRA '86.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE–129–86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). (202–566–3938) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend 26 CFR by adding a new section 1.414(q)–1T under Part 1 to provide guidance with respect to the definitions of highly compensated employee and compensation within the meaning of Code section 414(q) and (s). The regulations are proposed to be issued under the authority contained in sections 414(s) and 7805 of the Code (100 Stat. 2453, 68A Stat. 917; 26 U.S.C. 414(s), 7805). For the text of the temporary regulations, see F.R. Doc. (T.D. 8173) published in the Rules and Regulations portion of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that as regulatory impact analysis is not required.

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for Public Hearing

Before adopting these proposed requlations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Nancy J. Marks of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–0—1.425–1

Income taxes, Employee benefit plans, Pensions.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–3417 Filed 2–18–88; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 655]

Proposed Establishment of Fredericksburg in the Texas Hill Country Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Gillespie County, Texas, to be known as "Fredericksburg in the Texas Hill County." This proposal is the result of a petition from Mr. Karl W. Koch of the Pedernales Vineyards. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better

designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by April 4, 1988.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044—0385 (Notice No. 655).

Copies of written comments received in response to this notice will be available during normal business hours at: ATF Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Wine and Beer Branch, (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 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, for the listing of approved American viticultural areas.

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 features (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 the features which can be found on United States Geological Survey (U.S.B.S.) maps of the largest applicable scale; and

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

Petition

ATF has received a petition from Mr. Karl W. Koch of the Pedernales Vineyard proposing an area in Gillespie County, Texas, as a viticultural area to be known as "Fredericksburg in the Texas Hill Country." This proposed viticultural area is located entirely in Gillespie County, Texas, in the central part of the State approximately 80 miles west of Austin. The proposed area consists of approximately 110 square miles. There are approximately eight vineyards in the area which are devoted to wine grapes with a total of about 50 acres under cultivation. Additionally, there are many commercial peach growers in the area with test plantings of grapes. The petitioner provides the following information as evidence that the proposed area meets the regulatory requirements discussed previously.

Viticultural Area Name

The name "Fredericksburg" can be found on several U.S.G.S. maps of the area surrounding the city of Fredericksburg. The area around Fredericksburg is described in various newspaper and magazine articles, as well as brochures published by the State of Texas, as the "Texas Hill Country." Therefore, the petitioner proposes to use the name "Fredericksburg in the Texas Hill Country" as the name of this proposed viticultural area.

Local Viticultural History

Fredericksburg was founded May 8, 1846, by German immigrants under the auspices of the Society for the Protection of German Immigrants in Texas. The first colonization was of New Braunfels in 1845. A few years later, Fort Martin Scott was established southeast of Fredericksburg.

The Commissioner General of the Society, also known as the "Adelsverein," was Baron Ottfried Hans Von Meusebach, a German nobleman who took the name of John O. Meusebach once settled in Fredericksburg.

The city of Fredericksburg derived its name from German nobleman Prince Frederick of Prussia, who was the highest ranking member of the "Adelsverein." This society sponsored the colonization of the Fisher-Miller Grant in Central Texas. Vineyards were confined during this time to a very small number of Germans in the eastern settlements. The few vineyards which were established often drew favorable comments from observers, who foresaw a great future for this agricultural specialty.

More common was the practice of making wine from wild grapes, principally the variety known as the Mustang, which was found in abundance in the valleys of the Colorado, San Antonio, and Guadalupe rivers and their tributaries. The abundance of wild grapes convinced the early settlers that domesticated types would also thrive, and vine clippings brought from Europe were planted by Germans in the very first year at New Braunfels and shortly thereafter around Castroville. Experiments continued for a number of years in the western settlements, including the hills on the north side of Fredericksburg, but in the end it was realized that the imported European vines would not grow properly in Texas, and viticulture was, with few exceptions, abandoned. A commercial winery existed as late as the post-World War II period in Fredericksburg, selling products made from wild grapes and berries, but the wine was made primarily for home use to satisfy a cultural beverage preference. Currently, present day technology has made viticulture a more practical venture than a century or so ago. Consequently, recent efforts in viticulture in the Fredericksburg area show promise of producing a unique wine that will parallel and/or supplement the peach business for which the Fredericksburg area has long been well known.

Geographical/Climatological Features

The petitioner claims the proposed viticultural area is distinguished from surrounding areas by differences in geography, soil and climate. The petitioner bases these claims on the following:

(a) *Geography.* The proposed viticultural area is on the Edwards Plateau which is the result of the geological uplift phenomenon. The Pedernales watershed orginates due west of Fredericksburg a few miles from the Gillespie-Kerr-Kimble county line at an elevation of 2200 feet. The Pedernales River flows easterly to Lake Travis (below 700 feet elevation) which is a part of the Austin city water supply. The elevation of the proposed viticultural area is between 1500 and 1900 feet. At an altitude above 1900 feet there is a greatly increased risk of spring frost.

The proposed viticutural area ia a "bowl" shaped area with a relatively flat bottom and relatively steep sides. It is the bottom of the bowl that is suitable for farming. There is no similar farming area for at least 100 miles west of Austin and San Antonio. Most of the surrounding area is ranching, not crops and orchards. The majority of the proposed area, including the town of

Fredericksburg, lies to the north of the Pedernales River.

(b) *Soil.* The soils of the proposed viticultural area consist of the contiguous Luckenbach-Pedernales-Heatly Soil Association which is on or near the Pedernales River and its tributaries at an approximate elevation of between 1500 and 1900 feet. These soils adjacent to the river, and the riverbed itself, near Fredericksburg contain an abundance of flint or chert which is hydrated silica from the ancient seabed that formed the Edwards Plateau. The Spanish word "Pedernale," from which the river derived its name, actually means "flintstone."

The higher elevations of the Pedernales River watershed are the source of the Alluvial Valley Soils of the proposed area. The Luckenbach-Pedernales-Heatly Soil Association is composed of deep, sandy to loamy, gently sloping soils on uplands and terraces.

The Soil Conservation Service, U.S. Department of Agriculture, describes the Luckenbach-Pedernales-Heatly Soil Association as a sandy loam topsoil (mostly quartz with limited organic matter) over a reddish clay. This clay is high in the nutrients, phosphorus, potassium, and calcium, as well as other minerals. The red color is due to iron which helps peaches (and grapes) avoid a chloritic condition. About one-half of this Soil Association in Gillespie County is cultivated. The crops are sorghums, small grain, peaches, grapes, and tame pasture. The remaining one-half is used for rangeland and wildlife habitat.

(c) *Climate.* The Fredericksburg area, at latitude 30 degrees north, is far enough south to escape harsh winters. At an elevation of 1,747 feet and a distance of more than 200 miles inland from the coast, the Fredericksburg area escapes the hot, humid summers characteristic of many southern climates. Summer temperatures are more characteristic of the High Plains than of southern Texas. Smog is unknown, and severe storms are very rare.

Total annual precipitation averages 27.44 inches. The lack of rainfall is due to the distance north and west of the Gulf of Mexico. A result of the dry climate is an abundance of sunshine which is a requirement for quality fruit. The dry climate also reduces disease problems.

The Fredericksburg area is generally cooler than surrounding areas. Summer nights at Fredericksburg average four to five degrees Fahrenheit cooler than at lower elevations east of the Hill Country. The growing season (freeze-free period) in the Fredericksburg area averages 219 days. The average date of the last occurrence of 32 degrees in spring and the first occurrence in fall are April 1 and November 6, respectively.

The altitude of the area serves two purposes. In winter there are over 850 hours per year at below 40 degrees Fahrenheit. This maintains a proper winter dormancy factor. A second altitude benefit is that of temperature change between night and day. A difference in temperature is required to properly mature a fruit. Because of the higher elevation of the Fredericksburg area, the temperature difference between night and day is more pronounced than in surrounding areas.

Weather maps published by the Bureau of Business Research at the University of Texas show that the proposed Vitricultural area is located at or near departure or change points from surrounding areas for temperature, precipitation and relative humidity. The Fredericksburg area is generally cooler than areas to the north and east while about the same mean annual temperature as areas to the immediate south and west. The mean annual precipitation for the proposed area is about the same as the area to the north, more than the area to the west, and less than the areas to the east and south. The mean annual relative humidity for the Fredericksburg area is about the same as the areas to the north and south, lower than the area to the east, and higher than the area to the west.

Proposed Boundary

The boundary of the proposed Fredericksburg in the Texas Hill Country viticultural area may be found on six United States Geological Survey maps. The maps are 7.5 minute series with a scale of 1:24,000. The six maps are titled Stonewall Quadrangle (1961), Cain City Quadrangle (1963), Fredericksburg East Quadrangle (1967, photorevised 1982), Cave Creek School Quadrangle (1961), Fredericksburg West Quadrangle (1967, photorevised 1982), and Lady Bird Johnson Park Quadrangle (1964, photoinspected 1979). The specific description of the boundaries of the proposed viticultural area is found in the proposed regulations which immediately follow the preamble to this notice of proposed rulemaking.

Executive Order 12291

It has been determined that this proposed regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects 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 notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

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 notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed

regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Area, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Par. 2. The Table of Sections in Subpart C is amended to add the title of § 9.125 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.125 Fredericksburg in the Texas Hill Country.

Par. 3. Subpart C is amended by adding § 9.125 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.125 Fredericksburg in the Texas Hill Country.

(A) *Name.* The name of the viticultural area described in this section is "Fredericksburg in the Texas Hill Country."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Fredericksburg in the Texas Hill Country viticultural area are six U.S.G.S. topographical maps of the 1:24,000 scale. They are titled:

(1) Stonewall Quadrangle (1961);

(2) Cain City Quadrangle (1963);

(3) Fredericksburg East Quadrangle (1967, photorevised 1982);

(4) Cave Creek School Quadrangle (1961);

(5) Fredericksburg West Quadrangle (1967, photorevised 1982); and

(6) Lady Bird Johnson Park Quadrangle (1964, photoinspected 1979).

(c) *Boundaries.* The Fredericksburg in the Texas Hill Country viticultural area is located entirely in Gillespie County, Texas, in the central part of the State approximately 80 miles west of Austin. The beginning point is on the Stonewall Quadrangle map near Blumenthal at a point on U.S. route 290 approximately .1 mile east of bench mark (BM) 1504, at the junction of a light-duty road known locally as Jung Road.

(1) From the beginning point, the boundary proceeds on Jung Road in a northwesterly direction across the Pedernales River.

(2) Then northwesterly approximately 1 mile along Jung Road as it parallels the Pedernales River.

(3) Then north along Jung Road approximately 3.9 miles to a point where Jung Road meets a medium-duty road known locally as Texas Ranch Road 2721.

(4) Then westerly approximately .1 mile on Texas Ranch Road 2721 to a point where it meets a medium-duty road known locally as Texas Ranch Road 1631.

(5) Then northeasterly along Texas Ranch Road 1631 approximately 1 mile to a point where Texas Ranch Road 1631 crosses the 1,800 foot contour line.

(6) Then northwesterly in a meandering manner along the 1800-foot contour line to the point where the 1,800-foot contour line crosses State Route 16.

(7) Then in a generally westerly direction along the 1,800-foot contour line to the point where the 1,800-foot contour line crosses State Route 965.

(8) Then in a northwesterly and then generally a southeasterly direction along the 1800-foot contour line to a point where the 1,800-foot contour line goes just south of the Kordzik Hills approximately 1 mile due east of the city of Fredericksburg.

(9) Then continuing on the 1800-foot contour line in a generally northwesterly, southerly, and again northwesterly direction to the point where the 1,800-foot contour line crosses Loudon Road approximately 4 miles northwest of Fredericksburg.

(10) Then continuing on the 1800-foot contour line in a northwesterly, then generally a southeasterly, westerly and finally a southerly direction to a point where the 1,800-foot contour line crosses a light-duty road known locally as Hayden Ranch Road about 50 yards north of Texas Ranch Road 2093.

(11) Then 50 yards south on Hayden Ranch Road to Texas Ranch Road 2093 and then east on Texas Ranch Road 2093 approximately .15 mile to an unimproved, southbound, gravel and dirt county road known locally as Beverly Gold's Road.

(12) Then approximately 2.6 miles south on Beverly Gold's Road to a point where it joins Texas State Route 16.

(13) Then approximately 1.5 miles northeast on State Route 16 to a light-duty county road known locally as Bear Creek Road.

(14) Then approximately 1 mile in a southeasterly, northeasterly, and then a southerly direction along Bear Creek Road to the point where the road crosses the 1700-foot contour line.

(15) Then in a generally easterly direction for approximately 10 miles along the 1700-foot contour line to a point where the 1700-foot contour line crosses Texas Ranch Road 1376.

(16) Then approximately 3.1 miles southeast along Texas Ranch Road 1376 to a light-duty road at Luckenbach known locally both as Kunz-Klien Road and Luckenbach Road.

(17) Then approximately 1.3 miles in a generally northeasterly and then an easterly direction along Luckenbach Road and continuing along Luckenbach Road in a northerly direction about 2.5 miles to the point where Luckenbach Road joins U.S. Route 290.

(18) Then west approximately .2 mile on U.S. Route 290 to the intersection with Jung Road, the point of beginning.

Approved: February 8, 1988.

W.T. Drake,

Acting Director.

[FR Doc. 88-3528 Filed 2-18-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to Virginia Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments, if approved, will establish alternate standards for permitting, bonding, and

reclamation on surface coal mining and reclamation operations which remine areas affected before the effective date of SMCRA. Virginia intends, by these proposed amendments, to encourage mining and subsequent reclamation of previously mined areas which would not ordinarily be mined and reclaimed under the existing program.

This notice sets forth the times and locations that the Virginia program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on March 21, 1988, if requested, a public hearing on the proposed amendments will be held on March 15, 1988, and requests to present testimony at the hearing must be received on or before 4:00 p.m. March 7, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 200, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303. If a hearing is requested, it will be held at the same address.

Copies of the proposed amendments, the Virginia program, the Administrative Record on the Virginia program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street NW., Washington, DC 20240; Telephone (202) 343–5492.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, PA 15220; Telephone (412) 937–2828.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219; Telephone (703) 523–2925.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523–4303

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior granted conditional approval of the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendments

By letter dated December 22, 1987, (Administrative Record No. VA–664) Virginia submitted proposed amendments to its permanent regulatory program. The proposed amendments contain alternate standards for permitting, bonding, and reclamation to be applied to surface coal mining and reclamation operations which remine areas affected before the effective date of SMCRA. These proposed amendments are briefly summarized below:

1. Section 480–03–19.700.5 is proposed to be amended by adding definitions of appropriate terms including definitions of "remining" and "reprocessing coal mine waste," and "previously mined lands" to specify the meanings of these terms as used in these proposed amendments.

2. Subchapter VP is proposed to be added to the Virginia program. This subchapter will contain all special requirements and standards which are intended to apply to remining operations including reprocessing of coal mine waste operations. The proposed Subchapter is summarized as follows.

a. Part 480–03–19.830 establishes proposed permitting and bonding requirements to be applied to remining operations including reprocessing of coal mine waste operations. Section 480–03–19.830.11 provides that each application shall contain a description of the proposed operation pursuant to the requirements of Subchapter VG of the Virginia program except for reclamation to be performed as part of an Abandoned Mined Lands Contract, or as part of a voluntary reclamation plan under contractual agreement with Virginia. Section 480–03–19.830.13, 480.03–19.830.14, and 480–03–19.830.15 establish proposed bond requirements for remining operations. Under proposed 480–03–19.830.14, performance bond on excess spoil disposal sites associated with remining on previously mined lands will not be required if certain conditions are met. Section 480–03–19.830.15 proposes to establish bond credits which may be earned on remining operations. Credits may equal the cost of reclaiming previously mined lands.

b. Part 480–03–19.831 proposes special performance standards which will apply to remining operations. Section 480–03–19.831.12 establishes proposed requirements for backfilling and regrading to the extent technically practical. Section 480–03–19.831.13 proposes standards for disposal of spoil generated by remining operations. Section 480–03–19.831.14 proposed to allow the placement of spoil on certain areas within the permit area but not directly affected by the remining operations, and on areas outside the permit, provided that environmental benefits will occur. Section 480–03–19.831.16 proposes standards for the disposal of waste generated during the reprocessing of coal mine waste. Section 480–03–19.831.17, proposes alternate sediment control measures which may be used on premined land and reprocessing of coal mine waste areas. This section would allow mining to occur without the construction of sediment ponds provided that drainage is controlled by existing sumps, depressions, ponds, or benches. Section 480–03–19.831.18 proposes standards for determining the success of revegetation on previously mined lands. Section 480–03–19.831.19 proposes a waiver of the performance standards for existing roads if reconstruction would result in increased environmental harm. Section 480–03–19.831.20 proposes that requests for release of bond posted on remining areas or reprocessing of coal mine waste areas be subject to all applicable standards of the approved program except as modified by this proposed amendment in regard to pollution abatement areas, no cost AML contracts, or where a reclamation bond

credit may be earned under proposed section 480–03–19.830.15.

c. Part 480–03–19.832 proposes an option which would allow an operator to earn civil penalty credits, on a dollar matching basis, for the cost of reclaiming certain previously mined lands.

d. Part 480–03–19.835 proposes to establish special permitting and bonding requirements for operations proposed to remine remnants of previously mined lands. For purposes of this part, remnant remining is defined as a mining operation conducted on previously mined lands which have been isolated by past surface coal mining practices and are uneconomical to mine or reclaim under normal regulatory requirements. Virginia proposes to encourage mining and reclamation of such areas by requiring less administrative, environmental, operational, and public notice information be submitted to obtain a remnant remining permit than is required for a mining permit. This part also changes the basis for calculating bond for remnant remining sites.

e. Part 480–03–19.836 proposes special performance standards for remnant remining operations. These performance standards are for the most part the same as those proposed under Parts 480–03–19.831. In addition, operations would be required to comply with the approved program provisions for signs and markers found in section 480–03–19.816.11, with the blasting requirements found in sections 480–03–19.816.61–68, and with all applicable State and Federal water quality laws, standards and regulations and may be further required to comply with the applicable standards of Parts 480–03–19.816 through 480–03–19.828.

f. This amendment also proposes to add Parts 480–03–19.833 and 480–03–19.834 pertaining to permitting requirements and performance standards, respectively, for operations which intend to remine areas with existing pollutional discharges. The proposals contained in these two parts were originally submitted as a program amendment on September 10, 1987, (Administrative Record No. VA 647) under proposed section 480–03–19.785.19 and Part 480–03–19.825. The September 10, 1987, submittal is currently being reviewed by the Director, OSMRE. This submittal is essentially identical to the September 10, 1987, submittal except for redesignation of section numbers.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Pubic Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by close of business on March 7, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**. All such meetings will be open to the public and, if possible, notices of meetings, will be posted in advance in the Administrative Record. A written summary of each public meeting will be made part of the Administrative Record.

IV. Procedural Determinations

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

2. *Compliance with Executive Order No. 12291:* 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 exempted from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

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

List of Subjects in 30 CFR Part 946

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

Date: February 7, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88–3527 Filed 2–18–88; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS–400010; FRL–3331–6]

Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is granting three petitions by proposing to delete the substance titanium dioxide from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). EPA proposes to amend the final rule codifying the list of chemicals published on February 16, 1988 (53 FR 4500). Section 313(e) allows any person

to petition the Agency to modify the list of toxic chemicals for which toxic chemical release reporting is required.

DATES: Written comments should be submitted on or before March 15, 1988.

ADDRESSES: Written comments should be submitted in triplicate to: Section 313 Petition Coordinator, OTS Docket Clerk, OTS Reading Room NE–G004, Environmental Protection Agency, Mail Stop TS–793, 401 M Street, SW., Washington, DC 20460, Attention: Docket Control Number OPTS–400010.

FOR FURTHER INFORMATION CONTACT: Renee Rico, Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, U.S. Environmental Protection Agency, 401 M Street, SW., (WH–562A), Washington, DC 20460, (800) 535–0202. (In Washington, DC and Alaska, (202) 479–2449).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The response to the petition and proposed deletion are issued under section 313(e)(1) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, "SARA" or "the Act"). Title III of SARA is also the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

Title III of SARA is intended to encourage and support emergency planning efforts at the State and local level and to provide the public and local govenments with information concerning potential chemical hazards present in their communities.

Section 313 of Title III requires owners and operators of certain facilities that manufacture, process, or otherwise use a listed toxic chemical to report annually their releases of such chemicals to the environment. Only facilities that have manufacturing operations (in Standard Industrial Classification Codes 20 through 39) and have 10 or more employees must report. Such reports are to be sent to both EPA and the State in which the facility is located. The basic purpose of this provision is to make available to the public information about total annual releases of toxic chemicals from industrial facilities in their community. In particular, EPA is required to develop a computer data base containing this toxic chemical release information and to make it accessible by telecommunications on a cost reimbursable basis.

For reporting purposes, section 313 establishes an initial list of "toxic chemicals" that is composed of 329 entries, 20 of which are categories of chemicals. This list is a combination of lists of chemicals used by the States of Maryland and New Jersey for emissions reporting under their individual right-to-know laws. Section 313(d) authorizes EPA to modify by rulemaking the list of chemicals covered either as a result of EPA's self-initiated review or in response to petitions under section 313(e).

Section 313(e)(1) provides that any person may petition the Agency to add chemicals to or delete chemicals from the list of "toxic chemicals." EPA issues a statement of policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479). This statement provided guidance to potential petitioners regarding the recommended content and format for submitting petitions. The Agency must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied. If EPA fails to respond within 180 days, it is subject to citizen suits. In the event of a petition from a State governor to add a chemical under section 313(e)(2), if EPA fails to act within 180 days, EPA must issue a final rule adding the chemical to the list. Therefore, EPA is under specific constraints to evaluate petitions and to issue a timely response.

State governors may petition the Agency to add chemicals on the basis of any one of the three toxicity criteria listed in section 313(d) (acute human health effects, chronic human health effects, or environmental toxicity). Other persons may petition to add chemicals only on the basis of acute or chronic human health effects. EPA may delete substances only if they fail to meet any of the criteria contained in section 313(d).

Chemicals are evaluated for inclusion on the list based on the criteria in section 313(d) and using generally accepted scientific principles or the results of properly conducted laboratory tests, or appropriately designed and conducted epidemiological or other population studies, that are available to EPA.

II. Description of Petitions

The Agency received three separate petitions to delist titanium dioxide, CAS No. 13463–67–7, from the list of toxic chemicals. The three petitions, in order of receipt, were from: E.I. du Pont de Nemours and Company (DuPont), SCM Chemicals, Inc. and Didier Taylor Refractories Corporation, and Kemira Oy. EPA received the first petition on August 24, 1987, and under statutory deadline must respond by February 20, 1988. DuPont and SCM/Didier Taylor submitted extensive documentation to support their claim that titanium dioxide (TiO_2) fails to meet any of the statutory criteria in section 313(d).

III. EPA's Review of Titanium Dioxide

A. Chemistry

Titanium dioxide (TiO_2) is a white powder that exists in three crystalline forms: Rutile, anatase, and brookite. TiO_2 is thermally stable, chemically insert up to 3,000°C, and is not soluble in water but does exhibit solubility in hot concentrated sulfuric acid and alkaline hydroxide (Ref. 2).

B. Toxicity Evaluation

The health and environmental review included an assessment of chronic toxicity, mutagenicity, oncogenicity, and environmental toxicity. Available data on the health and environmental effects of TiO_2, including data submitted by DuPont and SCM/Didier Taylor, EPA documents, and studies obtained from literature sources were reviewed.

1. *Chronic toxicity.* The available limited epidemiological studies have provided no evidence of significant respiratory effects in humans. The results of a well-conducted, long-term inhalation study showed the development of minimal lung fibrosis in male and female rats exposed for 2 years to very high concentrations, 50 and 250 mg/m^3, of respirable TiO_2 dust. Based on the results of this study, a no observable adverse effect level (NOAEL) of TiO_2 via inhalation is estimated to be 10 mg/m^3. Several injection studies showed that TiO_2 did not cause fibrosis of the rat lung or peritoneum following intratracheal instillation and intraperitoneal injection, respectively. TiO_2 appears to be nontoxic upon ingestion. The results of a National Cancer Institute feeding carcinogenicity study in rats and mice showed no chronic toxicity associated with ingestion of TiO_2 in the diet at 25,000 or 50,000 ppm. TiO_2 has been shown to have low *in vitro* biological activity as determined by cytotoxicity assays in cell culture (Ref. 6).

2. *Mutagenicity.* Studies have shown that TiO_2 does not induce gene mutations, DNA effects, or cell transformations in cells in culture (Ref. 6).

3. *Oncogenicity.* Based on a review of the available data, the total weight-of-evidence for the carcinogenicity of titanium dioxide is not sufficient to reasonably anticipate that this chemical will cause cancer in humans. This

conclusion is based on a review of a series of well-conducted laboratory animal studies performed in multiple species and involving multiple routes of exposure. The epidemiological study, submitted by DuPont, of workers exposed to TiO_2 and/or $TiCl_4$ was found to be inconclusive. No adequate epidemiological evidence exists on TiO_2 that will permit an evaluation of the effects on humans exposed to the chemical (Ref. 6).

In long-term bioassays, TiO_2 was not carcinogenic at any dose by oral administration to rats and mice (both sexes) or by inhalation to male and female mice. Intraperitoneal injection in mice, subcutaneous injection in dogs, intratracheal instillation in hamsters, and intramuscluar injection in rats did not result in tumorigenicity. In an inhalation bioassay involving multiple dose levels, carcinogenic effects were noted in rats at the high dose level, 250 mg/m^3, only. The single positive effect appears to have been produced at a dose level that overwhelmed normal clearance mechanisms in the lung which leads to a questionable relevance of this finding. The questionable relevance of the positive results when evaluated against the multiple negative carcinogenicity results, along with the negative mutagenicity data, leads to an overall weight-of-evidence determination that there is not sufficient evidence for carcinogencity (Ref. 6).

4. *Ecotoxicity.* Available data indicate that TiO_2 exhibits very low aquatic toxicity with a 96-hour LC_{50} greater than 1,000 mg/L, and TiO_2 does not bioaccumulate to high levels in fish (Ref. 6).

C. Use, Release, and Exposure

1. *Production.* The Agency has confirmed that there are four producers of TiO_2 in the United States. DuPont has four plants (in Antioch, CA, Edgemoor, DE, DeLisle, MS, and New Johnsonville, TN). SCM has two plants (in Baltimore, MD, and Ashtabula, OH). Kemira has one plant in Savannah, GA, and Kerr-McGee has one plant in Hamilton, MS. EPA's estimate of the 1986 U.S. production volume for TiO_2 is slightly greater than 1.8 billion lbs., and the growth in near term demand is predicted to be moderate, averaging about 1.5 percent per year. Annual imports of TiO_2 for 1986 were 424 million lbs., making the total U.S. consumption slightly greater than 2 billion lbs. for 1986 (Refs. 4 and 5).

Paints and coatings are responsible for 50 percent of the total consumption of TiO_2, and consumption for these uses is expected to increase by 0.5 to 1 percent per year. Paper and paperboard make up 24 percent of the total demand, and growth is limited in this area due to new techniques. Plastics represent 15 percent of consumption, and consumption for these uses is expected to increase 3 percent per year. Miscellaneous uses like printing inks, ceramics, elastomers, floor coverings, coated fabrics, and roofing granules make up 11 percent of the demand (Ref. 5).

2. *Releases.* Releases to air, land, and water are possible from the manufacturing plants, processing plants, and end user applications (Ref. 4).

a. *Manufacturing plants.* TiO_2 is manufactured via two methods. The first method, by which 20 percent of the TiO_2 is produced, is the sulfate method. The second method, by which 80 percent of TiO_2 is produced, is the chloride method. Air emissions from the TiO_2 manufacturing processes can result from the chlorinator in the chloride method and from the calcine ovens in the sulfate method. Other sources of air emissions are the grinding operations associated with each process. Since large quantities (96,000 to 630,000 kg/day), are ground each day, the potential for fugitive air emissions is present. Releases of TiO_2 to water from both processes can occur from the filtering and washing steps. The major sources of TiO_2 solid waste from the manufacturing processes is expected to be the solids that settle out of the wastewater sludge during wastewater treatment and the unreacted crude materials (Ref. 4).

EPA calculated air, water, and land emission estimates for TiO_2 from actual manufacturer data for six plants. Total estimated emissions to the air, fugitive plus stack, ranged from 1,900 kg/yr to 166,000 kg/yr. Releases to water ranged from 400 kg/yr to 752,000 kg/yr, and emissions to land ranged from 136,000 kg/yr to 8,500,000 kg/yr. Kemira was identified as having the plant with the highest estimated emissions to air; DeLisle, MS had the second highest estimated emissions to air; and Antioch, CA had the lowest estimated emissions to air (Ref. 4).

b. *Processors and end-users.* There are over 8,000 estimated processor and user sites, but quantitative data were not available on processing and use operations. EPA's limited analysis indicates, however, that the releases of TiO_2 to air, land, and water from the paper, plastics, and paint industry are quite low compared to the release values for the manufacturing plants. The manufacturing plants handle much greater quantities of TiO_2 (96,000 to 630,000 kg/day) on a per day basis than the processors or end users (40 kg/day) (Refs. 4 and 5).

3. *Exposure.* Annual ambient air level concentrations around manufacturing sites of TiO_2 were estimated. Statistical wind summaries along with a variety of other input parameters, such as emission rate, particle size and density, and stack height, are used to estimate the annual ground level concentrations. Release information estimated for Kemira, the plant with the highest emission rates, was used to estimate the annual ambient air level concentrations at the plant boundaries. The results showed a range of ambient air level concentrations from 3.25 $\mu g/m^3$ to 64.9 $\mu g/m^3$. The entire range is significantly below the 10,000 $\mu g/m^3$ NOAEL for fibrosis of the lung, and concentrations at this exposure level are not expected to cause cancer in humans (Refs. 6 and 7).

D. Summary of Technical Review

The concerns raised in review of the health data for TiO_2 were the potential development of lung fibrosis and lung cancer. The worst-case exposure concentration is significantly below the no adverse effect level (NOAEL) for fibrogenic effects. The Agency has found that the weight-of-evidence is not sufficient to support a determination that TiO_2 can reasonably be anticipated to cause cancer in humans. Available data do not show that TiO_2 causes or can reasonably be anticipated to cause any significant adverse health or environmental effect.

IV. Titanium Dioxide's Relationship to Other Environmental Lists

A. State Environmental Lists

TiO_2 emissions are generally not regulated at the State level. Since TiO_2 is a solid, it is generically covered under "nuisance dust" or "particulate matters" standards which are not chemical-specific.

TiO_2 was on the section 313 list because it was listed on the (State of) Maryland Toxic Substances Registry. Maryland listed the chemical because it was listed in a report titled "The Relative Carcinogenic Potential of 50 Chemicals That May Be Air Pollutants" prepared for the Office of Air Quality and Planning Standards (OAQPS), U.S. EPA, in 1984 (Ref. 3). The inclusion of titanium dioxide in the group of chemicals considered in the report appears to have been based on the positive response in the rat inhalation study, which was referred to in the toxicity evaluation section of this proposed rule. The Office of Air Quality and Planning Standards has concurred with this proposed rule. The State of

Maryland was considering the inclusion of TiO_2 in a proposed air toxic regulation. The Air Management Administration of the Maryland Department of the Environment has removed TiO_2 from the list of chemicals subject to its air toxic regulation (which is still in draft form). Maryland has decided that TiO_2 emissions can be controlled under the nuisance dust standard, which covers particle size of solids, as opposed to toxicity (Ref. 1).

B. EPA Environmental Lists

TiO_2 is not included on any EPA list, including those compiled under the Clean Water Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Toxic Substances Control Act (TSCA).

c. Other Federal Lists

TiO_2 has an Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit (PEL) of 15 mg/m^3, which is for dust particles (i.e., the standard is not related to the toxicity of the substance).

TiO_2 is approved by the Food and Drug Administration (FDA) for various uses, including as a food colorant (up to 1 percent of the weight of the food) (Ref. 8).

V. Explanation for Proposed Action To Delete

A. General Policy

EPA has broad discretion in determining whether to grant or deny petitions from the general public under section 313. When granting petitions, the Agency has a clear obligation to show how the granting of the petition fulfills the statutory criteria the Agency is to use in section 313(d) when modifying the list of toxic chemicals. However, in the Joint Conference Committee Report, the conferees made clear that EPA may conduct risk assessments or site-specifc analyses in making listing determinations under section 313(d). In cases of petitions to delist substances, EPA believes that such analyses are important factors in determining whether removal of a substance from the list would serve the public's right to know. These analyses might show that while the toxicity of the substance is not of high concern, exposures to humans and the environment are significant enough to warrant maintaining the substance on the list.

B. Reasons for Proposing Deletion

EPA is granting the three petitions, submitted by DuPont, SCM/Didier Taylor, and Kemira by proposing to delete TiO_2 from the list of toxic chemicals subject to release reporting under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986.

The decision to grant the petitions and to propose rulemaking to modify the list is based on the toxicity evaluation. The Agency believes that there is insufficient evidence to establish that TiO_2 may cause adverse affects to human health or the environment.

The Agency's decision in this case was facilitated by the numerous well-conducted animal studies on TiO_2 itself. In employing a weight-of-evidence approach, the Agency will consider a host of items including the number of tests, their validity, epidemiology data, exposure data, etc. A weight-of-evidence approach is inherently chemical-specific. Therefore, it would be inappropriate to generalize the conclusions of this review to other chemicals.

EPA intends to make this proosed rule final and effective on or about June 1, 1988. This target date falls 1 month prior to the statutory deadline for submitting release reports for the 1987 calendar year. EPA's position is that, if the rule becomes final prior to July 1, 1988, the regulated community would not be expected to submit release reports (for purposes of complying with section 313 of Title III of SARA) for 1987 or 1988. In light of the low toxicity of TiO_2, the Agency believes that the large number of reports that would be submitted would not serve the community right-to-know objectives of Title III of SARA and would needlessly burden both the agencies responsible for receiving section 313 reports as well as the regulated community. The Agency realizes that some firms, to ensure compliance in the event that EPA does not finalize the delisting prior to July 1, 1988, will calculate/estimate releases and fill out the reporting form. Those firms may want to retain their forms until the end of the reporting period.

Section 313(d)(4) of Title III of SARA pertains to the effective date of revisions to the 313 list. One interpretation of this section would indicate that, in order to relieve facilities of reporting requirements covering 1987 releases, the Agency would have had to make the revision prior to December 1, 1986. Since this rulemaking on TiO_2 is taking place between January 1, 1988 and June 1988, section 313(d)(4) could be interpreted to mean that facilities would have to report on releases that occurred during 1987 and 1988. However, EPA believes that section 313(d)(4) is meant to cover additions to the list, not deletions. The Agency believes that Congress inserted the language in section 313(d)(4) to protect the regulated community from unreasonable reporting requirements that could be created by an addition to the list late in the year. For example, it would be unreasonable to add a chemical to the section 313 list in June of 1987 and expect facilities to report on releases for the entire 1987 calendar year. Congress created a time lag between additions to the list and the need to report releases on the added chemical to give facilities time to gather information, calculate releases, and perform other tasks attendant to complying with section 313 reporting requirements. The Agency does not believe that Congress intended section 313(d)(4) to apply to deletions, since deletions relieve the regulated community of certain reporting requirements. In addition, public agencies are relieved of the burden of processing forms that are of little or no value in the context of community right-to-know.

The Agency requests comments specific to the intent to relieve the regulated community of the obligation to submit section 313 release forms for TiO_2 covering the 1987 and 1988 calendar years.

VI. Rulemaking Record

The record supporting this proposed rule is contained in docket control number OPTS-400010. All documents, including an index of the docket are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Room NE-G004, 401 M Street, SW., Washington, DC 20460.

VII. Request for Public Comment

The Agency requests comments on all the analyses conducted for this review and on the Agency's proposal to delete TiO_2 from the list of toxic chemicals. EPA also requests that any pertinent data on TiO_2 be submitted to the address at the front of this notice. All comments should be submitted on or before March 15, 1988.

VIII. References

(1) Aburn, P. 1987 Telephone Conversation Between Pat Aburn, Maryland Department of the Environment, and Dennis Leaf, Office of Toxic Substances, USEPA, 1987.

(2) Aleem, M. Summary Report of Physical and Chemical Properties of Titanium Dioxide. USEPA, 1987.

(3) Clements Associates. The Relative Carcinogenic Potential of 50 Chemicals That May be Air Pollutants. Prepared by Clements

Associates for the Office of Air Quality Planning and Standards. USEPA. 1984.

(4) Macek, G. J. Engineering Assessment of TiO_2 Emissions (From Manufacture, Processing, and Use). USEPA. 1987.

(5) Smith, K.S. Economic Report on Production, Uses, Substitutes, and Cost Analysis: Titanium Dioxide. USEPA. 1987.

(6) Thomson II, W. Hazard Assessment of Titanium Dioxide. USEPA. 1987.

(7) USEPA 1987. Atmospheric Concentration Estimates from Titanium Dioxide Manufacturing. Prepared by General Sciences Corporation for the Exposure Evaluation Division, Office of Toxic Substances.

(8) Williamson, J.T. Letter and Food and Drug Administration Authorities from DuPont for Use of Titanium Dioxide in Food and Cosmetics. USEPA. 1987.

IX. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation 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.

This proposed rule would decrease the impact of the section 313 reporting requirements on covered facilities and would result in cost-savings to industry, EPA, and states. Therefore, this is a minor rule under Executive Order 12291.

This proposed rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

There are four producers of TiO_2. Estimates of the number of processors/users that might be subject to reporting requirements range from 8,125 to 8,940 facilities. The estimated cost savings for industry over a 10-year period range from $48 million to $57 million, while the savings for EPA are estimated to be $1 million (10-year present values using a 10 percent discount rate) (Ref. 5).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the proposed rule results in cost savings to facilities, the Agency certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

OMB has reviewed the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction At of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the OMB, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 49 CFR Part 372

Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 11, 1988.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, it is proposed that Part 372 of Chapter I of 40 CFR be amended as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for titanium dioxide under paragraph (a) and removing the entire CAS. No. entry for 13463–67–7 under paragraph (b).

[FR Doc. 88–3669 Filed 2–18–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 406 and 407

[BERC-299-P]

Medicare Program; Hospital Insurance Entitlement and Supplementary Medical Insurance Enrollment and Entitlement

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would affect the Medicare rules that deal with hospital insurance entitlement and with supplementary medical insurance (SMI) enrollment and entitlement. It would also revise rules that deal with State buy-in agreements, that is, agreements under which States may secure SMI benefits for certain Medicaid-eligible individuals by enrolling them in SMI and paying their SMI premiums.

The proposed changes are necessary to conform our rules to changes made in the Medicare and Medicaid laws since the rules were last published.

The purpose is to ensure that those who must apply our rules are not misled or confused by content that fails to reflect statutory changes and modified policy.

DATE: Consideration will be given to comments received by April 19, 1988.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–299–P, P.O. Box 26676, Baltimore, Maryland 21207 .

In commenting, please refer to file code BERC–299–P.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks from today, in Room 309–G of the Department's Office at 200 Independence Ave. SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

Although we cannot respond to individual comments, we will discuss all comments in the preamble to the final rules.

FOR FURTHER INFORMATION CONTACT: Harold Fishman, (301) 594–9077.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

These amendments would conform HCFA regulations to statutory changes enacted since the particular sections were last published. Many of the statutory changes are self-executing, that is, are so clear and specific that their provisions can be put into effect without further elaboration through formal rules. Others are being implemented through changes in the basic regulations for each particular policy areas. In both cases, it is necessary to conform all of our regulations so that they are internally consistent and reflect current requirements and procedures. When the regulations that need to be conformed contain outdated material, confusing language, or incorrect cross-references, we would also clarify and correct them.

Most of the statutory provisions are contained in seven laws:

1. The Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) enacted December 5, 1980.

2. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) enacted August 13, 1981.

3. The Tax Equity and Fiscal Responsibility Act (Pub. L. 97–248) enacted September 3, 1982.

4. The Social Security Amendments of 1983 (Pub. L. 98–21) enacted April 20, 1983.

5. The Deficit Reduction Act of 1984 (Pub. L. 98–369) enacted July 18, 1984.

6. The Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 98–272) enacted April 7, 1986).

7. The Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) enacted October 21, 1986).

The above laws are referred to by number. Other laws are identified as necessary.

The conforming changes are needed primarily for the Medicare supplementary medical insurance (SMI) program. Accordingly, it is the SMI regulations in Subpart B of 42 CFR Part 405 (most of which were last published between 1971 and 1978) that would undergo the most extensive revision. Subpart B, which deals with enrollment and entitlement, requires extensive revision because of changes in the statute or in other regulations that implement statutory changes.

As part of our ongoing project to establish separate parts for each major area of the Medicare program, the Subpart B content would be redesignated as Part 407. For the reader's convenience, a redesignation table for Subpart B is provided at the end of this preamble.

II. Background

The SMI program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities. Part B also helps to pay for certain other medical and health services not covered by hospital insurance (Medicare Part A).

The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens or are aliens lawfully admitted for permanent residence who have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums.

III. Changes in the Law and the Rules

The principal statutory and policy changes and the proposed conforming changes in the regulations are discussed below in relation to specific program and policy areas. Unless otherwise noted, all statutory references are to the Social Security Act. That Act is specifically identified when necessary to distinguish it from other laws.

A. Medicare Entitlement Based on Government Employment

1. Statutory Provisions

Section 278 of Pub. L. 97–248 provides, effective January 1, 1983, for taxing Federal wages and crediting Federal employment as a basis for entitlement to hospital insurance (HI). (Section 278 added section 210(p) and amended sections 226(a)(2)(C), 226(b)(2)(C), 226A(a)(1), and 1811 of the Social Security Act; added section 3121u and amended sections 1402(b) and 3122 of the Internal Revenue Code of 1954.)

Section 13205 of Pub. L. 99–272 provides for taxing the wages of State and local government employees hired on or after April 1, 1986, and crediting that employment for entitlement to Medicare Part A hospital insurance. State and local entities have the option of covering employees hired before April 1986, but only with respect to wages for periods after March 31, 1986. (Section 13205 amended section 3121u of the Internal Revenue Code and section 218 of the Social Security Act and made other conforming changes.)

2. Conforming Changes

Subpart B of Part 406 of the Medicare rules would be amended to reflect the provisions of sections 278 and 13205.

B. Medicare Entitlement for Disabled Men Entitled to Father's Benefits

1. Statutory Provisions

Section 309(q) of the Social Security Amendments of 1983 (Pub. L. 98–21) extends Medicare entitlement, effective May 1983, to disabled men who are entitled to father's benefits. Under the new provision, which amends section 226(e)(3), a disabled man who is entitled to father's benefits (and cannot become entitled to disabled widower's benefits at the same time), is, if he applies for hospital insurance benefits, *deemed* entitled to disabled widower's benefits as follows:

- If he applied for hospital insurance benefits before May 1984, he was deemed entitled to disabled widower's benefits for any month after April 1981 for which he would have been entitled to those benefits if he had filed an application for them.
- If he applies for hospital insurance benefits in or after May 1984, he will be deemed entitled to disabled widower's benefits for any of up to 12 months before the month of application for which he would have been eligible for those benefits if he had filed an application for them.

2. Conforming Change

Section 406.12 would be amended to incorporate this provision.

C. SMI Enrollment, Coverage, and Premium Increase

1. Statutory Provisions

Section 945 of Pub. L. 96–499 liberalized enrollment for Medicare Part B and, indirectly, for individuals who can become entitled to Medicare Part A only by enrolling and paying a monthly premium. Under previous law, an individual could not enroll more than twice, and there was an annual general enrollment period that lasted from January 1 to March 31 of each calendar year. Section 945 amended sections 1837, 1838, 1839 to remove the two-enrollment limitation and establish an unlimited general enrollment period that began when the individual's initial enrollment period ended. (The initial enrollment period is a 7-month period beginning 3 months before the month the individual first meets the eligibility requirements for Medicare and ending with the third month after that first month of eligibility).

The changes made by section 945 meant that indivudals could reenroll as many times as they wished and could do so in any month, not just during January, February, or March. Section 945 was effective for enrollments made on or after April 1, 1981. Section 2151 of Pub. L. 97–35 eliminated continuous open enrollment, (that, is, restored the annual 3-month enrollment period) effective October 1, 1981 but retained the provision allowing an unlimited number of reenrollments. (Section 2151 amended sections 1837(e) and (g)(3), 1838(a)(2)(E) and 1839(d).) Since the law requires that the monthly premium be increased for individuals who enroll after expiration of their initial enrollment periods and for those who reenroll, the enrollment provisions of sections 945 and 2151 also affected the way the premium increase would be determined.

Section 2338(a) of Pub. L. 98–369 amended section 1839(b), effective January 1, 1983, to provide that, in determining the premium for late enrollment in SMI, the months during which an employer group health plan was primary payer for individuals age 65 to 69 be excluded.

Sections 2338(b) and (c) of Pub. L. 98–369 corrected an anomaly whereby employed individuals between 65 and 69 years of age, for whom the employer group health plan was primary payer of benefits, were nonetheless obliged to enroll in SMI because of the above noted restrictions on enrollment periods

and the increased premiums charged to late enrollees under section 1839(b) of the Medicare law. The amendment added special enrollment periods (SEPs) to existing initial and general enrollment periods, so that Medicare coverage could begin promptly when Medicare would again become the primary payer because the beneficiary had ceased working or attained age 70. (Sections 1837(i) and 1838(e) were amended.)

Three sections of Pub. L. 99–272 affect enrollment and premium increases, as follows:

Section 9201(a) amended section 1862(b)(3)(A), effective May 1, 1986, to remove the upper age limit so that employer group health plan benefits continue to be primary to Medicare benefits even after the individual or the individual's spouse attains age 70. Section 9201(c) eliminated the SEP at age 70 since the employer plan continues to be primary as long as employment continues. (Sections 1837(i) and 1838(e) were amended.)

Section 9219(a) makes the provisions for SEPs, and for exclusion of months of employer plan coverage in determining premium increases consistent for all workers. (Sections 1837(k) and 1839(b) were amended.) This means that the provisions apply to two groups for whom employer plan benefits are *not* primary to Medicare because—

- They are neither entitled to, nor eligible for, hospital insurance; or
- They work for employers of less than 20 employees.

Since, as discussed above, the age 70 cap has been removed, these rules apply to individuals age 65 or over. The premium penalty provision is effective for months beginning with January 1983, for premiums for months beginning with June 1986. The SEP provision applies to enrollments made in or after August 1986.

Section 9124 added section 1818(c)(7) to provide, effective for premiums for months after June, 1986, that the premium increase for late enrollment in hospital insurance be limited to 10 percent and be payable for no longer than twice the number of full twelve-month periods during which the individual could have been, but was not, enrolled in the Medicare Part A program.

Section 9319 of Pub. L. 99–509—

- Added section 1862(b)(4) to make Medicare secondary payer for certain disabled Medicare beneficiaries who are covered under large group health plans; and
- Amended section 1837(i) to provide special enrollment periods for those beneficiaries, so that SMI will begin promptly when employer plan coverage ends.

These provisions are effective January 1, 1987 and will expire on December 31, 1991.

2. *Conforming Changes*

The regulations dealing with individual SMI enrollment would be revised to reflect the statutory changes discussed above. (See Subpart B of Part 407.) Section 407.18(c), (d), and (e) would be revised to restore content that was erroneously dropped from § 405.210(b) when that paragraph was revised by rules published on March 25, 1983 (48 FR 12526). The statutory amendments that apply to Medicare Part A would be reflected in §§ 406.21 and 406.22 of the hospital insurance rules.

D. Effective Date of Voluntary Disenrollment from SMI

1. Statutory Provision

Section 9344(b) of Pub. L. 99–509 amends section 1838(b) to change the effective date of voluntary disenrollment from SMI. Effective for disenrollment requests filed on or after July 1, 1987, SMI coverage ends on the last day of the month following the month in which the disenrollment request is filed. Before this amendment, voluntary termination was effective at the end of the quarter after the quarter in which the disenrollment request was filed.

2. Conforming Changes

The regulations dealing with SMI termination (Subparts B and C of Part 407) would reflect this change.

E. State Buy-in Agreements

1. Statutory Provisions

Section 945 of Pub. L. 96–499 also amended section 1843 to provide that, during calendar year 1981:

- A State that did not have a buy-in agreement (that is, an agreement to enroll in SMI individuals eligible for SMI and cash assistance or Medicaid and pay their SMI premiums), could request such an agreement; and
- A State that already had a buy-in agreement could request a broader coverage group for the agreement.

Section 947 of that same law provides for earlier termination of SMI entitlement when requested by an individual who was deemed enrolled after he or she was no longer eligible to have the SMI premiums paid by the State. (Sections 1838(b) and 1843(g)(2) were amended.)

Section 9404 of Pub. L. 99–509 and seven other laws enacted after 1979 required changes in the buy-in coverage groups because they established or modified Medicaid coverage groups.

Section 310(b) of Pub. L. 96–272 (the Adoption Assistance and Child Welfare Act of 1980) provides Medicaid eligibility, effective January 1, 1979, for certain individuals who, in December 1978, were receiving a pension from the Veterans' Administration and were eligible for and receiving cash assistance under the Social Security Act.

Section 101(a) of that same law enacted sections 472(d) and 473(b), which respectively provide that children receiving foster maintenance payments and children receiving adoption assistance payments (both Under Part E of title IV of the Act) will be considered to be receiving AFDC for purposes of eligibility for Medicaid.

Section 201(a) of Pub. L. 96–265 (the Social Security Disability Amendments of 1980) enacted section 1619. This section provided continued Medicaid eligibility for certain blind and disabled individuals who become ineligible for supplemental security income (SSI) or State supplements because of their earnings. This provision was initially effective only for the period January 1, 1981 through December 31, 1983. Section 14 of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98–460) extended it through June 30, 1987. Section 2 of the Employment opportunities for Disabled Americans Act, enacted November 10, 1986 (Pub. L. 99–643) made the provision permanent, and section 9404(b) of Pub. L. 99–509 established, effective July 1, 1987, a mandatory Medicaid coverage group composed of "severely impaired individuals" who were eligible for Medicaid under section 1619 in June, 1987.

Three sections of Pub. L. 97–35 amended title IV of the Social Security Act in ways that affect eligibility for Medicaid. Section 2308 enacted section 414(g), under which a State that chooses to operate a work supplementation program under section 414 may also choose to provide that any indivivual who participates in the program (and any child or relative of the individual, or member of the household) who would be eligible for AFDC if the State did not have work supplementation, shall be considered to be receiving AFDC for purposes of Medicaid eligibility.

Section 2312 enacted section 406(g)(2), under which a State could provide that, for purposes of Medicaid eligibility, a woman whose pregnancy had been verified medically would be considered to be a recipient of AFDC for any month for which she would have been eligible

to receive AFDC if the child had already been born and was living with her. (This State option was removed by section 2361 of Pub. L. 98–369, as discussed below).

Section 2316 enacted section 402(a)(32), which prohibits payment of AFDC in amounts of less than $10, but requires that an individual denied aid solely on this basis be considered to be an AFDC recipient for purposes of Medicaid eligibility.

Section 134 of Pub. L. 97–248 enacted section 1902(e)(3) of the Social Security Act, which gives the State the option of treating certain disabled children being cared for at home as supplemental security income recipients or State supplementary payment recipients for purposes of Medicaid eligibility.

Two sections of Pub. L. 98–369 also affect Medicaid coverage and therefore the buy-in coverage groups.

- Section 2361 of that law removes the States option (provided by section 2312 of Pub. L. 97–35) to consider pregnant women as AFDC recipients for Medicaid eligibility purposes, and make qualified pregnant women a mandatory Medicaid coverage group effective October 1, 1984.
- Section 2624 of that law added a new section 402(a)(37) which requires that Medicaid be continued for nine months, and may at State option be continued for an additional period of up to six months, when a family loses AFDC eligibility because it is no longer eligible for the disregard of earnings of $30 or $30 plus one third of the remainder.

Section 20 of Pub. L 98–378, the Child Support Enforcement Amendments of 1984 added a new section 406(h) which requires States to continue to provide Medicaid benefits for four calendar months after the family loses AFDC eligibility because of collection or increased collection of support payments, if the family received AFDC benefits during at least 3 of the 6 months preceding the month of AFDC ineligibility.

Section 6 of Pub. L. 99–643, the Employment Opportunities for Disabled Americans Act, amended section 1634 to provide that, for purposes of Medicaid eligibility, an individual be deemed to be receiving SSI benefits if the individual—

- Is receiving SSI benefits on the basis of blindness or a disability that began before attainment of age 22; and
- Becomes ineligible for SSI benefits because of receipt of, or increase in, child's insurance benefits under section 202(d) of the Act on the basis of disability.

2. Conforming Changes

Subpart C of Part 407 (§§ 407.40–407.50) would explain the statutory basis for buy-in, define terms, show the coverage group changes required by legislation enacted after 1979, and set forth the conditions and procedures for termination of buy-in agreements.

The provisions that apply to veterans would be set forth in § 407.42(d). Those that apply to children receiving foster care or adoption assistance would be shown in § 407.42(a)(4), Category D, which would also reflect the provisions of Pub. L. 97–35, Pub. L. 98–369, and Pub. L. 98–378. (For Guam and the Virgin Islands, those provisions are set forth in § 407.43(a), Category B.) Category F contains the provisions applicable to blind or disabled adults, Cagegory G, the provisions for qualified severely impaired individuals, Category H, the provisions for cetain children considered as receiving SSI when they lose eligibility for that program because of receipt of, or an increase in, social security disability benefits, and Category I, the provisions for certain disabled children being cared for at home.

The amendments discussed above in their effect on the Medicare buy-in regulations also affect the Medicaid rules on eligibility. The changes required in the latter have already been made or are being made by other regulations.

IV. Regulatory Impact Statement

Executive Order 12291

Executive Order (E.O.) 12291 requires agencies to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required for these rules because they would not have an annual impact of $100 million or more.

Regulatory Flexibility Act

This Act requires agencies to prepare and publish a regulatory flexibility analysis (RFA) for any regulation that will have "a significant economic impact on a substantial number of small entities.". A small entity is defined as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. The purpose of the analysis would be to explain the impact and to seek alternatives that would have a less negataive effect.

We have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Paperwork Reduction Act

These regulations do not contain information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 407

Medicare Part B enrollment and entitlement, State buy-in agreements.

Redesignation Table

42 CFR Part 405, Subpart B

Old sec.	New sec.
405.201	407.1.
405.202	407.2.
405.205	407.10(a).
405.206	407.10(b).
405.210(a)	407.12 and 407.22(b).
405.210(b)	407.17(a) and 407.18.
405.210(c)	407.17(b).
405.211	407.12(a).
405.212 (a) & (c)	407.14(a)(1).
405.212(b) [Reserved]	407.Deleted.
405.212(d)	407.14(a)(2).
405.212(e)	407.14(b).
405.213	407.12(a) and 407.15.
405.214(a) [Reserved]	407.Removed.
405.214 (b) & (c)	407.Removed as inconsistent with changes in the law.

Old sec.	New sec.
405.214(d)	407.30.
405.215	407.12(b).
405.216	407.20.
405.217(a)	407.40(a)
405.217 (b)–(i)	407.40 (c) and (d). 407.42, and 407.43.
405.220	407.4(b).
405.221	407.25.
405.222	407.47.
405.223	407.27, 407.148, and 407.50.
405.226	407.32.

42 CFR Chapter IV would be amended as set forth below:

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart B—[Removed and Reserved]

A. Subpart B is removed and reserved and the table of contents is amended to reflect this change.

B. The contents of §§ 405.201 through 405.226 is redesignated under a new Part 407, revised, and presented later in this document.

C. Throughout this Chapter IV, all references to Subpart B and to §§ 405.201–405.226 are changed to refer to Part 407 and its sections, as appropriate.

II. Part 406 is amended as set forth below:

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

A. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

B. Subpart A is amended as set forth below:

1. The subpart title is revised to read as follows:

Subpart A—General Provisions

2. In § 406.6, the introductory text of paragraph (c) is republished and a new paragraph (c)(5) is added, to read as follows:

§ 406.6 Application or enrollment for hospital insurance.

* * * * *

(c) *Individuals who must file an application for hospital insurance.* An individual must file an application for hospital insurance if he or she seeks entitlement to hospital insurance on the basis of—

* * * * *

(5) The special provisions applicable to government employment as set forth in § 406.15.

C. Subpart B is amended as set forth below:

1. The table of contents is amended by revising the title of § 406.11 and adding a new § 406.15, to read as follows:

Subpart B—Hospital Insurance Without Premiums

406.10 Individual age 65 or over who is entitled to social security or railroad retirement benefits.

406.11 Individual age 65 or over who is not eligible as a social security or railroad retirement beneficiary, or on the basis of government employment.

406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.

406.13 Individual who has end-stage renal disease.

406.15 Special provisions applicable to government employment.

§ 406.11 [Amended]

2. Section 406.11 is amended as follows:

a. The section heading is revised to read "§ 406.11 Individual age 65 or over who is not eligible as a social security or railroad retirement beneficiary or on the basis of government employment."

b. In paragraph (b), "or § 406.15" is inserted immediately after "§ 406.10".

c. In paragraph (e)(2), "or § 406.15" is added at the end of the sentence.

3. Section 406.12 is amended by revising the heading of paragraph (c), redesignating paragraph (c)(4) as (c)(5) and republishing (c)(5), and adding a new paragraph (c)(4) to read as follows:

§ 406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.

* * * * *

(c) *Deemed entitlement to disabled widow's or widower's monthly benefits.*

* * * * *

(4) *Deemed entitlement for certain individuals entitled to father's benefits.* An individual who is entitled to father's insurance benefits under section 202(g) of the Act cannot at the same time be entitled to disabled widower's benefits. However, if he applies for hospital insurance benefits, he will be deemed to be entitled to disabled widower's monthly benefits as follows:

(i) If he applied for hospital insurance benefits before May 1984, he was deemed entitled to disable widower's benefits for any month after April 1981 for which he would have been entitled to those benefits if he had filed an application for them.

(ii) If he applies for hospital insurance benefits in or after May 1984, he is deemed entitled to disabled widower's benefits for any month, up to 12 months before the month of application, for which he would have been entitled to those benefits if he had filed an application for them.

(iii) Hospital insurance entitlement under this paragraph (c)(4) could not begin before May 1983.

(5) *Deemed retroactive entitlement for certain disabled widows and widowers.* In some cases, disabled widows or widowers cannot become entitled to monthly cash benefits before the month in which they file application. However, for purposes of meeting the 25-month requirement, disability benefit entitlement will be deemed to have begun with the earliest month (of the 12 months before the application for cash benefits) in which the individual met all the requirements except the filing of an application. (This provision is effective for applications filed on or after January 1, 1978.)

* * * * *

4. New § 406.15 is added, to read as follows:

§ 406.15 Special provisions applicable to Medicare qualified government employment.

(a) *Definition.* As used in this section, "Medicare-qualified government employment" means Federal, State, or local government employment that is subject only to the hospital insurance portion of the tax imposed by the Federal Insurance Contributions Act (F.I.C.A.). This includes—

(1) Wages paid for Federal employment after December 1982.

(2) Wages paid to State and local government employees hired after March 31, 1986.

(3) Wages paid to State and local government employees hired before April 1, 1986 but whose employment after March 31, 1986 is covered, for Medicare purposes only, under an agreement under section 218 of the Act.

(b) *Crediting of wages that are taxable only for Medicare purposes.* Medicare qualified government employment is credited in the same way and in the same amount as social security covered employment is credited for monthly social security cash benefit purposes. However, since only the Medicare portion (not the social security portion) of the F.I.C.A. tax is imposed, Medicare qualified government employment does not help qualify the individual for monthly Social Security cash benefits.

(c) *Required quarters of coverage.* (1) To qualify for hospital insurance on the basis of Medicare qualified government employment, an individual must have

the number of quarters of coverage necessary to qualify for hospital insurance under § 406.10, § 406.12, or § 406.13.

(2) An individual who has worked in Medicare qualified government employment may qualify for hospital insurance on the basis of Medicare qualified government employment exclusively, or a combination of Medicare qualified government employment and social security covered employment.

(d) *Transitional provision for Federal employment.* Any individual who was a Federal employee at any time both during and before January 1983 will receive credit for quarters of Federal employment before January 1983 without paying tax. This transitional provision applies even if the Federal employee did not receive Federal wages for January 1983, for instance, because he or she was on approved leave without pay or on loan to a State or foreign agency.

(e) *Conditions of entitlement.* An individual who has worked in Medicare qualified government employment (or any related individual who would be entitled to social security cash benefits on the employee's record if Medicare qualified government employment qualified for those benefits) is entitled to hospital insurance benefits if he or she—

(1) Would meet the requirements of § 406.10, § 406.12, or § 406.13 if Medicare qualified government employment were social security covered employment; and

(2) Has filed an application for hospital insurance.

For purposes of this section not more than 12 months before the month of application may be counted towards the 25-month qualifying period specified in § 406.12(a).

(f) *Beginning and end of entitlement—(1) Basic rule.* Subject to the limitations specified in paragraph (f)(2) and (f)(3) of this section, entitlement begins and ends as specified in § 406.10, § 406.12 or § 406.13, whichever is used to establish hospital insurance entitlement for the Federal, State, or local government employee or related individual.

(2) *Limitations: Federal government employment.*

(i) Hospital insurance entitlement based on Federal employment could not begin before January 1983.

(ii) No months before January 1983 may be used to satisfy the qualifying period required for entitlement based on disability.

(3) *Limitations: State and local government employment.* (i) Hospital insurance entitlement based on State or local government employment cannot begin before April 1986.

(ii) No months before April 1986 may be used to satisfy the qualifying period required for entitlement based on disability.

D. Subpart C is amended as set forth below:

Subpart C—Premium Hospital Insurance

1. Section 406.21 is amended to revise paragraphs (a) and (c)(2) and add a new paragraph (e) to read as follows:

§ 406.21 Enrollment and entitlement.

(a) *Basic provision.*

An individual who meets the requirements of § 406.20(b) may enroll for premium hospital insurance only during his or her 'initial enrollment period", a "general enrollment period", or a "special enrollment period", as set forth in paragraphs (b) through (e) of this section.

* * * * *

(c) *General enrollment period.*

(1) * * *

(2) General enrollment periods are for individuals who do not enroll during the special enrollment period, who failed to enroll during the initial enrollment period, or whose previous period of entitlement had terminated.

* * * * *

(e) *Special enrollment period*—(1) *Terminology.*

As used in this paragraph—

(i) "Employer group health plan" or "Employer plan" has, to the extent not inconsistent with section 1837(i)(1)(B) of the Act, the meaning set forth in section 162(i)(3) of the Internal Revenue Code (IRC) which reads: "* * * 'group health plan' means any plan of, or contributed to by, an employer, to provide medical care * * * to his employees, former employees, or the families of such current or former employees, directly, or through insurance, reimbursement or otherwise". The phrase "plan of" encompasses a plan that is under the auspices of an employer who makes no financial contribution—a so-called "employee-pay-all" plan. Since section 1837(i)(1)(B) of the Act (which is made applicable to premium hospital insurance by section 1818 of the Act) requires that the individual be covered under the plan "by reason of the individual's or the individual' spouse's current employment", the "former employee" language of the IRC definition does not apply.

(ii) "Special enrollment period" (SEP) is a 7-month period that begins when the individual is no longer covered by an employer group health plan.

(2) *Basic rule.* Effective August 1, 1986, individuals may enroll in premium hospital insurance during SEPs that are available to them if they meet the following requirements:

(i) When first eligible to enroll for premium hospital insurance under § 406.20(b), they were covered under and employer group health plan by reason of current employment of the individual or the individual's spouse; and

(ii) The employer plan coverage has ended because of termination of the employment, or for any other reason.

(3) *Beginning date of SEP.* If the individual enrolls during the month in which employer plan coverage ends, that month is considered the first month of the SEP. Otherwise, the SEP begins with the following month.

(4) *Effective date of coverage.* Enrollment during the first month of the SEP will result in coverage effective with the first day of that month; enrollment in the second through seventh months of the SEP will result in coverage effective with the month following the month of enrollment.

(5) *Limitation on right to subsequent SEPs.* Subsequent SEPs become available if the individual reacquires employer plan coverage based on current employment and later loses it. Generally, if an individual fails to enroll during any available SEP, no further SEPs become available. However, if an individual failed to enroll during a previous SEP because employer plan coverage (under the same of a different plan) was restored before the end of that SEP, that failure to enroll would not preclude another SEP now or in the future.

2. Section 406.22 is amended by revising paragraph (a)(2), adding a new paragraph (a)(3) and revising paragraph (c) to read as follows:

§ 406.22 Monthly premiums.

(a) *General provisions.*

(1) * * *

(2) For months, from July 1974 through June 1983, premiums were determined for each 12-month period beginning July 1, and published in the **Federal Register** during the last quarter of the preceding calendar year.

(3) Beginning with 1984, premiums are promulgated each September, effective for the succeeding calendar year. (Because of the change in promulgation and effective dates, there was no change in the premiums for July through December of 1983.)

* * * * *

(c) *Monthly premiums: Increase for late enrollment and for reenrollment.*

For an individual who enrolls after the close of the initial enrollment period or reenrolls, the amount of the monthly premium, as determined under paragraph (b) of this section, is increased by 10 percent for each full 12 months in the periods described in §§ 406.23 and 406.24. Effective beginning with premiums due for July 1986, the premium increase is limited to 10 percent and is payable for twice the number of full 12-month periods determined under those sections.

* * * * *

3. Section 406.23 is amended by revising paragraph (a), and adding new paragraphs (c)(3), (c)(4), and (c)(5), to read as follows:

§ 406.23 Determination of months to be counted for premium increase: Enrollment.

(a) *Enrollment before April 1, 1981 or after September 30, 1981.* The months to be counted for premium increase are the months from the end of the initial enrollment period through the end of the general enrollment period or special enrollment period in which the individual enrolls, excluding the following:

(1) Any months before September 1973.

(2) For premiums due for months after May 1986, any months during which the individual was enrolled in an employer group health plan based on the current employment of the individual or the individual's spouse.

(3) Any months during the 7-month special enrollment period under § 406.21(e) during which premium hospital insurance coverage is in effect.

* * * * *

(c) *Examples.*

* * * * *

(3) Effective with July 1986, Mary T, in Example 2, would no longer have to pay an increased premium because she had paid it for twice the number of full 12-month periods during which she could have been, but was not, enrolled in the program.

(4) Vincent C's initial enrollment period ended 8/31/86. He was covered under his wife's employer group health plan until she retired on 5/31/89. He enrolled during June 1989, the first month of the special enrollment period under § 406.21(e). No months are countable for premium increase purposes because the exclusions of paragraph (a) of this section apply to all months.

(5) Terry P enrolled in the 1987 general enrollment period, with coverage effective 7/87. There were 28 months after the end of this initial enrollment period through the end of the 1987 general enrollment period. His premium is increased by 10 percent. The increase will be eliminated after he has paid the additional 10 percent for 48 months.

§ 406.25 [Amended].

4. In § 406.25(b)(1), the cross reference is revised to read "§ 406.10, § 406.11, § 406.13, or § 406.15

5. In § 406.25(b)(2), the cross reference is revised to read "§ 406.10, § 406.11, § 406.13, or § 406.15

III. A new Part 407 is added, to read as set forth below:

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

Subpart A—General Provisons

Sec.

Subpart B—Individual Enrollment and Entitlement for SMI

Subpart C—State Buy-in Agreements

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

Subpart A—General Provisions

§ 407.1 Basis and scope.

(a) *Statutory basis.* The supplementary medical insurance SMI) program is authorized by Part B of title XVIII of the Social Security Act.

(1) Section 1831 of the Act establishes the program.

(2) Sections 1836 and 1837 set forth the eligibility and enrollment requirements.

(3) Section 1838 specifies the entitlement periods, which vary depending on the time and method of enrollment and on the basis for termination.

(4) Section 1843 sets forth the requirements for State buy-in agreements under which States may enroll, and pay the SMI premiums for, eligible individuals who are also eligible for cash assistance or Medicaid.

(5) Section 104(b) of the Social Security Amendments of 1965 (Pub. L. 89–87) specifies the limitations that apply to certain aliens and persons convicted of subversive activities.

(b) *Scope.* This part sets forth the eligibility, enrollment, and entitlement requirements and procedures for supplementary medical insurance. (The rules about premiums are in Part 408 of this chapter.)

§ 407.2 General description of program.

Part B of title XVIII of the Act provides for a voluntary "supplementary medical insurance plan" available to most individuals age 65 or over and to disabled individuals who are under age 65 and entitled to hospital insurance. The supplementary medical insurance program (SMI) is financed by premiums paid by (or for) each individual enrolled in the program, plus contributions from Federal funds. It covers certain physicians' services, outpatient services, home health services, services furnished by rural health clinics (RHCs), ambulatory surgical centers (ASCs), and comprehensive outpatient rehabilitation facilities (CORFs), and other medical and other health services.

§ 407.4 Basic requirements for entitlement.

(a) An individual must meet the following requirements to be entitled to SMI:

(1) *Eligibility.* The individual must meet the eligibility requirements specified in § 407.10(a).

(2) *Enrollment.* The individual must enroll for SMI, or must be enrolled by a State under a buy-in agreement as specified in § 407.40.

(b) SMI pays only for covered expenses incurred during an individual's period of entitlement.

Subpart B—Individual Enrollment and Entitlement for SMI

§ 407.10 Eligibility to enroll.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, an individual is eligible to enroll for SMI if he or she—

(1) Is entitled to hospital insurance under any of the rules set forth in §§ 406.10 through 406.15 of this chapter; or

(2) Meets the following requirements:

(i) Has attained age 65. (An individual is considered to have attained age 65 on the day before the 65th anniversary of his or her birth.)

(ii) Is a resident of the United States.

(iii) Is a citizen of the United States, or an alien lawfully admitted for permanent residence who has resided continuously in the United States during the 5 years preceding the month in which he or she applies for enrollment.

(b) *Exception.* An individual is not eligible to enroll for SMI if he or she has been convicted of—

(1) Spying, sabotage, treason, or subversive activities under chapter 37, 105, or 115 of title 18 of the United States Code; or

(2) Conspiracy to establish dictatorship under section 4 of the Internal Security Act of 1950.

§ 407.12 General enrollment provisions.

(a) *Opportunity to enroll.* (1) An individual who is eligible to enroll for SMI may do so during an initial enrollment period or a general enrollment period as specified in §§ 407.14, and 407.15. An individual who meets the conditions specified in § 407.20 may enroll during a special enrollment period, as provided in that section.

(2) An individual who fails to enroll during his or her initial enrollment period or whose enrollment has been terminated may enroll or reenroll during a general enrollment period, or, if he or she meets the specified conditions, during a special enrollment period.

(b) *Enrollment periods ending on a nonworkday.* (1) If an enrollment period ends on a Federal nonworkday, that period is automatically extended to the next succeeding workday.

(2) A Federal nonworkday is any Saturday, Sunday, or Federal legal holiday or a day that is declared by statute or executive order to be a day on which Federal employees are not required to work.

§ 407.14 Initial enrollment period.

(a) *Duration.* (1) The initial enrollment period is the 7-month period that begins 3 months before the month an individual first meets the eligibility requirements of § 407.4 and ends 3 months after that first month of eligibility.

(2) In determining the initial enrollment period of an individual who is age 65 or over and eligible for enrollment solely because of entitlement to hospital insurance, the individual is considered as first meeting the eligibility requirements for SMI on the first day he or she becomes entitled to hospital insurance or would have been entitled if he or she filed an application for that program.

(b) *Deemed initial enrollment period.* (1) SSA or HCFA will establish a deemed initial enrollment period for an individual who fails to enroll during the initial enrollment period because of a belief, based on erroneous documentary evidence, that he or she had not yet attained age 65. The period will be established as though the individual had attained age 65 on the date indicated by the incorrect information.

(2) A deemed initial enrollment period established under paragraph (b)(1) of this section is used to determine the individual's premium and right to enroll in a general enrollment period if that is advantageous to the individual.

§ 407.15 General enrollment period.

(a) Except as specified in paragraph (b) of this section, the general enrollment period is January through March of each calendar year.

(b) An unlimited general enrollment period existed between April 1 and September 30, 1981. Any eligible individual whose initial enrollment period had ended, or whose previous period of entitlement had terminated, could have enrolled or reenrolled during any month of that 6-month period.

§ 407.17 Automatic enrollment.

(a) *Who is automatically enrolled.* An individual is automatically enrolled for SMI if he or she:

(1) Resides in the United States, except in Puerto Rico;

(2) Becomes entitled to hospital insurance under any of the provisions set forth in §§ 406.10 through 406.15 of this chapter; and

(3) Does not decline SMI enrollment upon application for hospital insurance.

(b) *Opportunity to decline automatic enrollment.* (1) SSA will notify an individual that he or she is automatically enrolled under paragraph (a) of this section and grant the individual a specified period (at least 2 months after the month the notice is mailed) to decline enrollment.

(2) The individual may decline enrollment by submitting to SSA or HCFA a signed statement that he or she does not wish SMI.

(3) The statement must be submitted before entitlement begins, or if later, within the time limits set in the notice of enrollment.

§ 407.18 Determining month of automatic enrollment.

(a) An individual who is automatically enrolled in SMI under § 407.17 will have the month of enrollment determined in accordance with paragraphs (b) through (f) of this section. The month of enrollment determines the month of entitlement.

(b) An individual is automatically enrolled in the third month of the initial enrollment period if he or she—

(1) Is entitled to social security benefits under section 202 of the Act on the first day of the initial enrollment period;

(2) Is entitled to hospital insurance based on end-stage renal disease; on entitlement to disability benefits as a social security or railroad retirement beneficiary; or on deemed entitlement to disability benefits on the basis of Medicare-qualified government employment; or

(3) Establishes entitlement to hospital insurance by filing an application and meeting all other requirements (as set forth in Subpart B of Part 406 of this chapter) during the first 3 months of the initial enrollment period.aq

(c) If an individual establishes entitlement to hospital insurance on the basis of an application filed in the last 4 months of the SMI initial enrollment period, he or she is automatically enrolled for SMI in the month in which the application is filed.

(d) If an individual establishes entitlement to hospital insurance on the basis of an application filed after the SMI initial enrollment period but not during an general enrollment period in effect before April 1, 1981, or after September 30, 1981, he or she is automatically enrolled for SMI on the first day of the next general enrollment period.

(e) If the individual establishes entitlement to hospital insurance on the basis of an application filed during a SMI general enrollment period in effect before April 1, 1981 or after September 30, 1981, he or she is automatically enrolled on the first day of that period.

(f) If an individual established entitlement to hospital insurance on the basis of an application filed during the general enrollment period of April 1, 1981, through September 30, 1981, he or she was automatically enrolled for SMI

on the first day of the month in which the application was filed.

§ 407.20 Special enrollment period related to coverage under an employer group health plan.

(a) *Terminology.* As used in this section—

(1) "Employer group health plan" or "Employer plan" has, to the extent not inconsistent with section 1837(i)(1)(B) of the Act, the meaning set forth in section 162(i)(3) of the Internal Revenue Code (IRC) which reads: "* * * 'group health plan' means any plan of, or contributed to by, an employer, to provide medical care * * * to his employees, former employees, or the families of such current or former employees, directly, or through insurance, reimbursement or otherwise". The phrase "plan of" encompasses a plan that is under the auspices of an employer who makes no financial contribution—a so-called "employee-pay-all" plan. Since section 1837(i)(1)(B) of the Act requires that the individual be covered under the plan "by reason of the individual's or the individual's spouse's current employment", the "former employee" language of the IRC definition does not apply.

(2) "Large group health plan" has the meaning set forth in section 5000(b) of the IRC, which reads: "* * * 'large group health plan' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of a least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year."

(3) "Special enrollment period (SEP)" is a 7-month period that begins when the individual is no longer covered by an employer plan or large group health plan.

(b) *General rule.* SEPs are available to individuals who meet the requirements of this paragraph (b) and those of paragraph (c) or (d) of this section, as appropriate:

(1) They are eligible for SMI on the basis of age or disability, but not on the basis of end-stage renal disease.

(2) When first eligible for SMI coverage (4th month of their initial enrollment period), they were covered under an employer plan or a large group health plan or, if not so covered, they enrolled in SMI during their initial enrollment period.

(3) Coverage under either SMI or an employer plan or large group health plan has been maintained for all months thereafter. Generally, if an individual fails to enroll in SMI during any available SEP, no further SEPs become available. However, if an individual failed to enroll during a SEP because coverage (under the same or a different employer plan or large group health plan) was restored before the end of that SEP, that failure to enroll in SMI does not preclude another SEP now or in the future.

(c) *Specific rules: Individual age 65 or over.* Individuals entitled on the basis of age must meet the following conditions:

(1) Have been covered, on the basis of current employment of the individual or the individual's spouse, under a group health plan; and

(2) Are no longer covered under such a plan on the basis of current employment.

(d) *Specific rules: Disabled Individual.* Individuals entitled on the basis of disability (but not on the basis of end-stage renal disease), must meet the following conditions:

(1) Have been covered under a large group health plan;

(2) Had this coverage as an employee, employer, individual associated with the employer in a business relationship, or as a member of family of the family of any of those persons; and

(3) No longer have coverage under such a plan.

(e) *Beginning of special enrollment period: Individual age 65 or over.* For an aged individual—

(1) Before May 1986, the SEP begin with whichever of the following resulted in earlier SMI entitlement:

(i) The first day of the third month before the month in which the individual attained age 70, if employer group health plan coverage continued to age 70.

(ii) The first day of the month in which the individual was no longer enrolled in an employer plan on the basis of current employment.

(2) In and after May 1986, the SEP begins on the first day of the first month in which the individual is no longer enrolled in an employer plan on the basis of current employment.

(f) *Beginning of special enrollment period: Disabled individual.* The SEP begins with the first day of the first month after December 1986 in which the individual is no longer covered under an employer plan as described in paragraph (c) of this section. Because the provisions applicable to disabled individuals expire on December 31, 1991, the last SEP available under those provisions will begin with January 1992.

(g) *Beginning of special enrollment period:* Partial coverage month. When employer plan coverage ends before the end of a month, the following rules apply—

(1) If the individual enrolls in SMI before the end of the partial coverage month, the SEP begins with that month.

(2) If the individual does not enroll in SMI before the end of the partial coverage month, the SEP begins with the following month.

§ 407.22 Request for individual enrollment.

(a) A request for enrollment is required of an individual who meets the eligibility requirements of § 407.10 and desires SMI, if the individual—

(1) Is not entitled to hospital insurance;

(2) Has previously declined enrollment in SMI;

(3) Has had a previous period of SMI entitlement which terminated;

(4) Resides in Puerto Rico or outside the United States; or

(5) Is enrolling or reenrolling during a special enrollment period under § 407.20.

(b) A request for enrollment under paragraph (a) of this section must:

(1) Be signed by the individual or someone acting in his or her behalf; and

(2) Be filed with SSA or HCFA during the initial enrollment period, a general enrollment period, or a special enrollment period as provided in § 407.20

§ 407.25 Beginning of entitlement: Individual enrollment.

The following apply whether an individual is self-enrolled or automatically enrolled in SMI:

(a) *Enrollment during initial enrollment period.* (1) If an individual enrolls during the first three months of the initial enrollment period, entitlement begins with the first month of eligibility.

(2) If an individual enrolls during the fourth month of the initial enrollment period, entitlement begins with the following month.

(3) If an individual enrolls during the fifth month of the initial enrollment period, entitlement begins with the second month after the month of enrollment.

(4) If an individual enrolls in either of the last two months of the initial enrollment period, entitlement begins with the third month after the month of enrollment.

(5) *Example.* An individual first meets the eligibility requirements for enrollment in April. The initial enrollment period is January through July. The month in which the individual

enrolls determines the month that begins the period of entitlement, as follows:

Enrolls in initial enrollment period	Entitlement begins on—
January	April 1 (month eligibility requirements first met).
February	April 1.
March	April 1.
April	May 1 (month following month of enrollment).
May	July 1 (second month after month of enrollment).
June	September 1 (third month after month of enrollment).
July	October 1 (third month after month of enrollment).

(b) *Enrollment or reenrollment during general enrollment period.* (1) If an individual enrolls or reenrolls during a general enrollment period before April 1, 1981 or after September 30, 1981, entitlement begins on July 1 of that calendar year.

(2) If an individual enrolled or reenrolled during the general enrollment period between April 1, 1981 and September 20, 1981, entitlement began with the third month after the month in which the enrollment request was filed.

(c) *Enrollment or reenrollment during a special enrollment period (SEP)—*

(1) *Before May 1986 for those whose employee group health plan coverage continued to age 70—*

(i) If an individual enrolled during the 3 months before attainment of age 70, entitlement began with the month of attainment of age 70; and

(ii) If an individual enrolled during the month of attainment of age 70, or during any of the 3 following months, entitlement began with the month after the month of enrollment.

(2) *Before and after May 1986 for all other enrollees—*

(i) If an individual enrolls during the first month of nonenrollment in an employer group health plan (which, under § 407.20(d), is the first month of the SEP), entitlement begins with the first day of that month.

(iii) If an individual enrolls during the last 6 months of the SEP, entitlement begins with the month after the month of enrollment.

§ 407.27 Termination of entitlement: Individual enrollment.

An individual's entitlement will terminate for any of the following reasons:

(a) *Death.* Entitlement to SMI ends on the last day of the month in which the individual dies.

(b) *Termination of hospital insurance benefits.* If an individual's entitlement to hospital insurance ends before the month in which he or she attains age 65, entitlement to SMI will end on the same day unless it has been previously terminated in accordance with paragraph (c) or (d) of this section.

(c) *Request by individual.* An individual may at any time give HCFA or SSA written notice that he or she no longer wishes to participate in SMI, and request disenrollment.

(1) Before July 1987, entitlement ended at the end of the calendar quarter after the quarter in which the individual filed the disenrollment request.

(2) For disenrollment requests filed in or after July 1987, entitlement ends at the end of the month after the month in which the invidividual files the disenrollment request.

(d) *Nonpayment of premiums.* If an individual fails to pay the premiums, entitlement will end as provided in the rules for SMI premiums, set forth in Part 408 of this chapter.

§ 407.30 Limitations on enrollment.

(a) *Initial enrollment periods.*—(1) *Individual under age 65.* An individual who has not attained age 65 may have one or more periods of entitlement to hospital insurance, based on disability. Since each period of disability entitlement entitles the individual to hospital insurance and since entitlement to hospital insurance makes the individual eligible for SMI enrollment, an individual may have an SMI initial enrollment period for each continuous period of entitlement to hospital insurance.

(2) *Individuals who have attained age 65.* An individual who has attained age 65 may not have more than one initial enrollment period on the basis of age. However, if the individual develops ESRD after age 65, he or she may have another initial enrollment period based on meeting the requirements of § 406.13 of this chapter.

(b) *Number of enrollments.* There is no limitation on the number of enrollments.

(c) *Coverage under buy-in agreements.* For purposes of paragraph (a) of this section, the continued enrollment of an individual following the end of coverage under a State buy-in agreement is considered an initial enrollment.

§ 407.32 Prejudice to enrollment rights because of Federal Government misrepresentation, inaction, or error.

If an individual's enrollment or nonenrollment in SMI is unintentional, inadvertent, or erroneous because of the error, misrepresentation, or inaction of a Federal employee or any person authorized by the Federal Government to act in its behalf, the Social Security Administration or HCFA may take whatever action it determines is necessary to provide appropriate relief. The action may include:

(a) Designation of a special initial or general enrollment period;

(b) Designation of an entitlement period based on that enrollment period;

(c) Adjustment of premiums;

(d) Any combination of actions under paragraphs (a) through (c) of this section; or

(e) Any other remedial action that may be necessary to correct or eliminate the effects of the error, misrepresentation, or inaction.

Subpart C—State Buy-In Agreements

§ 407.40 Enrollment under a State buy-in agreement.

(a) *Statutory basis.* (1) Section 1843 of the Act, as amended through 1969, permitted a State to enter into an agreement with the Secretary to enroll in the SMI program certain individuals who are eligible for SMI and who are members of the coverage group specified in the agreement. A coverage group could include certain individuals receiving Federally-aided State cash assistance (with the option of excluding individuals also entitled to social security benefits or railroad retirement benefits) or could include all individuals eligible for Medicaid. Before 1981, December 31, 1969 was the last day on which a State could request a buy-in agreement or a modification to include a coverage group broader than the one originally selected.

(2) Section 945(e) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) further amended section 1843 to provide that, during calendar year 1981, a State could request a buy-in agreement if it did not already have one, or request a broader coverage group for an existing agreement.

(3) Several laws enacted during 1980–1982 required modification of the coverage groups available under section 1843.

(b) *Definitions.* As used in this section, unless the context indicates otherwise—

"Cash assistance" means any of the following kinds of monthly cash benefits, authorized by specified titles of the Act and, for convenience, represented by initials, as follows:

"AABD" stands for aid to the aged, blind or disabled under the first title XVI of the Act in effect until December 31, 1973.

"AB" stands for aid to the blind under title X of the Act.

"AFDC" stands for aid to families with dependent children under Part A of title IV of the Act.

"APTD" stands for aid to the permanently and totally disabled under title XIV of the Act.

"OAA" stands for old-age assistance under title I of the Act.

"SSI" stands for supplemental security income for the aged, blind, and disabled under the second title XVI of the Act, effective January 1, 1974.

"SSP" stands for State supplementary payments, whether mandatory or optional, to an aged, blind, or disabled individual under the second title XVI of the Act.

"Railroad retirement beneficiary" means an individual entitled to receive an annuity under the Railroad Retirement Act of 1974.

"State" means one of the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, or the Northern Mariana Islands, except when reference is made to "the 50 States".

"State buy-in agreement", or *"buy-in agreement"* means an agreement authorized by section 1843 of the Act, under which a State secures SMI coverage for individuals who are eligible for SMI, and who are receiving cash assistance or are eligible for Medicaid, by enrolling them in SMI and paying the SMI premiums on their behalf.

(c) *Basic rule.* A State that has a buy-in agreement in effect must enroll any individual who is eligible to enroll in SMI under § 407.10 and is a member of the coverage group as specified in the agreement.

(d) *Coverage under buy-in agreements.* (1) The buy-in coverage group options that were available to States during 1981 are specified in §§ 407.42 and 407.43. (These are the same groups that were available to States before 1970, as modified to reflect the intervening legislation.)

(2) A State buy-in agreement may include only one of the specified coverage groups.

(3) Before 1970 and during 1981, a State could request a buy-in agreement covering one of the specified coverage groups or an agreement modification to substitute a broader coverage group for its existing group.

(4) A State may at any time request an agreement modification to substitute a narrower coverage group for its existing group.

(5) Any buy-in agreement that is currently in effect will continue in effect with the coverage group specified in § 407.42(c) or § 407.43(c) unless it is modified in accordance with paragraph (d)(4) of this section, or terminated in accordance with § 407.45.

§ 407.42 Coverage groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.

(a) *Categories included in the buy-in coverage groups.* The coverage groups that were available to the 50 States, the District of Columbia, and the Northern Mariana Islands are specified in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals who—

(i) Receive SSI and SSP; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(2) *Category B:* Individuals who, in accordance with § 435.135 of this chapter, are covered under the State's Medicaid plan despite cost-of-living increases in social security benefits that occur after April 1977.

(3) *Category C:* Individuals who are receiving AFDC.

(4) *Category D:* Individuals who meet any of the following conditions:

(i) In accordance with § 435.112 of this chapter, become ineligible for AFDC because of increased earnings or hours of work, or both, but remain eligible for Medicaid for 4 more months.

(ii) In accordance with § 435.115 of this chapter, are treated as receiving AFDC because they are participants in a work supplementation program, or are denied aid because the payment would be less than $10.

(iii) In accordance with section 406(h) of the Act, become ineligible for AFDC because of the collection or increased collection of child or spousal support, but remain eligible for Medicaid for 4 more months.

(iv) In accordance with section 402(a)(37) of the Act, become ineligible for AFDC because they are no longer eligible for the disregard of earnings of $30 or $30 plus one third of the remainder.

(v) In accordance with § 435.118 of this chapter, must be covered under Medicaid because adoption assistance or foster care maintenance payments are made for them under title IV–E of the Act, and that title provides that individuals for whom such payments are made shall be considered as receiving AFDC.

(5) *Category E:* Individuals who, in accordance with § 435.114 or § 435.134 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Pub. L. 92–336.

(6) *Category F:* Disabled and blind individuals who, in accordance with section 1619(b) of the Act, are considered as receiving SSI or SSP benefits for purposes of continued Medicaid eligibility even though their earnings make them ineligible to receive those benefits.

(7) *Category G:* Individuals who, in accordance with section 1902(a)(10)(A)(i)(II) of the Act, are eligible for Medicaid as "qualified severely impaired individuals" as defined in section 1905(q) of the Act.

(8) *Category H:* Individuals who, in accordance with section 1634(c) of the Act are considered as receiving SSI when they lose eligibility for that program because of receipt of child's insurance benefits under title 202(d) of the Act on the basis of disability or an increase in the amount of such child's insurance benefits.

(9) *Category I:* Disabled children living at home to whom the State provides Medicaid under § 435.225 of this chapter.

(10) *Category J:* All other individuals who are eligible for Medicaid.

(b) *Coverage groups available.*

Any of the 50 States, the District of Columbia, and the Northern Mariana Islands could have chosen one of the following groups:

(1) *Group 1:* Categories A through J.

(2) *Group 2:* Categories A through I.

(3) *Group 3:* Categories A, B, F, G, H, and I, individuals in categories C and D who are not social security or railroad retirement beneficiaries, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received OAA, AB, APTD, or AABD in August 1972 or would have been eligible to receive OAA, AB, APTD, or AABD for that month if they had applied or had not been institutionalized.

(4) *Group 4:* Categories A, B, F, G, H, and I, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received AABD in August 1972 or would have been eligible to receive AABD for that month if they had applied or had not been institutionalized. This option was available only to those States that had an AABD program as of December 31, 1973.

(c) *Coverage groups in effect as of July 1, 1986.*[1] As of July 1, 1986—

(1) The following 28 States and the District of Columbia had group 1 (categories A through J):

Alaska	District of Columbia
Alabama	Florida
Arizona	Georgia
Arkansas	Hawaii
California	Idaho
Colorado	Indiana

[1] The Northern Mariana Islands requested a buy-in agreement during 1981, but took no further action. Wyoming did not request an agreement.

Iowa	North Carolina
Kansas	Ohio
Maryland	Oregon
Michigan	South Carolina
Mississippi	Texas
Montana	Utah
Nevada	Virginia
New Jersey	Washington
New Mexico	

(2) The following 19 States had group 2 (categories A through I):

Connecticut	North Dakota
Delaware	Oklahoma
Illinois	Pennsylvania
Louisiana	Rhode Island
Maine	South Dakota
Minnesota	Tennessee
Missouri	Vermont
Nebraska	West Virginia
New Hampshire	Wisconsin
New York	

(3) Massachusetts had group 3 (categories A, B, F, G, H, and I, and certain individuals in categories C, D, and E.)

(4) Kentucky had group 4 (categories A, B, F, G, H, and I, and certain individuals in category E.)

(d) *Special provisions for inclusion of certain recipients of Veterans Administration pensions*—(1) *General rule.* Under section 310(b) of Pub. L. 96–272, recipients of Veterans Administration pensions who, for purposes of Medicaid eligibility, are deemed eligible for SSI, mandatory SSP, or AFDC, are also deemed eligible for those programs for purposes of inclusion in buy-in categories A and C of paragraph (a) of this section.

(2) *Effect of Pub. L. 96–272 in specific States.* (i) In the following 13 States that had buy-in agreements in effect on December 31, 1980, recipients of Veterans Administration pensions were deemed eligible for SSI, mandatory SSP, or AFDC, as provided by Pub. L. 96–272, for purposes of eligibility for Medicaid and inclusion in buy-in categories A and C of paragraph (a) of this section:

Alabama	Nevada
Colorado	New Jersey
Delaware	Mew Mexico
Florida	South Carolina
Georgia	South Dakota
Idaho	Texas
Iowa	

(ii) In the following 4 States that had buy-in agreements in effect on December 31, 1980, recipients of Veterans Administration pensions were deemed eligible for AFDC as provided in Pub. L. 96–272 for purposes of eligibility for Medicaid and inclusion in buy-in category C of paragraph (a) of this section:

Indiana	Missouri
Mississippi	Ohio

§ 407.43 Coverage groups available to Guam and the Virgin Islands.

(a) *Categories included in buy-in coverage groups.* The coverage groups that were available to Guam and the Virgin Islands, which are not covered by the SSI program, are described in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals receiving OAA, AB, APTD, or AFDC.

(2) *Category B:* Individuals who meet any of the following conditions:

(i) In accordance with § 436.114 of this chapter, are treated as receiving AFDC because they are participants in a work supplementation program, or are denied aid because the payment would be less than $10.

(ii) In accordance with § 436.116 of this chapter, become ineligible for AFDC because of increased earnings or hours of work, or both, but remain eligible for Medicaid for 4 more months.

(iii) In accordance with section 406(h) of the Act, become ineligible for AFDC because of the collection or increased collection of child or spousal support, but remain eligible for Medicaid for 4 more months.

(iv) In accordance with section 402(a)(37) of the Act, become ineligible for AFDC because they are no longer eligible for the disregard of earnings of $30 or $30 plus one third of the remainder.

(v) In accordance with § 436.118 of this chapter, must be covered under Medicaid because adoption assistance or foster care maintenance payments are made for them under title IV–E of the Act, and that title provides that individuals for whom such payments are made shall be considered as receiving AFDC.

(3) *Category C:* Individuals who, in accordance with § 436.112 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Pub. L. 92–336.

(4) *Category D:* All other individuals who are eligible for Medicaid.

(b) *Coverage groups available.* Guam and the Virgin Islands could have chosen any one of the following groups:

(1) *Group 1:* Categories A through D.

(2) *Group 2:* Categories A through C.

(3) *Group 3:* Individuals in categories A and B who are not social security or railroad retirement beneficiaries.

(4) *Group 4:* Individuals in category A who are receiving OAA and individuals in category C who are included in that category (in accordance with § 436.112 of this chapter) because they received OAA for August 1972 or would have been eligible to receive OAA for that month if they had applied or have not been institutionalized.

(5) *Group 5:* Individuals in category A who are receiving OAA and are not social security or railroad retirement beneficiaries.

(c) *Coverage groups in effect as of July 1, 1986.* As of July 1, 1986, Guam and the Virgin Islands had group 1.[1]

§ 407.45 Termination of State buy-in agreements.

(a) *Termination by the State*—(1) *Termination after advance notice.* A State may terminate its buy-in agreement after giving HCFA 3 months advance notice.

(2) *Termination without advance notice.* A State may terminate its buy-in agreement without advance notice if—

(i) The State gives HCFA written certification to the effect that it is not longer legally able to comply with one or more of the provisions of the agreement; and

(ii) Submits a supporting opinion from the appropriate State legal officer, if HCFA requests such and opinion.

(b) *Termination by HCFA.* If HCFA, after giving the State notice and opportunity for hearing, finds that the State has failed to comply substantially with one or more of the provisions of the agreement, other than the requirement for timely payment of premiums, HCFA will give the State written notice to the effect that the agreement will terminate on the date indicated in the notice unless, before that date, HCFA finds that there is not longer that failure to comply. (Rules for collection of overdue premiums, including assessment of interest and offset against FFP due the State, are those set forth in the Notice published on September 30, 1985 at 50 FR 39784.)

§ 407.47 Beginning of coverage under a State buy-in agreement.

(a) *General rule.* Subject to the provisions of paragraphs (b) and (c) of this section, coverage under a buy-in agreement begins as follows:

(1) *Individuals who are, or are treated as, cash assistance recipients.* For individuals who are, or are treated as, cash assistance recipients (that is, are members of categories A through I of § 407.42(a) or categories A through C of § 407.43(a)), coverage begins with the first month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is a member of one of those categories.

(2) *Other individuals eligible for Medicaid.* For individuals who are members of category J of § 407.42(a) or category D of § 407.43(a), coverage

[1] Puerto Rico did not request a buy-in agreement.

begins with the second month after the month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is determined to be eligible for Medicaid.

(b) *Effect of effective date of agreement or agreement modification*—(1) *Effective date of agreement.* An individual's coverage period may not begin before the effective date of the buy-in agreement, as specified in the agreement. That date may not be earlier than the third month after the month in which the agreement is executed.

(2) If an individual is a member of the State's buy-in coverage group only by virtue of a modification to change that group, the individual's coverage period cannot begin before the effective date of modification, as specified in the agreement modification. That date may not be earlier than the third month following the month in which the modification is executed.

(c) *Coverage based on erroneous report.* If the State erroneously reports to SSA that an individual is a member of its coverage group, the rules of paragraphs (a) and (b) of this section apply, and coverage begins as through the individual were in fact a member of the group. Coverage will end only as provided in § 407.48.

§ 407.48 Termination of coverage under a State buy-in agreement.

An individual's coverage under a buy-in agreement terminates with the earliest of the following events:

(a) *Death.* Coverage ends on the last day of the month in which the individual dies.

(b) *Loss of entitlement to hospital insurance benefits before age 65.* If an individual loses entitlement to hospital insurance benefits before attaining age 65, coverage ends on the last day of the last month for which he or she is entitled to hospital insurance.

(c) *Loss of eligibility for the buy-in coverage group.* If an individual loses eligibility for inclusion in the buy-in coverage group, buy-in coverage ends as follows:

(1) On the last day of the last month for which he or she is eligible for inclusion in the group, if HCFA determines ineligibility or receives a State ineligibility notice by the 25th day of the second month after the month in which the individual becomes ineligible for inclusion in the group.

(2) On the last day of the second month before the month in which HCFA receives a State ineligibility notice later than the time specified in paragraph (c)(1) of this section. A notice received by HCFA after the 25th day of the month is considered to have been received in the following month.

(d) *Termination of buy-in agreement.* If the State's buy-in agreement is terminated, coverage ends on the last day of the last month for which the agreement is in effect.

§ 407.50 Continuation of coverage: Individual enrollment following end of coverage under a State buy-in agreement.

(a) *Deemed enrollment.* When coverage under a buy-in agreement ends because the agreement terminates, or because the individual is no longer eligible for inclusion in the buy-in coverage group, the individual—

(1) Is considered to have enrolled during his or her initial enrollment period; and

(2) Will be entitled to SMI on this basis and liable for SMI premiums beginning with the first month for which he or she is no longer covered under the buy-in agreement.

(b) *Voluntary termination.* (1) An individual may voluntarily terminate entitlement acquired under paragraph (a) of this section by filing, with SSA or HCFA, a request for disenrollment.

(2) Voluntary disenrollment is effective as follows:

(i) If the individual files a request within 30 days after the date of HCFA's notice that buy-in coverage has ended, the individual's entitlement ends on the last day of the last month for which the State paid the premium.

(ii) If the individual files the request more than 30 days but not more than 6 months after buy-in coverage ends, entitlement ends on the last day of the month in which the request is filed.

(iii) If the individual files the request later than the 6th month after buy-in coverage ends, entitlement ends at the end of the month after the month in which request is filed.[1]

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance and No. 13.774 Medicare—Supplementary Medical Insurance)

Dated: October 6, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 12, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88-3400 Filed 2-18-88; 8:45 am]

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[1] For requests filed before July 1987, entitlement ended on the last day of the calendar quarter after the quarter in which the disenrollment request was filed.

FEDERAL COMMUNICATIONS COMMISSIONS

47 CFR Part 22

[General Docket No. 85-388; [RM 5167]; FCC 86-449

Public Land Mobil Services; Rural Cellular Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: In a Third Notice of Proposed Rulemaking (Notice), the FCC proposes to amend Part 22 of its rules (which apply to Rural Cellular Service) to require that *all* RSA applicants make a firm financial commitment demonstration that they have available at the time they file their application the funds needed to construct and operate the proposed system for one year. The proposal is made based on the FCC's tentative conclusion that such a requirement would further the goals of maintaining the integrity of the Commission's licensing process and ensuring that only sincere applicants that intend to provide and are capable of providing high quality cellular service apply for RSA licenses. The intended effect is to deter applicants which cannot demonstrate their financial qualifications *prior to the lottery.*

DATE: Comments must be received on or before March 4, 1988.

Reply comments must be received on or before March 14, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier Bureau; tele: 202-632-6450.

This is a summary of the Commission's third notice of proposed rulemaking, adopted February 12, 1988, and released February 16, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Third Notice of Proposed Rulemaking

1. On November 7, 1986, the FCC released a Further Notice of Proposed Rulemaking (Further Notice) to solicit

comments concerning changes in the rules for Rural Service Areas (RSAs). This Further Notice proposed prohibiting all prefiling, post-filing and post-grant partial settlements among competing non-wireline RSA cellular appliants, prohibiting all RSA applicants from having *any* ownership interest in more than one application in a market and prohibiting the sale, transfer, assignment or other alienation of any interest in a cellular application, permit or license to offer service to RSAs until the facility has been placed in operation. These changes were tentatively found to be necessary to protect the Commission's licensing processes from abuses which arose from applicants filing speculative applications in prior filing rounds. Several commenters to the Further Notice suggested that we also amend the rules to require RSA appliants to demonstrate that they have a firm financial commitment at the time they filed their RSA applications. The FCC tentatively concludes that such a requirement would further the goals stated in the Further Notice. Consequently, the FCC proposes that *all* RSA applicants make a firm financial commitment demonstration that they have available at the time they file their application the funds needed to construct and operate the proposed system for one year. The FCC further proposes that an applicant that has filed multiple applications would be awrded grants only for the number of applications its financial commitment will cover. Comment on both proposals is invited. However, since the comment period on the Further Notice has closed, the FCC does not intend by this Third Notice for commenters to address the proposals set forth in the Further Notice. The intention of the proposals in the Third Notice is to limit the RSA lotteries to only those applicants which are capable of implementing the cellular system plan in their application. The FCC's experience shows that applicants lacking the means to carry out their proposals may cause substantial delay to the process of bringing service to the public. By limiting the lottery pool to those who have the financial ability at the time they file their applications, the FCC is carrying out its statutory responsibilities to award licenses to *bona fide* applicants likely to provide service expeditiously to the public. This financial ability must be apart from the value of the license. The FCC also seeks comment on other alternatives that may best effectuate the proposed requirement.

2. *Ex Parte:* This is a non-restricted notice and comment rule making proceeding. *See* sections 1.1202, 1203, 1206 of the Commission's rules, 47 CFR 1.1202, Parts 1203 and 1206 for rules governing permissible *ex parte* contacts.

3. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that although the proposal will increase the costs to file applications for RSAs, the action will have negligible impact on small entities that propose a realistic system specifically designed to offer cellular service to rural communities. Moreover, by helping to eliminate insincere or speculative applications, the proposed rules will encourage the entry of and improve the chances of *bona fide* small businesses in the cellular licensing process.

4. *Paperwork Reduction.* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

5. *Service List.* A copy of this *Notice* shall be sent to the Chief, Counsel of Advocacy of the Small Business Administration.

Ordering Clauses

6. Authority for this rulemaking is contained in sections 1, 4(i) and 301, 303 and 309 of the Communications Act of 1934, as amended.

7. Effective on the date of the adoption of this *Notice*, 1988, applications proposing to serve areas not included in existing or proposed CGSAs will not be accepted by the Commission.

List of Subjects in 47 CFR Part 22

Cellular radio service, Processing of applications.

Federal Communications Commission
H. Walker Feaster,
Secretary.

Rules Section

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.917 is proposed to be amended by redesignating paragraphs (c) and (d) as (d) and (e) and adding a new (c) to read as follows:

§ 22.917 Demonstration of Financial Qualifications.

* * * * *

(c) *Rural Service Areas.* (1) An applicant for a new station shall demonstrate a firm financial commitment for the financing necessary to construct and operate for one year its proposed cellular system. This demonstration shall be independent of the applicant obtaining a construction permit. An applicant who was filed multiple applications would be awarded grants only for the number of applications its financial commitment will cover. The demonstration of commitment shall include the realistic and prudent estimated costs of construction and other initial expenses; estimated operating expenses for one year; and a balance sheet current within 30 days of the date of filing.

(i) The firm financial commitment required above shall be from a recognized bank or other financial institution and shall evidence that the lender has examined the financial condition of the applicant, and has determined that it is creditworthy. The lender must state that it is committed to providing the necessary financing and must indicate whether any actions are required of the applicant to continue the commitment in force. The applicant obtaining financing from other than a recognized lending institution must submit proof that the financing entity has such funds available and uncommitted to another cellular application.

(ii) An applicant relying on internal financing must submit the information required by § 22.917(a)(3), in conformance with generally accepted accounting principles, to demonstrate its financial ability.

(2) Modified Facilities. Applications for modified facilities in Rural Service Area markets shall demonstrate the applicant's financial ability in accordance with requirements of paragraph (a) of this section.

* * * * *

[FR Doc. 88-3716 Filed 2-18-88; 9:32 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file reply comments to notice of proposed rulemaking.

SUMMARY: In the Federal Register notice of proposed rulemaking, October 22, 1987 (52 FR 39549), the Commission proposed deleting its current tariff filing rules at 49 CFR Part 1312 and replacing them with simplified rules at 49 CFR Part 1314. The revised rules would accomodate the filing of electronic tariffs and greatly simplify tariff filing requirements. Comments on the proposal were due January 20, 1988. Replies to the comments are due on February 19, 1988. The Burlington Northern Railroad, Chicago and North Western Transportation Co., Consolidated Rail Corp., CSX Transportation, Norfolk Southern Corp., Union Pacific Railroad Co., and Western Territory Railroad (Railroads) requested that the date for filing replies to the comments be extended for 20 days to March 10, 1988. Many of the commentors are concerned about how the tariff system will work under the proposal. The railroads believe they can explain, at least with respect to rail tariffs, how the railroads propose to implement electronic tariffs. The railroads state that additional time is needed to prepare a response that will eliminate many of the concerns raised by the other commentors. Considering the importance of the rulemarking and the desire of the Commission to elicit meaningful comments, the extension request of 20 days is granted.

DATES: Replies to comments shall be submitted by March 10, 1988.

ADDRESS: An original and 15 copies shall be sent to: Secretary, Interstate Commerce Commission, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

C.E. Langyher, (202) 275–7739

or

Lawrence C. Herzig, (202) 275–7358, TDD for hearing impaired, (202) 275–1721

Dated' February 11, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88–3474 Filed 2–18–88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Comment Period; Stephen's Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposed determination of endangered status for the Stephen's kangaroo rat (*Dipodomys stephensi*) and that the comment period on the proposal is extended. The species has suffered widespread habitat loss and degradation, resulting in small isolated populations. The hearing and extension of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The public hearing is scheduled for Friday, March 11, 1988, from 7:00 to 9:00 p.m., Temecula, California. The comment period which originally closed on January 19, 1988, now closes April 19, 1988.

ADDRESSES: The hearing will be held at the Rancho California Water District Office, 28061 Diaz Road, Temecula, California. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Regional Endangered Species Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Stephen's kangaroo rat is found in the vicinity of the Perris and San Jacinto Valleys in western Riverside County and the San Luis Rey and Temecula Valleys in northern San Diego County. Occupied habitats are usually described as sparce slightly disturbed coastal sage scrub or annual grasslands. The species is threatened by deterioration or loss of habitat. A proposal of endangered status was published in the **Federal Register** (52 FR 44453) on November 19, 1987.

Section 4(b)(5)(e) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On December 29, 1987, a request for public hearing on this proposal was received from Thomas M. Wilson, General Manager and Chief Engineer, Vista Irrigation District. The Service has scheduled the hearing for March 11, 1988, Rancho California Water District Office, 28061 Diaz Road, Temecula, California from 7:00 to 9:00 p.m. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on January 19, 1988. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted until April 19, 1988, to the Service office in the Addresses section.

Author

The primary author of this notice is Mr. Wayne S. White, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: February 10, 1988.

Wally Steucke,

Acting Regional Director.

[FR Doc. 88–3542 Filed 2–18–88; 8:45 am]

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Notices

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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

Agricultural Stabilization and Conservation Service

1987-Crop Peanuts; National Poundage Quota for 1987-Crop Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Affirmation of determination.

SUMMARY: This notice affirms the determination of the national poundage quota for peanuts for the 1987–88 marketing year. On December 12, 1986, the Secretary of Agriculture announced that the national poundage quota for peanuts for the 1987–88 marketing year would be 1,355,500 tons, the same as last year's quota. That determination was made pursuant to the statutory requirements of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as "the Act").

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3732–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5953. The final regulatory impact analysis describing the impact of implementing this determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: The determination affirmed in this notice was reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and classified "not major". It was determined that the determination will not result in:

(1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, industries, Federal, State, or local governments or geographical regions, or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this notice applies to are: Title—Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to the determination affirmed in this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to that determination.

I. Background

A notice that the Secretary was preparing to determine the national poundage quota for the 1987 crop of quota peanuts was published in the **Federal Register** on November 20, 1986 (51 FR 41990). That notice proposed that the national poundage quota be set at 1,287,500 tons.

Quota peanuts are defined in section 358 of the Act as peanuts which are produced on a farm having a farm poundage quota and do not exceed the farm's poundage quota for such year.

II. Summary and Discussion of Comments

One hundred and fifty-nine comments were received in response to the proposed determination. One respondent recommended a five percent reduction in the national quota from the level for the 1986 marketing year, 136 respondents recommended no change from the 1986 quota level, and 22 respondents recommended an increase from that level (1,355,500 tons).

Of those respondents recommending an increase from the 1986 quota level, 17 recommended increases ranging from three to 11 percent (1,396,100 tons to 1,504,600 tons), one recommended a 16 percent increase (1,572,400 tons), and 4 favored increasing the quota but did not specify an amount. Many respondents requesting a quota increase felt domestic food demand will grow at a accelerated rate based on industry plans for aggressive advertising, new product introductions and intense competition for food dollars. The respondents also suggested that the quota be increased to adjust for (1) incomplete reporting of product use to the National Agricultural Statistics Service (NASS), (2) a shortfall in stocks carried into the 1987/88 marketing year, (3) more than projected shrinkage in peanuts during handling, and (4) exports of products produced from quota peanuts which are exported to Canada or Mexico. In addition, the comments suggested that the conversion factor used by the Department to convert data for shelled peanuts to a farmer stock basis was inaccurate.

III. Discussion of Determination

Section 358(q) (1) of the Act requires that the national poundage quota for peanuts for each of the 1986 through 1990 marketing years shall be established by the Secretary at a level that is equal to the quantity of peanuts in tons that the Secretary estimates will be devoted in each such marketing year to domestic edible, seed, and related uses. Section 358 further provides that the national poundage quota for any such marketing year shall not be less than 1,100,000 tons. The marketing year for the 1987 crop of peanuts runs from August 1, 1987 through July 31, 1988.

Section 358(q)(2) of the Act requires the national poundage quota for a marketing year to be announced not later than December 15 preceding such marketing year.

Poundage quotas for the 1986–1990 crops of peanuts were approved by producers in a mail ballot held January 27–31, 1986.

On December 12, 1986, the Secretary of Agriculture announced that the national poundage quota for the 1987–88 marketing year would be 1,355,500 tons. The quota was set at that level based on the following estimates:

ESTIMATED DOMESTIC EDIBLE USE FOR THE 1987–88 MARKETING YEAR

[In tons]

Item	Proposed quota	Final quota
Domestic edible	1,032,500	1,050,500
Seed	100,500	100,500
Related use		
Crushing residual	128,750	135,550
Shrinkage	25,750	47,450
Low-quality transfers from additional loan	0	20,000
Exports of products to Canada and Mexico	0	1,500
Total	1,287,500	1,355,500

The domestic edible use estimate includes, in addition to farm use and local sales, the sum of (1) shelled peanuts used in primary products minus the exports of processed or preserved peanuts, plus (2) the domestic disappearance of roasting stock peanuts. The estimates for those components are derived from survey data collected by NASS. The estimates set forth in the proposed determination reflected that exports of preserved and processed blanched peanuts had been subtracted from the gross shelled product use estimate. However, it was determined that such blanched peanuts were not in the gross shelled product use figure. For that reason, the domestic edible use estimate was raised which in turn raised the estimates for shrinkage and crushing residual. Shrinkage was further increased as it was determined that actual shrinkage in farmers stock peanuts should be estimated at 3½ percent on a farmer stock ton rather than at 2 percent—the figure used for the proposed determination. Exports of products to Canada and Mexico were added to the estimates of total use because such products are not permitted, under 7 CFR Part 1446, to be produced from additional peanuts. In addition, an estimate was added for quota peanuts which due to quality defects must be replaced by other peanuts.

Based on these estimates which take into account the marketing history of preceding crops and the most reliable data available, it was determined that the 1987 quota should be 1,355,500 tons.

Determination

The previously announced national poundage quota for 1987-crop peanuts of 1,355,500 tons is hereby affirmed.

The statutory authority for this determination is:

Authority: Sec. 358, 55 Stat. 88, as amended (7 U.S.C. 1358).

Signed at Washington, DC, on February 11, 1988.

Milton Hertz,

Administrator.

[FR Doc. 88-3613 Filed 2-18-88; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

1987-Crop Peanuts; 1987-Crop Peanut Program Determination Regarding National Average Support Levels for Quota and Additional Peanuts and the Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Loan Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice affirms the February 13 announcements with respect to the following determinations for the 1987 crop of peanuts: (1) The national average level of price support for quota peanuts, (2) the national average level of support for additional peanuts and (3) the Commodity Credit Corporation (CCC) minimum sales price for export for edible use of 1987-crop additional peanuts which were pledged as collateral for a price support loan.

These determinations are made pursuant to the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act").

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3732-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5953. The final regulatory impact analysis describing the impact of implementing this determination is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under Department of Agriculture (USDA) procedures established to implement Executive Order 12291 and Department Regulation 1512-1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases, Number-10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 1017 of the Food Security Act of 1985 provides that the Secretary of Agriculture shall determine the rate of loans, payments, and purchases under the 1949 Act for the 1986–90 crops of commodities without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of title 5 of the United States Code or in any directive of the Secretary.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A notice that the Secretary was preparing to make determinations with respect to the national average support level for the 1987 crop of quota and

additional peanuts and the minimum sales price for export for edible use for 1987-crop additional loan peanuts owned or controlled by CCC was published in the **Federal Register** on January 26, 1987 (52 FR 2796). The written comment period ended February 2, 1987.

A total of five comments were received through February 2: One national producer group, two state producer groups, and two sheller associations. Four respondents commented on the national average support level for quota peanuts—three of which supported no increase (the proposed level), and one disagreeing with the decrease in drying costs. Four respondents commented on the national average support level for additional peanuts—of which three respondents urged setting the support at a level to ensure no loss to CCC, and one recommended holding the support at the 1986 level. Five respondents commented on the minimum CCC sales price for additional peanuts sold for export for edible use—three supported no change from the 1986 sales prices ($400 per ton), and two supported a price in the range of $400 to $450 per ton.

The determination of the national average support level for the 1987-crop of quota and additional peanuts was required to be made by the Secretary of Agriculture no later than February 15, 1987.

The determinations with respect to the minimum CCC export edible sales price for loan collateral additional peanuts is usually made at the same time to facilitate producer planning for the crop year.

For the reasons set forth below, the Secretary on February 13, 1987, announced for the 1987 crop of peanuts the following: (1) A national average quota support level of $607.47 per ton; (2) a national average additional support level of $149.75 per ton; and (3) a minimum price of $400 per ton for export sales for edible uses of additional peanuts pledged as collateral for price support loans.

A. *National Average Support Level for Quota Peanuts.* Section 108B(1)(B)(ii) of the 1949 Act provides that the national average support level for the 1987 crop of quota peanuts shall be the national average quota support rate for such peanuts for the preceding crop, adjusted to reflect any increase in the national average cost of peanut production, excluding any change in the cost of land, during the calendar year immediately preceding the marketing year for the crop for which a level of support is being determined. This section provides further that in no event shall the national average quota support rate for any such crop exceed by more than 6 per centum the national average quota support rate for the preceding crop.

Accordingly, the 1987 quota support level is required to be the 1986 quota support of $607.47 per ton adjusted to reflect any such increase in the national average cost of peanut production in calendar year 1986. Cash expenses, capital replacement, net land rent and labor are the cost components used in this comparison. Because Section 108B excludes any change in the cost of land, 1985 net land rent was substituted for 1986 net land rent in the analysis. Based on the production cost components as estimated by the Economic Research Service (ERS), it was estimated that the national average cost of producing 1986-crop peanuts on a planted acre basis decreased $23.91 per planted acre from the 1985 cost estimate.

Using a trend yield, planted acre costs were converted to a cents per pound figure. A trend yield is used to reduce year-to-year per unit variability caused by abnormal weather and related factors. On a per pound basis, the national average cost of producing 1986 crop peanuts was estimated to have decreased $0.0099 per pound or $19.80 per ton from the 1985 cost of production.

One comment challenged the estimate of the cost to dry 1986 crop peanuts. These estimates were obtained from national survey data and are the most reliable estimates available.

Details of the cost of production estimates are shown in the following table:

NATIONAL AVERAGE COST OF U.S. PEANUT PRODUCTION, 1985–86

[Dollars per planted acre]

Item	1985	1986
Cash receipts:		
Primary crop	620.74	579.82
Secondary crop	18.59	20.47
Total	639.33	600.29
Cash expenses:		
Seed	59.61	64.86
Fertilizer	18.70	17.19
Lime and gypsum	14.34	13.18
Chemicals	79.63	78.91
Custom operations	7.52	7.63
Fuel, lube, and electricity	24.85	20.36
Repairs	19.54	19.05
Hired labor	7.41	7.70
Drying	39.22	27.65
Miscellaneous	0.20	0.20
Technical services	0.86	0.88
Total, variable expenses	271.88	257.60
General farm overhead	28.69	29.05
Taxes and insurance	11.01	11.92
Interest	71.31	56.33
Total, fixed expenses	111.01	97.30
Total, cash expenses	382.89	354.90
Receipts less cash expenses	256.44	245.40
Capital replacement	48.73	51.57
Receipts less cash expenses and replacement	207.71	193.83
Economic (full ownership) costs:		
Variable expenses	271.88	257.60

NATIONAL AVERAGE COST OF U.S. PEANUT PRODUCTION, 1985-86—Continued

[Dollars per planted acre]

Item	1985	1986
General farm overhead	28.69	11.92
Taxes and insurance	11.01	20.05
Capital replacement	48.73	51.57
Allocated returns to owned inputs:		
Return to operating capital	7.88	6.57
Return to other nonland capital	18.13	19.19
Net land rent	84.97	85.15
Unpaid labor	24.79	26.03
Total, economic costs	496.08	487.08
Residual returns to management and risk	143.25	113.21
Total returns to owned inputs	279.02	250.15
Cash expenses, capital replacement, and labor ($ per planted acre)	456.41	432.50
Net land rent	84.97	[1] 84.97
Total	541.38	517.47
Trend yield (pounds per planted acre)	2,599	2,608
Cost (cents per pound)	20.83	19.84

[1] 1985 net land rent was substituted for the 1986 value because a legislative provision excludes any change in the value of land from consideration.

Based on the foregoing, it was determined there was no increase in the national average cost of peanut production in the preceding year. Accordingly, the national average level of price support for the 1987 crop of quota peanuts will be the same as for the 1986 crop—$607.47 per ton.

B. *National average level of support for additional peanuts.* Section 108B(2)(A) of the 1949 Act provides that the Secretary shall make price support available to producers through loans, purchases, or other operations on 1987-crop additional peanuts at such level as the Secretary determines to be appropriate, taking into consideration certain factors. Those factors are the demand for peanut oil and meal, expected prices of other vegetable oils and meals, and the demand for peanuts in foreign markets. The Act further provides that the Secretary shall establish the support rate for additional peanuts at a level which the Secretary estimates will ensure that there are no losses to CCC on the sale or disposal of such peanuts. Section 358(v)(1) of the Agricultural Adjustment Act of 1938 defines additional peanuts for any marketing year as: (A) Any peanuts marketed from a farm for which a farm poundage quota has been established that are in excess of the quota marketings from such farm for such year and (B) all peanuts marketed from a farm for which no farm poundage quota has been established. The statutory factors for determining the additional support level are discussed below for the 1987 crop.

1. *Demand for peanut oil and meal.* The quantity of peanuts available for crushing for the 1987/88 marketing year (August 1, 1987 to July 31, 1988), a residual of edible use, is projected to range from 283,000 tons to 288,000 tons compared with 189,000 tons for the 1986/87 marketing year. Peanut oil and meal prices are expected to range from 23 to 31 cents per pound and $130 to $160 per ton, respectively, for the 1987/88 marketing year.

2. *Expected prices of other vegetable oils and meals.* For the 1986/87 marketing year, the world aggregate production of oilseeds is estimated to be 215.1 million short tons, up slightly from 1985/86. The recovery in soybean production is the biggest single factor in the increase. Soybeans account for 50 percent of the total world aggregate oilseed production while peanuts account for 10 percent. Because of soybean dominance of the total supply, soybeans lead the demand-supply price patterns for oilseeds.

U.S. soybean production for 1986/87 decreased 4 percent to 2,007 million bushels. However, high carryover stocks will more than offset the lower production and increase total supplies by 5 percent. A projected 3-percent increase in use is not expected to offset the higher level of supplies and ending stocks could increase 15 percent to 615 million bushels.

Soybean oil and meal prices are expected to fall relative to recent years because of large supplies. For the 1986/87 marketing year, soybean oil prices are expected to range from 13.5 to 17.5 cents per pound in comparison to an average price of 18 cents per pound for the 1985/86 marketing year. Soybean meal prices are expected to range from $140 to $160 per ton for the 1986/87 marketing year in comparison to a price of $154.90 per ton for 1985/86.

The 1987 U.S. soybean acreage and production may drop slightly from 1986/87. This is expected to lower total supplies. Increases in demand could lower ending stocks. Total use of peanut oil and meal is expected to be up 2 to 3 percent. Soybean oil prices are projected to increase about 10 percent above 1986/87 levels and soybean meal prices are projected to drop about 5 percent from 1986/87 levels.

3. *Demand for peanuts in foreign markets.* The demand for U.S. peanuts in foreign markets is expected to strengthen. The U.S. is expected to supply 488,000 short tons of peanuts to the export market in the 1987/88 marketing year, compared with 450,000 tons for the 1986/87 marketing year.

Section 108B(2)(A) of the 1949 Act provides, further, that the support rate for additional peanuts must be established at a level estimated to ensure no loss to CCC from the sale or disposal of additional peanuts placed under loan. Subject to the pool offset provisions of sections 108B(3)(B) and 108B(4), net gains from peanut pools are redistributed to producers, while net loses are absorbed by CCC. Section 108B(3)(B) of the 1949 Act requires each area marketing association to establish accounting pools for each segregation for quota and additional peanuts. It is possible that all peanuts in some additional loan pools may be disposed of exclusively through sales for domestic crushing. Further, it has been determined based on the consideration of the market factors set forth above, that the estimated average mid-range crushing price of loan collateral 1987-crop additional peanuts would be $221 per ton. CCC's handling and related costs were estimated to be $62 per ton. It was, therefore, estimated that the expected effective revenue from crushing sales would be $158.70 per ton. It was concluded that a national average

level of price support for additional peanuts of $149.75 per ton would be appropriate to provide a cushion against lower than expected crushing prices, higher than expected costs, or other factors which could result in a loss to CCC from the sale or disposal of additional loan collateral peanuts.

C. *CCC Minimum price for additional peanuts sold for export for edible use.* The determination of a CCC minimum price for additional peanuts sold for export for edible use is discretionary. This price has been announced at the same time as the determination of the support levels for quota and additional peanuts to give handlers and growers adequate information on which to base export contracts for additional peanuts. If the price is established too high, it may discourage export contracting between handlers and growers and unnecessarily encourage the production of additional peanuts for the price support loan program on the assumption that the minimum CCC sales price would be the price growers actually will receive for the sale of their loan collateral peanuts as the result of supplemental payments made as pool dividends pursuant to Section 108B of the 1949 Act. This assumption may be incorrect, however, since a misjudgment of the price of edible peanuts in the export market could result in CCC losing edible sales and having to crush the loan inventory. If the minimum sales price is too low, returns from export sales will not be maximized and grower income will be reduced since the price provided in export contracts between handlers and growers generally do not exceed the CCC minimum export sales price.

Based on expected world prices, it was concluded that a CCC minimum price of $400 ton for export sales for edible use of additional peanuts would be appropriate.

Since the only purpose of this notice is to affirm the determinations announced by the Secretary on February 13, 1987, with respect to the 1987 levels of support for quota and additional peanuts and the CCC minimum price for export sales for edible use of additional peanuts pledged as collateral for price support loans, it has been determined that no further public rulemaking is required. Accordingly, the following determinations are affirmed.

Determinations

(1) The national average level of support for the 1987 crop of quota peanuts has been determined to be $607.47 per ton. This level of support is applicable to eligible 1987-crop farmers stock peanuts in bulk or in bags, net weight basis.

(2) The national average level of support for the 1987 crop of additional peanuts has been determined to be $149.75 per ton. This level of support is applicable to eligible 1987-crop farmers stock peanuts in bulk or in bags, net weight basis.

(3) The Commodity Credit Corporation (CCC) minimum price for export sales for edible use of the 1987 crop of additional peanuts is $400 per ton for peanuts (1) owned by CCC, or (2) which are taken into inventory by a producer association as collateral for price support loans made available by CCC.

Signed at Washington, DC, on February 10, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-3614 Filed 2-18-88; 8:45 am]

BILLING CODE 3410-05-M

Economic Research Service

National Agricultural Cost of Production Standards Review Board; Meeting

The National Agricultural Cost of Production Standards Review Board will meet at the Economic Research Service, U.S. Department of Agriculture, Washington, DC on February 25–26, 1988.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. All meetings will be held in room 332, 1301 New York Avenue, NW. The meeting's morning session on February 25 will convene at 9:00 a.m. and end at 12:30 p.m.; the afternoon session will convene at 2:00 p.m. and end at 4:00 p.m. The morning session on February 26 will convene at 9:00 a.m. and end at 11:30 a.m.; the afternoon session will convene at 1:00 p.m. and end at 3:00 p.m.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted to Kenneth Deavers, Director, ARED–ERS–USDA, Room 314, 1301 New York Avenue, NW., Washington, DC 20250.

For further information, contact Diane Bertelsen at (202) 786–1808.

John E. Lee, Jr.,

Administrator.

[FR Doc. 88-3581 Filed 2-18-88; 8:45 am]

BILLING CODE 3410-18-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m., March 10, 1988, in Room 1900–A, John F. Kennedy Building, Cambridge and Sudbury Streets, Boston, Massachusetts. The purpose of the meeting is to discuss and select topics for a project and monitoring in 1988. Also featured is a forum on how law enforcement officials are using existing statutes to protect minority communities which have been subjected to racially- and religiously-motivated violence and intimidation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Philip Perlmutter (617/542–7525) or John I. Binkley, the Director of the Eastern Regional Division (202/523–5264; TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 11, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-3497 Filed 2-18-88; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting; Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 2:30 p.m. on March 11, 1988, at the Barrington Public Library, 281 County Road, Barrington, Rhode Island 02806. The purpose of the meeting is (1) to discuss and approve the report "The Immigration Reform and Control Act of 1986: Civil Rights Issues in Implementing the Legalization and Employer-sanctions Programs," and (2) to plan a community forum on violence and bigotry.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson David Sholes (401–463–5600) or John I. Binkley, Director of the Eastern Regional Division at (202–523–5264) (TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 11, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–3498 Filed 2–18–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Electronic Instrumentation Technical Advisory Committee; Open Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held March 10, 1988, Herbert C. Hoover Building, 14th & Constitution Avenue NW., Washington, DC. The meeting will convene in Room 6802 at 9:00 a.m.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Comments are especially invited on the following entries of the Commodity Control List (CCL):

CCL 1533A—Spectrum Analyzers

CCL 1584A—Oscilloscopes

4. Public discussion on any other matters related to activities of the Electronic Instrumentation Technical Advisory Committee. Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security. The committee is also interested in proposals for revision to the People's Republic of China guidelines and G–COM regulations relating to these CCL numbers.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Carole Willis, Technical Support Staff, Office of Technology & Policy Analysis, Room 4086, 14th Street & Constitution Avenue NW., Washington, DC 20230.

For further information or copies of the minutes contact Carole Willis, 202/377–2583.

Date: February 16, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88–3600 Filed 2–18–88; 8:45 am]

BILLING CODE 3510–DT–M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held March 8, 1988, 9:00 a.m., Herbert C. Hoover Building, Room B–841, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

Agenda:

Open Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. University Presentation on Technical Data.
6. Review of Technical Data Regulations.
7. Discussion of Application of the Committee's Recommendations on Technical Data by the Ad Hoc Subcommittee.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes contact Ruth D. Fitts, 202–377–2583.

Dated: February 16, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–3571 Filed 2–18–88; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

[Transmittal No. 06–10–88014–01; Project I.D. No. 06–10–88014–01]

Baton Rouge, LA, Minority Business Development Center (MBDC); Solicitation of Competitive 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 August 1, 1988 to July 31, 1989. The MBDC will operate in the Baton Rouge Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Baton Rouge SMSA	$165,500	$29,118 [1]	$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 idividuals 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.

CLOSING DATE: The closing date for receipt of application is March 31, 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 applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on March 11, 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.

February 12, 1988.

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development.

Project Name: Baton Rouge MBDC (Geographic Area or SMSA).

Project Identification Number: 06–10–88014–01.

Project Start and End Dates: 08–01–88 to 07/31/89.

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 31, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: Baton Rouge, Louisiana.

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. 88–3491 Filed 2–18–88; 8:45 am]

BILLING CODE 3510–21–M

Minority Business Development Center Program; Solicitation of Competitive Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of July 1, 1988 to June 30, 1989. The MBDC will operate in the Richmond, Virginia Metropolitan Statistical Area. The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 03–10–88006–10.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; 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 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is March 21, 1988. Applications must be postmarked on or before March 21, 1988.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6711, Washington, DC 20230, 202/377–8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: February 9, 1988.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 88–3499 Filed 2–18–88; 8:45 am]

BILLING CODE 3510-21M-M

National Oceanic and Atmospheric Administration

Endangered Marine Mammals; Denial of Permit to Dr. Richard H. Lambertsen (P277B)

On May 18, 1987, notice was published in the **Federal Register** (52 FR 18593) that an application had been filed by Dr. Richard H. Lambertsen, Director, Institute of Biomedical Aquatic Studies, Box J–144, University of Florida, Gainesville, Florida 32610, for a permit to conduct scientific research on an unspecified number of all species of cetaceans.

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), after having considered all pertinent information and facts, the National Marine Fisheries Service has determined that the permit request should not be granted. The request is denied without prejudice to the consideration of future applications. The Applicant was notified on February 16, 1988.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC 20009;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

February 16, 1988.

[FR Doc. 88–3609 Filed 2–18–88; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit 571]

Marine Mammals; Permit Modification; Ms. Janice M. Straley

Notice is hereby given that pursuant to the provisions § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR 222), Scientific Research Permit No. 571 issued to Ms. Janice M. Straley, P.O. Box 273, Sitka, Alaska 99835, is modified as follows:

Section B.1 is deleted and replaced by:

1. The research shall be conducted by the means, and for the purposes set forth in the application and modification request.

Section 6 a. is deleted and replaced by:

6. The Holder shall submit an annual report within 30 days of the completion of each year's research. The report shall include: the number of days on the water, when, where, how, and how many individuals and groups of whales were approached; how individuals and groups responded to approach; whether and how response varied by time, location, nature of approach; the actual distance from the animals required to obtain clear observations and obtain photographs; total number of animals photographed; total number of fluke shots taken; a statement on the success/failure of approaches (i.e. percentages of animals that allowed approach), how long an individual whale was worked with; incidents of harassment; measures taken to minimize disturbance and the apparent effectiveness thereof; number of vessels operating and number of persons involved (specify in boat/water) and duties; when, where and what activities are planned to be conducted during the forthcoming year; what steps have been and will be taken to coordinate with other researchers so as to minimize disturbance and avoid possible duplicative research; and what steps will be taken to avoid or minimize disturbance from proposed activities.

This modification is effective on February 12, 1988.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

The Permit, as modified, is available for review in the following offices:

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

Director, Alaska Region, National Marine Fisheries Service, 709 9th Street, Juneau, Alaska 99802.

Date: February 2, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–3608 Filed 2–18–88; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 585]

Marine Mammals; Modification of Permit to Southeast Fisheries Center, National Marine Fisheries Service (P77#25)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Mammals (50 CFR Part 216), Scientific Research Permit No. 585, issued to the Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149 on June 16, 1987 (52 FR 22835), is modified as follows:

Section B.10 is added:

10. The Permit Holder or bona-fide research agent designated in accordance with Special Condition B.5 may employ non-TED equipped shrimp trawling vessels for the capture of marine turtles for scientific research in support of population abundance surveys and for monitoring of channel dredging.

This modification became effective on February 11, 1988.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: February 11, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-3610 Filed 2-18-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Athena Neurosciences, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Athena Neurosciences, Inc., having a place of business at 957-P Industrial Road, San Carlos, CA 94070, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application S.N. 7-068,982, "Enhancing Drug Delivery to the Brain." Prior to any license grant by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-3539 Filed 2-18-88; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988, Addition and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: March 21, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 9, and December 28, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (52 FR 37819 and 48861) of proposed addition to and deletion from Procurement List 1988, December 10, 1987 (52 FR 46926).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1988.

Service

Commissary Warehouse Service
Altus Air Force Base, Oklahoma

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from Procurement List 1988:

Commodity

Tube, Mailing and Filing, 8110-00-412-4410

C. W. Fletcher,

Executive Director.

[FR Doc. 88-3578 Filed 2-18-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force; Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

Reason for this Notice: The Department of Defense 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).

Title Applicable Form and Applicable OMB Control Number: Industrial Input to the AFSC Market Research Plan; No forms and No OMB Control Number.

Type of Request: New.

Annual Burden Hours: 12,000.

Annual Responses: 300.

Needs and Uses: Proposed survey will ask major defense contractors to describe subcontracts planned for completion under Government prime contracts. AFSC will use their input to heighten industry awareness and facilitate the competitive participation of both large and small business in the acquisition process.

Affected Public: Business.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Pearl . Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 12, 1988.

[FR Doc. 88–3531 Filed 2–18–88; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Committee has been scheduled as follows:

DATES: Tuesday and Wednesday, 10–11 May 1988, 9:00 a.m. to 5:00 p.m each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Adivosry Committee, Washington, DC 20340 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is dovoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 12, 1988.

[FR Doc. 88–3532 Filed 2–18–88; 8:45 am]

BILLING CODE 3610–01–M

Department of the Air Force

USAF Scientific Advisory Board, Meeting

February 9, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Hypersonic Test Facilities will meet on March 8–11, 1988, from 9:00 a.m. to 5:00 p.m. at the Office of the Scientific Advisory Board, Room 5D982, The Pentagon, Washington DC.

The purpose of this meeting is to indoctrinate the committee on the Hypersonic test facility requirements for projected hypersonic vehicles and munitions, discuss the status of current national ground test facilities, and map out a strategy to develop a roadmap to acquire or upgrade an adequate ground test capability to accomplish pre-design and design validation testing for new military and civilian production hypersonic systems.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–3540 Filed 2–18–88; 8:45 am]

BILLING CODE 6910–01–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement, Special Isotope Separation Project, Idaho National Engineering Laboratory, Idaho Falls, ID

AGENCY: Department of Energy.

ACTION: Notice of availability and schedule for public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft environmental impact statement (DEIS), "Special Isotope Separation Project," (DOE/EIS–0136) analyzing the environmental consequences of site selection, construction, and operation of a Special Isotope Separation (SIS) Project using the Atomic Vapor Laser Isotope Separation (AVLIS) process technology.

Public comments are invited and three (3) public hearings will be held with respect to the draft EIS.

DATE: Written comments on the draft EIS should be addressed to the Department of Energy (address below) and should be postmarked by April 21, 1988, in order to ensure consideration in preparation of the final environmental impact statement. The public hearings are scheduled for March 9, 10, and 11, as described in this notice. Individuals desiring to make oral statements at these hearings should notify Clay Nichols at the address below by March 7, 1988, specifying preferred dates and times, so that the Department may arrange a schedule for presentations.

ADDRESS: Requests for copies of the draft EIS, written comments on the draft EIS, requests to present oral comments at the public hearings, and requests for further information should be directed to Clay Nichols, SIS Project Manager, Idaho Operations Office, U. S. Department of Energy, 785 DOE Place, Idaho Falls, ID 83402, telephone (208) 526–0306.

FOR FURTHER INFORMATION CONTACT:.

1. Clay Nichols, at the address above.
2. Carol Borgstrom, Acting Director, Office of NEPA Project Assistance, U. S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Telephone (202) 586–4600

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent and Scoping

The Department of Energy published a Notice of Intent (NOI) on October 31, 1986 (51 FR 39765) regarding the preparation of a draft EIS for siting, construction, and operating a proposed SIS plant, and identified the Idaho National Engineering Laboratory, Idaho Falls, Idaho, as the preferred alternative. The Department of Energy published a Notice of Public Scoping Meetings for the proposed SIS facility on February 9, 1987 (52 FR 4048) and conducted two (2) public scoping meetings; one in Idaho Falls, Idaho, on February 24, 1987, and one in Boise, Idaho, on February 26, 1987. The period for submission of public comments on the scope of the EIS extended from October 31, 1986, until March 2, 1987.

II. Background

As the Federal agency responsible for the production of defense nuclear materials, DOE is required to both develop and maintain the capabilities necessary to meet requirements for plutonium. In accordance with the Conference Report for the FY–1986 Energy and Water Development Appropriation Act (Pub. L. 99–141) and subsequent DOE reviews, DOE is proposing to construct and oeprate a Special Isotope Separation (SIS) Project using the AVLIS process technology. The SIS Project is being proposed by DOE to provide redundancy in production capability, technological diversity and flexibility in DOE's production of nuclear materials for national defense.

The SIS Project would provide DOE with the capability to separate the isotopes of DOE-owned fuel-grade plutonium into specific isotopic concentrations required for national defense. The SIS Project would require the construction of several facilities that

include a plutonium processing building and a laser support building. The AVLIS process that would be used during operation uses precisely tuned visible laser light to selectively ionize, or excite, specific plutonium isotopes in a vapor stream. The ionized isotopes would then be separated from the plutonium isotopes of interest. Chemical processes would also be required during operation to prepare material for AVLIS processing and to recover and (if necessary) purify AVLIS processed material.

III. Scope of the EIS

The scope of the EIS was developed using the comments received during the public scoping period and public meetings described above.

The draft EIS has been prepared by DOE in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. The EIS is intended to provide environmental input into a DOE decision on whether to proceed to construct and operate the proposed SIS Project, and, if the Project is to be constructed and operated, whether it should be constructed and operated at: (1) The Idaho National Engineering Laboratory (INEL) near Idaho Falls, Idaho (preferred alternative), (2) the Hanford Site near Richland, Washington, or (3) the Savannah River Plant (SRP) near Aiken, South Carolina. The draft EIS assesses the potential environmental consequences of constructing and operating the proposed SIS Project at each of the alternative sites as well as no action, or not constructing and operating the SIS Project.

The draft EIS dicusses the need for the SIS Project and also includes a description of the facilities that would be constructed and the processes that would be used during operation. The potential environmental consequences of constructing and operating the facilities that are discussed in the draft EIS include: socioeconomic and land use impacts; archeological and historical impacts; impacts associated with the radioactive nonradioactive atmospheric emissions, non radioactive liquid effluents, and solid wastes; potential consequences of facility accidents; and the potential normal and accident consequences of transporting SIS plutonium feed, product, and byproduct materials.

IV. Comment Procedures

A. Availability of the Draft EIS

Copies of the draft EIS have been distributed to Federal, State, and local agencies, organizations, and individuals known to be interested in the proposed SIS Project. Additional copies of the draft EIS may be obtained from Clay Nichols at the address given above.

Copies of the draft EIS, referenced documents and scoping meeting transcripts are available for public inspection at: Idaho National Engineering Laboratory Technical Library, SIS Public Reading Room, University Place, 1776 Science Center Drive, Idaho Falls, Idaho 83402, Telephone No. (208) 526–1144.

Copies of the draft EIS and referenced documents will also be available for public inspection at the following locations:

1. Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, Telephone No. (202) 586–6020.
2. U.S. Department of Energy, Public Reading Room, Richland Operating Office, Richland, Washington 99352, Telephone No. (509) 376–8583.
3. U.S. Department of Energy Public Reading Room, University of South Carolina, Aiken Campus, Gregg-Graniteville Library, Aiken, South Carolina 29802, Telephone No. (803) 725–2940.

B. Written Comments

Interested parties are invited to provide comments on the draft EIS to Clay Nichols at the address given previously. Comments should be identified on the outside of the envelope with the designation "SIS Project EIS." All comments and related information should be postmarked by April 21, 1988, to ensure consideration in preparation of the final EIS. Comments postmarked after April 21, 1988, will be considered to the extent practicable.

C. Public Hearings

1. Participation Procedure

Public hearings have been scheduled on the draft EIS as follows:

Wednesday, March 9, 1988, at Owyhee Plaza Hotel, Boise, Idaho, at 2 p.m. and 7 p.m.

Thursday, March 10, 1988, at Holiday Inn, Twin Falls, Idaho, at 2 p.m. and 7 p.m.

Friday, March 11, 1988, at University Place, Idaho Falls, Idaho, at 2 p.m. and 7 p.m.

The public is invited to attend these hearings and provide comments on the draft EIS. All comments received at the hearings will be considered in the preparation of the final EIS. Individuals desiring to make an oral presentation at a hearing should notify Clay Nichols at the address above as soon as possible, stating preferred dates and times, so that the Department may arrange a schedule for the presentations. To maximize the opportunities for persons to present comments, five minutes will be allotted to individuals and ten minutes will be allotted to representatives of organizations. Persons with lengthy comments are asked to summarize them in their oral remarks and submit a full manuscript for entry into the official record. Persons who have not pre-registered to speak, may register at the hearing. Such persons will be called upon by the hearing officer to present their comments as time permits.

2. Conduct of Hearings

Each hearing will be conducted by a hearing officer selected by the Department. The Department of Energy will arrange the schedule of pre-registered presenters for each hearing. The hearings will not be judicial- or evidentiary-type hearings. There will be no cross examination of DOE representatives or persons presenting statements. Presenters' remarks will be limited to the time periods identified above. Any further procedural rules needed for the proper conduct of the hearings will be announced by the hearing officer at the start of each hearing. Transcripts of the hearings will be prepared, and the entire record of the hearings, including the transcripts, will be retained by the Department for inspection at the DOE's Freedom of Information Reading Room; the INEL Technical Library in Idaho Falls, Idaho; the Public Reading Room in Richland, Washington; and the Public Reading Room in Aiken, South Carolina (full addresses given above).

Issued in Washington, DC, this 17th day of February, 1988.

Garry W. Gibbs,

Acting Assistant Secretary, Environmental, Safety and Health.

[FR Doc. 88–3681 Filed 2–18–88; 8:45 am]

BILLING CODE 6450–01–M

Floodplain and Wetland Involvement Notification for Remedial Action at Various Inactive Uranium Mill Tailings Sites; Colorado et al.

AGENCY: Department of Energy (DOE).

ACTION: Notice of Floodplain and Wetland Involvement.

SUMMARY: The DOE proposes to conduct remedial actions involving the stabilization and control of uranium mill

tailings at various sites located in Colorado, Idaho, North Dakota, Texas and Utah. Remedial actions must comply with the standards promulgated by the Environmental Protection Agency (40 CFR Par 192) as required by the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604). Remedial action would involve the removal of tailings, contaminated soils, and/or vegetation from floodplains for the sites located in Maybell, Slick Rock and Naturita, Colorado; Lowman, Idaho; Belfield, North Dakota; and Green River, Utah; and from wetlands for the sites located in Bowman, North Dakota and Falls City, Texas. Floodplains involved include the 100-year floodplains of: Johnson Wash and Lay Creek for Maybell, Colorado; the Dolores River for the Union Carbide and North Continent sites in Slick Rock, Colorado; the San Miguel River for Naturita, Colorado; Clear Creek for Lowman, Idaho; the Heart River for Belfield, North Dokota; and Brown's Wash for Green River, Utah. In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain or weland assessment for each site, to be incorporated in the environmental assessment of these proposed actions. Maps and further information are available from DOE at the address shown below.

DATE: Any comments are due on or before March 7, 1988.

ADDRESS: Send comments to: Project Manager, Uranium Mill Tailings Remedial Action Project Office, 5301 Central Avenue, NE., Suite 1720, Albuquerque, New Mexico 87108.

Issued at Washington, DC, December 9, 1987.

John E. Baublitz,

Deputy Director, Office of Remedial Action and Waste Technology.

[FR Doc. 88–3573 Filed 2–18–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–247–000 et al.]

Boston Edison Co. et al.; Electric Rate and Corporate Regulation Filings

February 16, 1988.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER88–247–000]

Take notice that on February 11, 1988, Boston Edison Company (Edison) tendered for filing an agrement for the sale of power to New England Power Company (NEP) and an associated Exhibit A to Edison's non-firm transmission tariff, FERC Electric Tariff Original Vol. III. Pursuant to the power sales agreement on a monthly basis Edison will sell to NEP varying amounts of power, up to a maximum of 100 MW, from certain designated Edison jet turbine units.

Edison requests waiver of the Commission's notice requirements to permit the power sales agreement and the Exhibit A to become effective as of the commencement of the transaction, November 1, 1987.

Copies of the filing have been served upon NEP and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Electric Energy, Inc.

[Docket No. ER88–51–000]

Take notice that on February 10, 1988, Electric Energy, Inc., (EEInc.) tendered for filing pursuant to Commission letter order dated January 15, 1988 a compliance filing with respect to the two agreements filed in this proceeding, Modification No. 12 between EEInc. and the United States Department of Energy (DOE) and the Power Supply Agreement between EEInc. and its four Sponsoring Companies, Central Illinois Public Service Company (CIPS), Illinois Power Company (IP), Kentucky Utilities Company (KU) and Union Electric Company (UE).

EEInc. submits the following revised Service Schedules:

First Revised Service Schedule A to the Power Agreement, Additional Power;
First Revised Service Schedule B to the Power Agreement, Firm Additional Power;
First Revised Service Schedule C to the Power Agreement, Economy Energy; and
First Revised Service Schedule D to the Power Agreement, Term Energy.

Each of the revised Service Schedules reflects for KU a transmission rate of 2.6 mills/kWh plus 1.0 mill/kWh for difficult to quantify costs. In all other respects the revised Service Schedules are unchanged from the Schedules originally filed. KU has executed a Certificate of Concurrence.

Copies of the filing were served on DOE, the four Sponsoring Companies and the Illinois Commerce Commission.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. El Paso Electric Company

[Docket No. ER88–246–00]

Take notice that on February 10, 1988, El Paso Electric Company (EPE) tendered for filing executed amendments to agreements under which EPE provides all requirements service to Rio Grande Electric Cooperative, Inc. (Rio Grande) at Rio Grande's Van Horn and Dell City delivery points. The amendments replace the rate presently in effect as agreed to in settlement of the wholesale rate proceeding in Docket Nos. ER86–386–000, *et. al.*, with a new rate of $4.8 cents ($.048) per kwh to be effective sixty days from the date of this filing (on April 11, 1988).

The 4.8 cents rate is expected to increase EPE's revenues from Rio Grande by $100,824 or by 4.9% in the twelve months beginning April 1, 1988. The rate is supported based on a cost of service for the year ending September 30, 1987 (Period I) in accordance with the abbreviated filing requirements of Section 35.13(a)(2)(A) of the regulations applicable to rate increases under $200,000.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. GPU Service Corporation

[Docket No. ER88–243–000]

Take notice that on February 10, 1988, GPU Service Corporation and Niagara Mohawk tendered for filing a Second Supplemental Agreement, amending and supplementing the Power Purchase and Sale Agreement, dated as of July 1, 1986, which has been assigned the following Rate Schedule Designations:

Jersey Central Power & Light Company
FERC Rate Schedule No. 51
Metropolitan Edison Company
FERC Rate Schedule No. 52
Pennsylvania Electric Company
FERC Rate Schedule No. 82
Niagara Mohawk Power Corporation
FERC Rate Schedule No. 137

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Montana-Dakota Utilities Company

[Docket No. ER88-244-000]

Take notice that on February 10, 1988, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing and inclusion in its FPC Electric Service Tariff No. 6, Supplement No. 15 dated August 31, 1987. This supplement modifies Article 12 of the Interconnection Agreement dated November 21, 1956 with the United States Department of Energy, Western Area Power Administration (Western). The proposed change describes the purchase of electric energy by Montana-Dakota from Western. The modification was made when Western was authorized to offer a new class of short-term surplus energy scheduled as "Economy Energy". Also attached in the filing is a letter agreement which extended the termination date of this contract until a superseding contract is negotiated.

Montana-Dakota requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the supplement be made effective as of the date shown in the letter agreement.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER88-242-000]

Take notice that on February 9, 1988, Public Service Company of New Mexico (PNM) tendered for filing as an initial rate schedule an Agreement to Purchase Economy Energy between PNM and the City of Truth or Consequences, New Mexico (TorC). Under the Agreement PNM will make economy energy available to TorC at rates reflecting current market conditions for delivery to Western Area Power Administration (Western) to reduce TorC's accrued energy debt to Western.

Copies of the filing have been served upon TorC and the New Mexico Public Service Commission.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket NO. ER88-245-000]

Take notice that on February 10, 1988, Public Service Company of New Mexico (PNM) tendered for filing a Transmission Service Agreement between PNM and Salt River Project Agricultural Improvement and Power District (SRP). The Agreement, among other things, enables PNM and SRP to provide each other with nonfirm bi-directional transmission service.

Copies of the filing have been served upon SRP and the New Mexico Public Service Commission.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Company

[Docket No. ER88-182-000]

Take notice that on February 9, 1988, Tampa Electric tendered for filing an amendment to the Letter of Commitment filed on January 6, 1988, providing for the firm interchange of 100 megawatts of capacity and energy between Tampa Electric and the City of Lakeland, Florida (Lakeland). Tampa Electric proposes an effective date on January 1, 1988 for the amended Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the initial filing and amendment have been served on Lakeland and the Florida Public Service Commission.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this document.

9. Wisconsin Electric Power Company

[Docket No. ER88-149-000]

Take notice that on February 1, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an amendment to its filing in the above-referenced docket. The filing was made in response to a information request from the Division of Electric Power Application and Review. Cost support for the Dispatch Agreement and the Joint Use of Transmission Agreement was provided.

Wisconsin Electric requests an effective date on January 1, 1988.

Copies of the filing have been served on Upper Peninsula Power Company, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or potests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3582 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-232-000, et al.]

Gulf States Utilities Co. et al.; Electric Rate and Corporate Regulation Filings

February 11, 1988.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ER88-232-000]

Take notice that on February 4, 1988, Gulf States Utilities Company (GSU) tendered for filing a contract for sales of energy for resale to Deep East Texas Electric Cooperative, Inc.

GSU requests an effective date of July 15, 1985, for the contract.

Comment date: February 25, 1988, in accordance with Standard Paragraph E at the end of this document.

2. Louisville Gas and Electric Company

[Docket No. ER88-234-000]

Take notice that on February 5, 1988, Louisville Gas and Electric Company (Louisville) tendered for filing a proposed addendum to its Interconnection Agreement between Louisville and East Kentucky Power Cooperative (East Ky.) designated Louisville Gas and Electric Company Rate Schedule FPC No. 25.

The purpose of this filing is to provide for a Diversity Power Commitment between the parties at a demand charge of $1.05 per kilowatt-week and an energy charge to be determined on the basis of the supplying party's out-of-pocket costs, plus 10 percent of such costs.

Copies of the filing were served on East Ky. and the Public Service Commission of Kentucky.

Comment date: February 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER88-233-000]

Take notice that on February 5, 1988, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for the Amendment of

the Service Agreement between Arizona Public Service Company (APS) and Edison to delete reference to the discontinued Moonridge delivery and metering point under the provisions of the following rate schedule:

	Rate Schedule FERC No.
Arizona Public Service Company	180.1

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER88-235-000]

Take notice that on February 5, 1988, South Carolina Electric & Gas Company (SCE&G) tendered for filing Fifteenth Revised Sheet No. 5, Fifteenth Revised Sheet No. 6, to its FERC Electric Tariff, Original Volume No. 1. These sheets contain proposed reductions to SCE&G's rates and charges to its municipal, rural electric cooperative and public power body sales-for-resale customers.

SCE&G proposes to place the revised tariff sheets containing the proposed rate reduction into effect on January 1, 1988.

SCE&G states that the proposed rates would decrease revenues by approximately $1,032,885 for the 12 month period ending November 30, 1987.

SCE&G states that the proposed decreased rate is necessitated by its last approved Settlement Agreement with its municipal, rural electric cooperative and public power body sale-for resale customers wherein this wholesale rate would track the Company's large general service rate.

Copies of the filing have been served upon SCE&G's jurisidiction customers and the South Carolina Public Service Commission.

Comment date: February 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3583 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

[Docket No. TA88-5-20-000]

February 16, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on February 9, 1988, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Proposed to be effective October 1, 1987

Fourteenth Revised Sheet No. 211

Alternate Seventh Revised Sheet No. 214

Proposed to be effective December 1, 1987

Alternate Twenty-third Revised Sheet No. 203

Proposed to be efffective January 1, 1988

Twenty-fourth Revised Sheet No. 203

Proposed to be effective February 1, 1988

Eighth Revised Sheet No. 214

Algonquin states that such tariff sheets are being filed pursuant to section 7 of its Rate Schedule F-2, section 10 of its Rate Schedule STB and section 9 of its Rate Schedule SS-III to reflect changes in the underlying rates by its pipeline suppliers, Consolidated Gas Transmission Corporation for Rate Schedule F-2 and Texas Eastern Transmission Corporation for Rate Schedules STB and SS-III.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 23, 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 Cashell,

Acting Secretary.

[FR Doc. 88-3584 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-63-001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 16, 1988.

Take notice that Carnegie Natural Gas Company ("Carnegie") on February 10, 1988, tendered for filing as a part of its FERC Gas Tariff, First Revised Volume No. 1, six copies each of the revised tariff sheets:

Substitute First Revised Sheet No. 90

First Revised Sheet No. 92

First Revised Sheet No. 93

First Revised Sheet No. 94

Carnegie states that this filing supplements and revises its recent semi-annual PGA filing, dated February 1, 1988. In that filing Carnegie inadvertently failed to remove from its tariff the provisions relating to incremental pricing and to reflect a revision in the account numbers.

The proposed effective date of the above tariff sheets is March 1, 1988.

Carnegie respectfully requests waiver of any provisions of its tariff, and any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective March 1, 1988, so as to have said tariff changes commence on the same day as the other PGA rate changes.

Copies of the filing were served on Carnegie's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest wtih the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 23, 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. 88-3585 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-56-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 16, 1988.

Take notice that on February 9, 1988, Columbia Gas Transmission Corporation (Columbia) tendered for filing to its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective March 1, 1988:

One hundred and twenty-fourth Revised Sheet No. 16
Eleventh Revised Sheet No. 16B
First Revised Sheet No. 16B1
First Revised Sheet No. 16B2
Second Revised Sheet No. 46E
First Revised Sheet No. 68
First Revised Sheet No. 68A
First Revised Sheet No. 68B

Columbia states that the revised tariff sheets reflect a proposed adjustment to its current non-gas commodity sales rates effective March 1, 1988 to recognize the elimination of certain costs incurred by Columbia to reform its high-cost contracts with certain Southwest producers, which results in a decrease in Columbia's non-gas commodity sales rate of 15.74¢ per Dth. This proposed adjustment is expressly conditioned on, and shall be effective upon, acceptance of Columbia's proposal in the instant filing to amortize certain contract reformation costs over four years by means of a fixed charge, for a total fixed charge recovery over four years of approximately $310.4 million, plus interest calculated in accord with 18 CFR 154.38(d)(4)(iv)(c) of the Commission's Regulations. Columbia states that this amount represents one-half of Columbia's contract reformation costs subject to the instant filing attributable to the period commencing April 1, 1987.

Columbia states that consistent with the Commission's January 29, 1988 order in Docket No. RP88-43-000, the instant filing excludes the costs associated with four contracts for which recovery was previously disallowed by the Commission's January 19, 1988 order in Docket No. RP87-55-000. Columbia states that it intends to seek rehearing of the Commission's January 19 order and that it reserves its right to recover all or a portion of these costs as a result of the Commission's action on rehearing or the ultimate outcome of the hearings established in Docket No. RP87-55-000.

Columbia proposes to allocate costs among its customers on the basis of contract demand levels of Rate Schedules CDS and G customers and maximum daily obligation levels of Rate Schedule SGS customers as of April 1, 1987.

Columbia states that upon the effectiveness of the rates proposed in the instant filing, it would refund, with interest calculated pursuant to 18 CFR 154.38(d)(4)(iv)(c) of the Commission's Regulations, the contract reformation costs collected in Docket No. RP87-55-000 by means of a direct payment to all parties which paid such charges commencing May 11, 1987.

Columbia states that as support for the cost of service, exclusive of the contract reformation costs, Columbia incorporates by reference its Sept. 30, 1986 Section 4(e) filing in Docket No. RP86-168, *et al.*, as revised by motions on Feb. 27, 1987, and July 31, 1987, as well as Columbia Gulf Transmission Company's initial and revised filings in Docket No. RP86-167-000.

Pursuant to § 388.110 of the Commission's Regulations, Columbia has requested that the Commission treat certain contract reformation information and data as commercially sensitive and confidential, the disclosure of which would be harmful to Columbia. Due to the highly confidential and proprietary nature of the information contained in "Confidential Binder A", Columbia submits that access to the contents thereof be limited to parties other than producers, royalty owners and interstate pipelines to this proceeding. Columbia will maintain copies of the Confidential Binder A at its Charleston, West Virginia and Washington, DC offices for parties other than producers, royalty owners and interstate pipelines to review, which will be subject to appropriate protective conditions. Columbia submits that a protective order of the nature of the one issued by the Presiding Judge in Columbia's ongoing section 4 rate case in Docket No. RP86-168 *et al.*, would be appropriate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 23, 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, exclusive of Confidential Binder A, are on file with the Commission and are available for public inspection. A copy of this filing, including Confidential Binder A, is in the non-public file with the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3586 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-4-001]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

February 16, 1988.

Take notice that on February 10, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gass Tariff, First Revised Volume No. 1 containing changes in rates and tariff provisions for effectiveness on the dates listed below:

	Proposed effective date
Second Substitute Original Sheet No. 75-C.	Nov. 27, 1987
Second Substitute Twenty-First Revised Sheet No. 7.	Jan. 1, 1988
Third Substitute Twenty-First Revised Sheet No. 7.	Jan. 1, 1988
Substitute Original Sheet No. 88.....	Jan. 1, 1988
Fourth Substitute Twenty First Revised Sheet No. 7.	Jan. 15, 1988
Substitute Seventh Revised Sheet No. 7-A.	Jan 15, 1988

According to Granite State the instant filing is submitted in compliance with the conditions in a letter order of January 15, 1988 accepting its semi-annual purchased gas adjustment filing of December 17, 1987. Granite State further states that the filing contains the corrections to tariff sheets and revisions to rates reflecting changes in suppliers' rates required by the January 15, 1988 letter order.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regualtory commissions of the States of Maine and Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 23, 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. 88-3587 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-79-001, CP88-80-001]

National Steel Crop.; Amendment

February 11, 1988

Take notice that on January 27, 1988, National Steel Corporation (National Steel), 20 Stanwix Street, Pittsburgh, Pennsylvania 15222, filed, pursuant to 18 CFR 153.10 and 153.12 and section 3 of the National Gas Act, to amend its November 13, 1987 applications for approval of import facilities and for a Presidential Permit to import natural gas from Canada, all as more fully set forth in the request on file with the Commission and open for public inspection.

National Steel states that, by this amendment, it requests authority to construct and use for natural gas imports, approximately 3000 feet of 16-inch pipeline extending from its Great Lakes Steel plant in Ecorse, Michigan, under the Detroit River, to an interconnection with Canadian facilities located in Windsor, Ontario. The sole change in the November 13 application is the substitution of 16-inch pipeline instead of 12-inch pipeline. National Steel states that construction would still be carried out in the manner originally proposed and that neither the volumes nor the term of transaction as originally proposed will be affected by the amendment.

It is stated that the increase in diameter of the pipeline from 12 to 16 inches would assure that National Steel would be able to meet the existing peak hourly requirements of its Great Lakes steel facility and may be beneficial if National were to need additional capacity in the future. According to National Steel, no additional environmental impacts are expected from the increase in pipeline diameter from 12 to 16 inches.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 3, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion ot intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3588 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-231-000]

Oklahoma Gas Pipeline Co., et al.; Petition for Declaratory Order

February 11, 1988.

Take notice that on February 8, 1988, Oklahoma Gas Pipeline Company, Enron Gas Gathering, Inc., Odeco Gas Gathering Inc., Tabasco Gas Pipe Line Company, Sonat Gas Gathering Inc., and Murphy Gas Gathering Inc. (Petitioners), filed a petition pursuant to Rule 207 of the Commission's rules of practice and procedure, 18 CFR 385.207 (1987), requesting the Commission to issue a declaratory order disclaiming jurisdiction over a pipeline system to be constructed by Petitioners in federal and state waters offshore Alabama. Petitioners believe the system qualifies for the production and gathering exemption of section 1(b) of the Natural Gas Act.

Petitioners state that the proposed pipeline will gather gas produced through production platforms to be located in various blocks throughout the Mobile Bay and Viosca Knoll areas in the federal domain offshore Alabama, and additional gas from State waters. The gas will be delivered to an onshore compression and dehydration facility owned by Petitioners. Enron Gas Gathering, Inc. will oversee the construction and operation of the system on behalf of the owners. The system will gather gas for producer affiliates of the Petitioners and for third parties.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 15 days after publication of this notice in the **Federal Register**. All protests filed will be considered but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3589 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket RP87-150-001]

Pacific Interstate Offshore Co.; Change in Annual Charge Adjustment Clause

February 16, 1988.

Take notice that on February 3, 1988, Pacific Interstate Offshore Company (PIOC) submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Original Volume No. 1

Original Sheet No. 36
Original Sheet Nos. 37-99

PIOC states that these sheets are tendered to comply with a Letter Order from the Director of OPPR dated October 23, 1987 in the above referenced docket.

PIOC requests waiver of all FERC regulations to the extent necessary to permit an effective date of October 1, 1987, and as requested.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Febraury 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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. 88-3590 Filed 2-18-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3330-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 1, 1988 through February 5, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-H67001-MO, Rating EO3, Mark Twain National Forest, Hardrock Mineral Leasing, Approval and Issuance of Leases, Oregon, Carter and Shannon Counties, MO.

SUMMARY: EPA objected to this project because of the serious potential adverse impacts to ground and surface water in environmentally sensitive areas. Further, the draft EIS inadequately assess the impacts in the project area. EPA recommended that the U.S. Forest Service and Bureau of Land Management use a tiered approach to the EIS by revising the EIS to address the overall impacts of the projects and subsequently prepare site specific supplemental EIS's on mining operations.

ERP No. DS-SFW-A86004-00, Rating EC2, Sport Hunting of Migratory Birds, Issuance of Annual Regulations, Updated Information.

SUMMARY: EPA is concerned that the selection of the stabilized framework alternative could lead to possible uncontrolled population decline in those migratory bird species sought by hunters. EPA suggested the Fish and Wildlife Service (SFW) discuss the use of the special regulation process to offset potential shortcomings of stabilized framework regulations. Based on the potential environmental impacts of the preferred alternative as presented in this project and the need for clarification on how SFW's future regulatory approach will respond to transient population fluctuations.

Final EISs

ERP No. F1-BLM-L70004-ID, Lemhi Resource Area WSA Recommendation, Wilderness Designation and Nondesignation, Eighteenmile Wilderness Study Area, Salmon District, Lemhi County, ID.

SUMMARY: EPA has no objections to this project as proposed. No formal comments were made to the agency.

ERP No. F-DOE-E26001-SC, Savannah River Plant Hazardous/Low-Level Radioactive and Mixed Waste Management Activities for Groundwater Protection, Modifications and Implementation, Aiken, Barnwell and Allendale Counties, SC.

SUMMARY: Overall this project is responsive to most of EPA's comments on the draft EIS. However, several areas of concern require additional clarification in the Record of Decision. The concerns include: clarification of the programmatic nature of remedial recommendations; commitments to do project-specific NEPA documentation for the proposed incinerator(s) and new waste storage facilities; and use of proposed low level regulatory standards. EPA also has concerns about the continued use of the soil column and shallow groundwater for disposal of disassembly basin purge water and recommends the pursuit of alternative methods.

ERP No. F-FHW-B40053-CT, CT-72 Construction and Extension, Plainville to Bristol, Funding and 404 Permit, Hartford County, CT.

SUMMARY: EPA objects to the proposed full build expressway alternative because of possible significant wetland impacts and the availability of less damaging alternatives.

ERP No. F-NOA-B90008-NH, Great Bay National Estuarine Research Reserve, Designation and Management Plan, Establishment and Funding, Towns of Durham, Newmarket, Newfields, Stratham and Newington, Straffard County, NH.

SUMMARY: EPA supports the establishment of the Great Bay National Estuarine Research Reserve and believes that the proposed plan will not cause significant adverse impact on the environment.

Dated: February 16, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-3617 Filed 2-18-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-33307]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed February 8, 1988 Through February 12, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880037, DSuppl, FHW, AL, Corridor X Highway Construction. Walker/Jefferson County Line to US 31, Additional Alternate Alignment Alternative, Funding, Birmingham Metropolitan Area, Jefferson County, AL, Due: April 4, 1988, Contact: Joe D. Wilkerson (205) 832-7370.

EIS No. 880038, Draft, SFW, AK, Alaska Maritime National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, Implementation and Wilderness Recommendations, Forrester Island to near Barrow on the Arctic Ocean, AK, Due: May 18, 1988, Contact: William W. Knauer (907) 786-3399.

EIS No. 880039, Draft, FHW, WI, US 45 Bypass Construction around the City of New London, Funding and 404 permit, Outagamie County, WI, Due: April 4, 1988, Contact: R.W. Cooper (608) 264-5395.

EIS No. 880040, Final IBR, OR, Umatilla Basin Water Supply Project, Umatilla River Streamflows Improvement and Salmon and Steelhead Fish Runs Restoration Implementation and Funding, Umatilla and Morrow Counties, OR, Due: March 21, 1988, Contact: Douglas James (208) 334-1207.

EIS No. 880041, Draft, DOE, ID, WA, SC, Special Isotope Separation Production Plant Construction and Operation and the use of Atomic Vapor Laser Isotope Separation Technology, Site Selection and Implementation, Idaho National Engineering Laboratory near Idaho Falls, ID; Hanford Site near Richland, WA and Savannah River Plant near Aiken, SC, Due: March 21, 1988, Contact: Clay Nichols (208) 526-0306.

Dated: February 16, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-3618 Filed 2-18-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42024E; FRL-3330-8]

Intent To Approve Amendment to Texas Pesticide Applicator Certification Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to amend Texas Plan for Certification of Pesticide Applicators.

SUMMARY: The Texas Department of Agriculture has submitted to EPA an amendment to their approved plan for the certification of applicators of restricted use pesticides. This amendment to the Texas Certification Plan permits certification of Compound 1080 Livestock Protection Collar applicators. Notice is given of the intention of the Regional Administrator, EPA, Region VI, to approve this amendment. A summary of the amendment appears under **SUPPLEMENTARY INFORMATION.** Interested persons are invited to comment.

DATE: Comments should be submitted on or before March 21, 1988.

ADDRESSES: Address comments, identified by the docket control number OPP-42024E, to: EPA Region VI, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202.

See **SUPPLEMENTARY INFORMATION** for addresses where the plan is available for public inspection.

FOR FURTHER INFORMATION CONTACT: Dale Ratliff (214-655-7240).

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (86) Stat. 973; 7 U.S.C. 136b and 40 CFR Part 171, the Texas Department of Agriculture has submitted to EPA an amendment to the Texas State Plan to permit certification of applicators of the Compound 1080 Livestock Protection Collar.

Prior to July 11, 1985, all predator control uses of Compound 1080 were canceled. On July 11, 1985, EPA granted the initial registration of Compound 1080 Livestock Protection Collars for predator control. The registration of Compound 1080 Livestock Protection Collars imposed additional reporting and recordkeeping requirements beyond that required of other restricted use pesticides. Further, the registration required that Compound 1080 Livestock Protection Collar applicators receive specific training and a distinct certification. This amendment to the Texas Certification Plan that was published in the **Federal Register** of September 21, 1983 (48 FR 43084), meets the requirements of the Compound 1080 Livestock Protection Collar registration.

Compound 1080 Livestock Protection Collar Certification Plans were approved for Wyoming on July 2, 1986, and Montana on June 17, 1987. Wyoming and Montana have also been granted registration for Compound 1080 Livestock Protection Collars. However, unlike Wyoming and Montana, Texas will not seek a registration for Compound 1080 Livestock Protection Collars. Texas will permit the applicator certified under the Texas Compound 1080 Livestock Protection Collar program to obtain collars from Rancher's Supply Inc., P.O. Box 725, Alpine, TX 79830-0725. Rancher's Supply, Inc. was granted a registration for Compound 1080 Livestock Protection Collars on December 1, 1987. However, the Texas Department of Agriculture will assure that all monitoring and use conditions of the registration are met. The registrant, Rancher's Supply, Inc., and its agents, will be required to maintain sale and site review data monitoring forms. However, the Texas Department of Agriculture will assure that Rancher's Supply, Inc. complies with these requirements, through inspections and review of records. The Texas Department of Agriculture will also conduct use inspections and issue citations if violations are discovered.

Texas estimates that a hundred commercial applicators and an additional hundred non-commercial applicators will seek certification under the plan. A non-commercial applicator cannot apply a pesticide for hire or receive compensation. The non-commercial category is the category of certification available to a rancher wishing to apply Compound 1080 Livestock Protection Collars on his own property. Both commercial and non-commercial applicators of Compound 1080 Livestock Protection Collars will be required to meet the standards of competency established for commercial applicators under 40 CFR 171.4. In addition, all Compound 1080 Livestock Protection Collar applicators must attend specialized training and pass a written examination prior to being certified as a Compound 1080 Livestock Protection Collar applicator. A separate license will be issued to designate certification as a Compound 1080 Livestock Protection Collar applicator.

Compound 1080 Livestock Protection Collar applicators will be issued a license annually and must be recertified every 2 years. To be recertified an applicator must take and pass an examination or attend a training program approved by the Texas Department of Agriculture.

The regulations contained in the plan were passed on November 27, 1987, and became effective on December 10, 1987.

Copies of the plan amendment are available for review at the following locations during normal business hours:

1. Texas Department of Agriculture, Room 1034 E, Tenth Floor, Stephen F. Austin Building, 17th and Congress Streets, Austin, TX 78711, Telephone: 512-463-0013.
2. Environmental Protection Agency, Region VI, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202, Telephone: 214-655-7240.
3. Environmental Protection Agency, Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: 202-557-3262.

Interested persons are invited to submit written comments on the proposed State Plan amendment.

Dated: February 12, 1988.

Robert E. Layton, Jr.,

Regional Administrator, Region VI.

[FR Doc. 88-3561 Filed 2-18-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Report No. W-33

Released: February 1, 1988.

FM Vacant Channel Applications; Universal Window Filing Period

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning February 1, 1988 and ending March 10, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel-234A

Brundidge	AL
Gifford	FL
Manchester	IA
Caledonia	MN
Staples	MN
Seaside	OR
Erie	PA
Patton	PA
Sumter	SC
Williston	SC
Corpus Christi	TX
Camas	WA
MT Gay-Shamrock	WV

Channel–234 C

Santa Fe.....NM

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–3522 Filed 2–18–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–003368–005.

Title: Port of Palm Beach Terminal Lease Agreement.

Parties: Port of Palm Beach District, Eastern Cement Corporation.

Synopsis: The agreement cancels the Avenue E Lease Amendments and deletes the "Avenue E Parcel" from the Master Lease Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 12, 1988.

[FR Doc. 88–3493 Filed 2–18–88; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants; Alltransport Inc.; Correction

In the **Federal Register** Notice of February 20, 1988, (53 FR 1511), Alltransport Incorporated, 17 Battery Place North, New York, NY 10004 was inadvertently listed as an applicant for an ocean freight forwarder license. Alltransport Incorporated has been licensed since September 3, 1969, under license number 300.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 12, 1988.

[FR Doc. 88–3492 Filed 2–18–88; 8:45 am]

BILLING CODE 6730–01–M

Truck Detention Charges at West Coast Ports; Further Enlargement of Time To Reply To Petition for Rulemaking

The Commission on November 30, 1987 (52 FR 45499), published a notice of filing of petition by the Waterfront Rail Truckers Union seeking the promulgation of a truck detention rule applicable at West Coast ports. The notice requested the submission by interested persons on or before January 8, 1988, of view, arguments, or data in response to the petition. By notice published in the **Federal Register** on December 29, 1987 (52 FR 49086), this time was subsequently enlarged to February 22, 1988.

Upon request of interested persons, and good cause appearing, the time for submission of responses to the above-referenced petition is further enlarged to and including March 7, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–3575 Filed 2–19–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

February 12, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202–395–7340)

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

Report title: Weekly and Monthly Money Market Mutual Fund Asset Reports

Agency form number: FR 2051 a, b, c, and d

OMB Docket Number: 7100–0212

Frequency: Weekly and Monthly

Reporters: Money Market Mutual Funds

Annual reporting hours: 2643

Small businesses are affected.

General discription of report:

This information collection is voluntary (12 U.S.C. 353 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4)).

These reports provide information on the assets of money market mutual funds which is used by the Federal Reserve System in the constructon of the monetary aggregates.

Board of Governors of the Federal Reserve System, February 12, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–3511 Filed 2–18–88; 8:45 am]

BILLING CODE 6210–01–M

Midwest Financial Group, Inc., Application To Engage de Novo in Permissible Nonbanking Activities

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

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competiton, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.*, Peoria, Illinois; to engage *de novo* through its subsidiary, Midwest Financial Mortgage Banking Company, Peoria, Illinois, in originating, marketing, and servicing loans secured by mortgages on real estate pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3512 Filed 2-18-88; 8:45 am]

BILLING CODE 6210-01-M

Oxford Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

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

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 11, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President, 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Oxford Bank Corporation*, Oxford, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Oxford Bank, Oxford, Michigan. *Comments on this application must be received by March 9, 1988.*

2. *Remsen Financial Services, Inc.*, Council Bluffs, Iowa; to become a bank holding company by acquiring 93.87 percent of the voting shares of First Trust & Savings Bank, Remsen, Iowa.

3. *Western Iowa Consultants, Inc.*, Council Bluffs, Iowa; to acquire control of First Trust & Savings Bank, Remsen, Iowa, pursuant to a management agreement.

Board of Governors of the Federal Reserve System, February 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3513 Filed 2-18-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunications Privacy Advisory Committee; Notice of Establishment

Establishment of Advisory Committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of the Federal Telecommunications Privacy Advisory Committee. The Administrator of General Services has determined that establishment of this Committee is in the public interest.

Designation. Federal Telecommunications Privacy Advisory Committee.

Purpose. The purpose of the Committee is to review the General Services Administration's (GSA) Governmentwide policies on monitoring employee telephone calls and Federal agency operating practices for ensuring the security of information about telephone calls to ensure that both adequately protect personal privacy, commensurate with management requirements in such areas as abuse prevention, financial responsibility, law enforcement, and public safety.

Contact for Information. GSA's Information Resources Management Service is sponsoring this Committee. For additional information, contact John J. Landers, Special Assistant to the Commissioner, IRMS, GSA, Washington, DC 20405, telephone (202) 535-7425.

Dated: February 9, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88-3501 Filed 2-18-88; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Commission; Hearing

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to conduct a public hearing during the month of March 1988:

Name: Secretary's Commission on Nursing.

Date: March 7, 1988.

Time: 8:00 a.m.

Place: 28th Floor Conference Room, Department of Health and Human Services, 300 South Wacker Drive, Chicago, Illinois 60606.

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda: This is the first hearing conducted by the Secretary's Commission on Nursing. Witnesses representing a variety of organizations interested in issues affecting the supply of nurses will be invited to share their views with the Commission.

Witnesses will be asked to address the following questions in their presentations:

- What actions should be taken in order to ensure an adequate supply of nurses over both the short- and long-term? Which of these actions are the responsibility of the private health

sector, of government, and of the nursing profession?

• What examples can you identify of successful efforts to recruit and ? retain an adequate supply of nurses? What practices and strategies account for success in these examples How replicable are they.

Witnesses concerned with nursing education will be asked to address the following issues:

• Are student admissions and enrollments in nursing schools in your area declining? If so, why? What has been the response of nursing schools to declines in enrollment?

What are nursing schools affected by declining enrollments doing to attract students to nursing? How effective are these efforts?

Anyone wishing information regarding the Commission should contact the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 616–E, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 245–0409.

Dated: February 16, 1988.

Lillian K. Gibbons,

Executive Director, Secretary's Commission on Nursing.

[FR Doc. 88–3697 Filed 2–18–88; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 88N–0006]

Action Levels for Added Poisonous or Deleterious Substances in Food

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that its current action levels for added poisonous or deleterious substances in food (including animal feed) are not binding on the courts, the public (including food producers) or the agency (including individual FDA employees), and that the agency intends to initiate notice and comment rulemaking proceedings to amend certain of its regulations that gave rise to the implication that FDA regarded its action levels as binding.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Contaminants Policy Staff (HFC–205), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1815.

SUPPLEMENTARY INFORMATION: Beginning with the enactment of the Federal Food, Drug, and Cosmetic Act (the act) in 1938 (21 U.S.C. 301 *et seq.*), and continuing through most of 1987, FDA regulated the presence in food and feed of unavoidable added poisonous or deleterious substances, such as aflatoxin in corn, principally by using what the agency viewed as general statements of policy—publicly available prosecutorial guidelines—that it termed "action levels." These action levels announced the amount of a particular added contaminant that FDA regarded as resulting in adulteration under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)). That section provides that a food is adulterated if it bears or contains an added poisonous or deleterious substance that "may render [the food] injurious to health." In *Young* v. *CNI*, 106 S. Ct 2360 (1986), *reversing CNI* v. *Young*, 757 F.2d 354 (D.C. Cir. 1985), the Supreme Court decided that FDA has the discretion to regulate such substances either by (1) exercising its prosecutorial discretion to recommend court proceedings under section 402(a)(1) of the act, guided by informal action levels, or (2) issuing tolerances by formal rulemaking under sections 406 and 701(e) of the act (21 U.S.C. 346 and 371(e)). The Supreme Court found that the question whether action levels must be promulgated by notice and comment (informal) rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553) was not before it, see 106 S. Ct. at 2364, and therefore remanded the case of the United States Court of Appeals for the District of Columbia Circuit for decision on that issue.

On May 15, 1987, the D.C. Circuit held that FDA action levels are legislative rules rather than general statements of policy within the meaning of the APA (5 U.S.C. 551(5)) and, therefore, must be promulgated in accordance with the notice and comment procedures of that statute. *CNI* v. *Young*, 818 F.2d 943 (D.C. Cir. 1987). Because FDA's action levels were issued without such procedures, the court found the action levels to be "invalid." *Id.* at 950.

In concluding that the action levels were substantive rules, the court relied on several factors. First, the court found that language employed by the agency in creating and describing action levels suggested that they both have a present effect and are binding. *CNI* v. *Young*, 818 F.2d at 947, *quoting* 21 CFR 109.4 and 109.6(c). Second, the court found that an FDA regulation providing for exceptions to action levels confirmed that action levels have a present, binding effect. *CNI* v. *Young*, 818 F.2d at 947, *quoting* 21 CFR 109.8(a). Third, the court found that certain agency statements, one informal and the other elaborately formal, indicated that action levels constituted substantive rules. *CNI* v. *Young*, 818 F.2d at 947–948.

On June 29, 1987, the government filed a petition for rehearing with suggestion for rehearing *en banc* in the case. On October 15, 1987, the circuit court denied the *en banc* suggestion without dissent. On the same date, the petition for panel rehearing was denied. The government did not seek *certiorari*.

In response to the circuit court's decision, FDA is issuing this notice to state that its current action levels are not binding on the courts, the public (including food producers), or the agency (including individual FDA employees), and that the action levels do not have the "force of law" of substantive rules. Henceforth, if a food bears or contains an unavoidable added poisonous or deleterious substance in an amount below the action level for that substance, FDA is not precluded from recommending to the Department of Justice (see 21 U.S.C. 337; *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 598–599 (1950)) that court enforcement action be instituted against the food or the persons responsible for its shipment, and the government is not barred from bringing such an action. Action levels do not create a legal immunity from prosecution for food producers, not do action levels grant to food producers a legal privilege to ship in interstate commerce food with added contaminants up to the applicable action levels. At the same time, if a food bears or contains an unavoidable poisonous or deleterious substance in an amount in excess of the action level for that substance, FDA is not required to recommend court proceedings, and the government is not required to bring such proceedings. Whether FDA will recommend and the government will institute seizure, injunction, or prosecution in a given case will depend on the extent of the contamination, the strength of the evidence of adulteration within the meaning of section 402(a)(1) of the act, the risk to health presented by the unavoidable added poisonous or deleterious substance, the amount of food involved, and other factors.

In a future issue of the **Federal Register**, FDA will publish a proposed rule: (1) To amend its regulations creating and describing action levels to make it clear that action levels are prosecutorial guidelines rather than substantive rules, and (2) to revoke the provisions of the regulations providing for exceptions to action levels in 21 CFR Parts 109 (human food) and 509 (animal feed).

Dated: January 29, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-3519 Filed 2-18-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0153]

Certain Fixed-Combination Antibiotic/Antifungal Products; Withdrawal of Approval of New Drug Applications; Availability of the Commissioner's Decision

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Commissioner of Food and Drugs has issued his final decision withdrawing the provisions for certification of certain drugs containing antibiotics in combination with antifungal agents.

DATES: The Commissioner's decision will become effective on March 9, 1988. The Commissioner's decision was dated February 8, 1988.

ADDRESS: The Commissioner's decision, including the final order, and all other documents related to the decision may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Division of Regulation Policy (HFC-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 28, 1982 (47 FR 23564), FDA announced a formal evidentiary hearing on its proposal to withdraw provisions for certification of certain combination drugs containing antibiotics in combination with antifungal agents. The drugs at issue are Mysteclin-V Capsules (NDA 50-206), Mysteclin "F" Capsules (NDA 50-230), Mysteclin "F" 125 Capsules (NDA 50-231), and Mysteclin "F" Syrup (NDA 50-231). Mysteclin "F" is labeled as effective in preventing candidal disease attributable to antibiotic therapy and Mysteclin-V is labled as effective against the possibility of commensal candidal overgrowth in the intestine as a result of such therapy.

The Commissioner has determined that the provisions for certification of these drugs should be withdrawn because the sponsor has failed to submit substantial evidence that the drug products are effective for their intended uses, as required by sections 505 and 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 and 357). The decision therefore affirms the conclusion reached by the Administrative Law Judge in his initial decision that the provisions for certification be withdrawn. FDA has already withdrawn provisions for certification of 14 other drugs containing antibiotics in combination with antifungal agents in the Federal Register of August 8, 1985 (50 FR 32112).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355 and 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the Commissioner's Order withdraws (50-206), Mysteclin "F" Capsules (NDA 50-230), Mysteclin "F" 125 Capsules (NDA 50-231) and Mysteclin "F" Syrup (NDA 50-231). As explained in the notice of hearing (47 FR 23565; May 28, 1982), the regulations affected by the Commissioner's decision have already been removed from the Code of Federal Regulations.

Dated: February 16, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-3624 Filed 2-18-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79D-0465]

Human, Biological, and Animal Drugs and Medical Devices; Availability of Guideline for Use of the Limulus Amebocyte Lysate (LAL) Test

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline for use of the Limulus Amebocyte Lysate (LAL) test as an end-product endotoxin test for human injectable drugs (including biological products), animal injectable drugs, and medical devices. The guideline is intended to inform manufacturers of acceptable methods of validating the LAL test before using it as an alternative to the official rabbit pyrogen test. Manufacturers of human injectable drugs (including biological products), animal injectable drugs, and medical devices may use the LAL test following the procedures set forth in the guideline. For human drugs biological products, and animal drugs that are subject to requirements of submission of applications to the agency, FDA will accept and approve, as appropriate, supplements to applications for approval that describe use of the LAL test. A manufacturer of medical devices is not required to submit applications or supplemental applications for premarket approval or premarket notification submissions to describe use of the LAL test unless the LAL test procedures used by such manufacturer deviate significantly from the procedures in the guideline.

ADDRESS: Written comments and requests for single copies of the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT:

Human and Biological Drugs: Terry E. Munson, Center for Drug Evaluation and Research (HFN-325), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8098.

Animal Drugs: Katharine Freeman, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

Medical Devices: Virginia C. Ross, Center for Devices and Radiological Health (HFZ-332) Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7194.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 12, 1973 (38 FR 1404), FDA announced that Limulus Amebocyte Lysate (LAL), derived from circulating blood cells (amebocytes) of the horseshoe crab (*Limulus polyphemus*), is a biological product. As such it is subject to licensing requirements as provided in section 351 of the Public Health Service Act (42 U.S.C. 262). Since 1973, LAL has proved to be a sensitive indicator of the presence of bacterial endotoxins (pyrogens). Because of this demonstrated sensitivity, LAL can be of value in preventing the administration or use of products that may produce fever, shock, and death if administered to or used in humans or animals when bacterial endotoxins are present in the products.

When the January 12, 1973, notice was published, available data and experience with LAL were not adequate to support is adoption as an endotoxin test in place of the rabbit pyrogen test, which has been accepted and recognized for many years. In order to establish a data base and gain experience with the use of LAL, that

notice permitted the introduction of LAL into the marketplace without a license. This was upon the condition that the labeling clearly limit its use to the in-process testing of drugs, and that the labeling on LAL state that the test was not suitable as a replacement for the rabbit pyrogen test or a diagnostic tool for determining clinical endotoxemia in man.

In a notice published in the **Federal Register** of November 4, 1977 (42 FR 57749), FDA described conditions for the use of LAL as an end-product test for endotoxins in human biological products and medical devices. The notice stated further that the application of LAL testing to human drugs other than biologicals would be the subject of a future **Federal Register** publication.

The then Bureau of Medical Devices (now Center for Devices and Radiological Health (CDRH)) issued recommended procedures for the use of LAL as an end-product test for endotoxins in devices on March 26, 1979. these procedures have been revised as a result of comments received from interested parties.

As a direct result of CDRH's experience in approving petitions for the use of the LAL test in place of the rabbit pyrogen test, several procedures for using the LAL test have evolved and have been adopted for devices.

In the **Federal Register** of January 18, 1980 (45 FR 3668), FDA announced the availability of a draft guideline that set forth procedures for use of the LAL test as an end-product testing method for endotoxins in human and animal injectable drugs. This draft guideline was made available to enable the agency to obtain comments before issuing a final guideline. The notice stated that FDA believed that manufacturers, especially those who had used the LAL test in parallel with the rabbit pyrogen test, may have data that could be helpful in the preparation of any final guideline.

In response to comments received on the January 18, 1980, draft guideline, FDA made several significant changes (i.e., endotoxin limits changed and deletion of section on absence of nonendotoxin pyrogenic substances), and many minor editorial changes. The agency also determined that a single document should be made available covering all FDA-regulated products that may be subject to LAL testing. The agency made another draft of the guideline available for public comment, in the **Federal Register** of March 29, 1983 (48 FR 13096), primarily because of the addition of biological products and medical devices to the guideline.

Based on the comments received in response to the March 29, 1983, draft guideline, FDA has made changes, including minor editorial changes, in this final guideline. Briefly the significant changes are:

1. Inclusion of validation criteria for the chromogenic, turbidimetric, and kinetic-turbidimetric LAL techniques.
2. Any technique (gel-clot, chromogenic, or turbidimetric) can be used in testing a product for endotoxin. However, if a gel-clot lysate is used in a different technique, the results must be interpreted using the criteria for the technique being used.
3. Elimination of the requirement to test the sensitivity of the rabbit pyrogen testing colony.
4. CDRH has adopted the United States Pharmacopeia endotoxin reference standard and revised the limit expressions from nanograms per milliliter to endotoxin units per milliliter. The new limit for medical devices is 0.5 endotoxin unit per milliliter, except for devices in contact with cerebrospinal fluid for which the limit is 0.06 endotoxin unit per milliliter. These limits for devices are equivalent to those for drugs for a 70-kilogram person when consideration is given to the fact that, in the worst-case situation, all endotoxin present in the combined rinsings of 10 devices could have come from just 1 device. A wide variation in bioburden is common to some devices. In addition, FDA studies indicate that less than half of added endotoxin is recovered from devices using a nonpyrogenic water rinse.
5. Inclusion of a listing of the maximum dose per kilogram per hour and the corresponding endotoxin limits for most of the aqueous injectable drugs and biological products currently on the market. This listing was added to promote uniformity among companies making the same product.

This notice of availability of the guideline for use of the LAL test is announced under § 10.90(b) of FDA's regulations (21 CFR 10.90(b)). That section provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows the guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures or standards even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort for work that the agency may later determine to be unacceptable.

Interested persons may submit written comments to the Dockets Management Branch (address above). FDA will consider such comments in determining whether further amendments to the guideline are warranted. Two copies of all 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. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the guideline should be sent to the Dockets Management Branch.

Dated: February 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-3518 Filed 2-18-88; 8:45 am]
BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Service Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on the National Health Service Corps Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-400, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from:

Anna Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A-23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-4814.

Date: February 12, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-3510 Filed 2-18-88; 8:45 am]
BILLIING CODE 4160-15-M

Public Health Service

PHS Agency Heads, Federal Technology Transfer Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of June 23, 1987, by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the PHS Agency Heads, in their dual capacity as heads of Federal agencies and heads of Federal laboratories, with authority to redelegate, all of the authorities under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 *et seq.*), as amended by the Federal Technology Transfer Act of 1986, Pub. L. 99–502, and under Executive Order No. 12591 of April 10, 1987, as amended hereafter, as they pertain to the functions of their respective agencies. This delegation excludes the authorities listed below under Restrictions.

Restrictions

1. The Secretary has retained the authority to promulgate regulations and submit reports to the Congress.

2. This delegation does not include the authority to:

- Approve agreements and contracts with invention management organizations, such as the National Technical Information Service, under Section 11(a)(2); and
- Propose necessary statutory changes regarding conflict of interest to be forwarded to its authorizing committee in Congress under Section 11(c)(3)(B).

3. The following authorities may be redelegated only to a senior official in the immediate office of the Agency Head:

Section 11—Cooperative Research and Development Agreements:

(c)(5)(A)—The authority to disapprove or require the modification of cooperative research and development agreements and licensing agreements within a 30-day period, beginning on the date the agreement is presented to the head of the PHS agency by the head of the laboratory concerned;

(c)(5)(B)—The authority to transmit a written explanation of such disapproval or modification to the head of the laboratory concerned, in any case in which the head of the PHS agency disapproves or requires the modification of an agreement presented under this section.

4. The following authorities may not be redelegated:

Section 11—Cooperative Research and Development Agreements:

(b)(3)—The authority to waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party;

(b)(4)—The authority, to the extent consistent with any applicable agency requirements and standards of conduct, to permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

(c)(3)(A)—The authority to review employee standards of conduct for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies (including the agency with which the employee involved is or was formerly employed).

Section 13—Distribution of Royalties Received by Federal Agencies:

(a)(1)—The authority to retain any royalties or other income, except as provided in paragraph (a)(2) of this section, from the licensing or assignment of inventions under agreements entered into under section 11, and inventions of Government-operated Federal laboratories licensed under section 207 of Title 35, United States Code, or under any other provision of law.

(a)(1)(A)(i)—The authority to pay at least 15 percent of the royalties or other income the agency receives on account of any invention to the inventor (or co-inventors) if the inventor (or each such co-inventor) was an employee of the agency at the time the invention was made.

5. Any authorities delegated by the PHS Agency Heads may not be further redelegated.

6. After providing prior notice, the Assistant Secretary for Health may elect to exercise any authority included in this delegation.

Prior Delegations and Supersessions

The delegations of authority dated October 14, 1987, under the Federal Technology Transfer Act, and November 24, 1987, under 37 CFR Part 401 are hereby rescinded. Furthermore, the **Federal Register** notice of August 22, 1986 (51 FR 30130), "AIDS Vaccine Development: Private Sector/Government Collaborative Efforts," which establishes a framework for collaborative efforts between the Public Health Service (PHS) and the private sector for the development, testing, production and distribution of a vaccine for the prevention of Acquired Immune Deficiency Syndrome (AIDS), is hereby superseded.

Information and Guidance

5 U.S.C. 3701 *et seq.*, and memorandum of February 4, 1988 which transmits this delegation of authority.

Effective Date: Effective February 4, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–3515 Filed 2–18–88; 8:45 am]

BILLING CODE 4160–17–M

Surgeon General; Delegation of Authority

A. Notice is hereby given that pursuant to the delegation of authority of January 20, 1988, from the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Surgeon General the authority to:

1. Appoint individuals in the Reserve Corps of the PHS Commissioned Corps pursuant to 42 U.S.C. 204;

2. Terminate commissions of Reserve Corps officers without the consent of the officers concerned pursuant to 42 U.S.C. 209(a)(2);

3. Make or terminate temporary promotions of regular and Reserve Corps officers pursuant to 42 U.S.C. 211(a), (k), and (l); and

4. Prescribe titles, appropriate to the several grades, for PHS commissioned officers, other than medical officers, pursuant to 42 U.S.C. 207(b).

These authorities may be exercised by and redelegated to only those officials of the Public Health Service who are required to be appointed by the President, by and with the advice and consent of the Senate.

B. I have also delegated to the Surgeon General, with authority to redelegate except as noted below, those authorities delegated to the Assistant Secretary for Health which are necessary to administer the PHS

Commissioned Corps Personnel System, including, but not limited to, authorities contained in Titles 5, 10, 37, and 42 of the United States Code; regulations issued pursuant thereto; and Reorganization Plan 3 of 1966. Special conditions apply to the exercise of the following authorities:

1. The authority to determine the numerical requirements of the Commissioned Corps must be made within the available funding and any FTE ceiling which may be established for the Public Health Service.

2. The authority to request the Office of Personnel Management to initiate investigations of commissioned officers in the interest of national security must be exercised in accordance with the provisions of Federal Personnel Manual Chapter 736. The Secretary retains the authority to suspend or separate any employee on grounds of disloyalty or subversion; restore to duty an employee who has been suspended on such grounds; or reemploy any person who has been separated from any Federal position on such grounds.

Authorities B.1. and B.2. may be redelegated only to officials who report to the Surgeon General.

I have retained the authority to create special temporary positions in the grade of Assistant Surgeon General.

The Secretary has retained the authority to issue regulations pertaining to the PHS Commissioned Corps and the authority to approve selection of persons in special temporary positions in the grade of Assistant Surgeon General.

The March 30, 1987 delegation of authority is hereby superseded. However, redelegations of these authorities may continue until new delegations are made, provided they are consistent with this delegation.

This delegation of authority was effective upon February 11, 1988.

Dated: February 11, 1988.

Robert E. Windom,

Assistant Secretary for Heath.

[FR Doc. 88-3516 Filed 2-18-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1774]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

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

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

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

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

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

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

Dated: February 9, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Requisition for Funds—Advance Loans
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: Under the U.S. Housing Act of 1937, as amended, HUD is empowered to make loans to PHAs to assist them in project financing. These advance loans may be obtained by the PHAs submitting to HUD the form and supporting justification for review and processing.
Form Number: HUD-5402A
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Respondents: On Occasion
Estimated Burden Hours: 9,000
Status: Extension
Contact: George C. Davis, HUD, (202) 755-7920; John Allison, OMB, (202) 395-6880

Dated: January 29, 1988.

Proposal: Tax-Exempt Construction Financing for Turnkey Public Housing Projects
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: This information is used and needed by HUD to determine that the proposed financing issuance satisfies legal concerns and that the costs proposed for the tax-exempt construction financing are reasonable. It is also needed to justify approving the use of tax-exempt financing.
Form Number: None
Respondents: State or Local Governments, Business or Other For-Profit, and Non-Profit Institutions
Frequency of Respondents: On Occasion
Estimated Burden Hours: 198
Status: Reinstatement
Contact: William C. Thorson, HUD, (202) 755-6460; John Allison, OMB, (202) 395-6880

Dated: January 25, 1988.

Proposal: 1. CDBG Program Small Cities Performance Assessment Report (PAR); 2. Application for CDBG Funds Small Cities Program
Office: Community Planning and Development
Description of the Need for the Information and its Proposed Use: Under the Housing and Community Development Act of 1974, as amended, an applicant submitting an application to HUD for a grant must have the capacity to administer the grant. HUD needs this information to rate the application against various selection criteria.
Form Number: HUD-4052 and 4124
Respondents: State or Local Governments and Federal Agencies or Employees
Frequency of Respondents: On Occasion
Estimated Burden Hours: 27,405
Status: Reinstatement

Contact: Patricia G. Myers, HUD, (202) 755–6322; John Allison, OMB, (202) 395–6880

Dated: February 9, 1988.

Proposal: Default Status Report on Multifamily Housing Projects
Office: Housing
Description of the Need for the Information and its Proposed Use: Mortgagees need this report to notify HUD that a project owner has defaulted and that an assignment or acquisition will result if HUD and the mortgagor do not develop a plan for reinstating the loan. The report initiates HUD's negotiation with the mortgagor.
Form Number: HUD–92426
Respondents: Business or Other For-Profit
Frequency of Respondents: Monthly
Estimated Burden Hours: 3,000
Status: Extension
Contact: Judith L. Lemeshewsky, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880

Dated: February 10, 1988.

[FR Doc. 88–3594 Filed 2–18–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(UT–040–08–4121–16)]

Environmental Statements; Proposal Concerning Two Coal Lease Readjustments in Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a Draft Environmental Assessment.

ADDRESS: To obtain a copy of these documents or to obtain additional information on the proposal, contact Martha Hahn, Area Manager Kanab Resource Area P.O. Box 459 Kanab, Utah 84741 or telephone at 801–644–2672.

SUMMARY: The Bureau of Land Management, Cedar City District is proposing to adjust the terms and conditions of coal leases U–0130985 and U–0149373. Each of these leases have been evaluated and additional stipulations are proposed for the leases to increase the level of environmental protection and other considerations.

The Wilderness Study Areas involved are Carcass Canyon (076) and Death Ridge (078).

A Draft Environmental Assessment has been prepared on this proposal and is now available for public review and comment. Comments should be submitted within 30 days from the date of this publication.

Date: February 12, 1988.

Dave F. Everett,
Assistant District Manager.

[FR Doc. 88–3496 Filed 2–18–88; 8:45 am]
BILLING CODE 4310–DQ–M

[ID–010–08–4322–02]

Boise District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Idaho, Interior.

ACTION: Notice of meeting.

SUMMARY: The Boise District Grazing Advisory Board will meet Thursday, March 17 to discuss range improvement funding proposals for Fiscal Year 1988.

DATES: The meeting will be held March 17, beginning at 9:00 a.m. in the conference room of the Boise District Office.

ADDRESS: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise BLM District, 208–334–9303.

Date: February 10, 1988.

J. David Bruner,
District Manager.

[FR Doc. 88–3543 Filed 2–18–88; 8:45 am]
BILLING CODE 4310–GG–M

[ID–050–08–4322–14]

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Wednesday, March 30, 1988, at 9:00 a.m..

ADDRESS: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: K Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, ID 83352. Telephone (208) 886–2206 or FTS 554–6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) Disbursement of Grazing Advisory Board funds, (2) the Clover Creek Allotment Management Plan evaluation, (3) discussion of grazing alternatives for drought conditions, and (4) a Thorn Creek Pilot Riparian Project Plan update.

Operation and administration of the Board will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District by Friday, March 25, 1988. Records of the meeting will be available in the Shoshone District office for public inspection or copying within 30 days after the meeting.

K Lynn Bennett,
District Manager.

[FR Doc. 88–3544 Filed 2–18–88; 8:45 am]
BILLING CODE 4310–GG–M

[UT–040–08–4322–02]

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 992–463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, March 24, 1988. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 176 East DL Sargent Drive, Cedar City, Utah.

The agenda is as follows: (1) Report on Mineral Range Allotment; (2) Report on Beaver Dam Slope Allotment; (3) Report on recently completed AMPs; (4) District Grazing trespass policy; (5) Report on non-use policy and delinquent bills; (6) Report on use of FY 87 range improvement funds; (7) Priority ranking of FY 89 range improvement and advisory board funded projects; and (8) general advisory board business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 8472, phone 801–586–2401, by March 21, 1988. Depending on the

number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date: February 12, 1988.

Dave F. Everett,

Acting District Manager.

[FR Doc. 88-3495 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-020-41-5410-10-ZADJ; A-22922]

Mineral Interest Applications; Arizona

ACTION: Notice of receipt of amended conveyance of Mineral Interest Application A-22922.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Space Biosphere Ventures has amended their application filed July 17, 1987 to purchase the mineral estate and published in the **Federal Register** August 11, 1987 to include the following additional lands:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 15 E.,
Sec. 5, Lots 4, 8, 9;
Sec. 8, Lot 2.
T. 8 S., R. 16 E.,
Sec. 31, Lots 1-4, E½, E½W½.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years for the date of filing of the application, November 25, 1987, whichever occurs first.

Date: February 12, 1988.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 88-3502 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-08-4920-10-8451; A-22309]

Arizona; Conveyance of Mineral Estate and Acquisition of Surface and Mineral Estate for Inclusion in the Petrified Forest National Park

February 9, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the transfer of Federal mineral estate and the acquisition of private land and mineral estate for inclusion in the Petrified Forest National Park.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office, 602-241-5534.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management transferred the following mineral estate underlying private land on March 16, 1987, by Patent No. 02-87-0019, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 25 E.,
Sec. 30, NE¼SW¼.
Containing 40.00 acres in Apache County, Arizona.

In exchange the mineral estate in the following described land was reconveyed to the United States:

T. 19 N., R. 24 E.,
Sec. 27, SW¼SW¼.
Containing 40.00 acres in Apache County, Arizona.

The surface of the above described land was donated to the United States on December 9, 1986, for inclusion in the Petrified Forest National Park. In accordance with Pub. L. 99-250 this land has been determined to be in fee simple title vested in the United States and is now part of the Petrified Forest National Park, subject to all the laws, rules, and regulations applicable thereto.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-3545 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-32-M

[WY-930-08-4212-10; W-108334]

Receipt of Exchange Proposal, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of receipt of exchange proposal between Meadowlark, Inc., a subsidiary of AMAX, Inc.; the Bureau of Land Management; and the U.S. Forest Service, filed in accordance with provisions of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, and Title 43 CFR Part 2200.

SUMMARY: The proposal involves the exchange of 8734 acres of non-Federal land and interests within and adjacent to the Shoshone National Forest near Kirwin, Wyoming, and a portion of Federal Coal Lease Serial Number Wyoming 0313773 in Campbell County, Wyoming, for 1400 acres of Federal coal in fee in Campbell County, Wyoming. The Federal coal is near the AMAX Coal Company's Belle Ayre Mine. The non-Federal lands and interests would become part of the Shoshone National Forest upon acquisition.

Meadlowlark, Inc., has offered to exchange four parcels of land. The Kirwin property consists of patented mining claims located in T. 45 N., Rs. 103 and 104 W., and T. 46 N., Rs.103 and 104 W. The DD Ranch consists of patented placer claims and other property located in T. 46 N., R. 103 W., sec 21, and contains approximately 709 acres. The Sunshine Ranch contains 4795.04 acres of land located in T. 46 N., R. 102 W., sec. 1; T. 47 N., R. 101 W., secs. 18, 19 and 30; and T. 47 N., R. 102 W., secs. 13, 22, 23, 24, 25, 26 and 27. The 320 acre portion of Federal Coal Lease Wyoming 0313773 is located within T. 51 N., R. 72 W., sec. 35.

In exchange, Meadowlark, Inc., would acquire approximately 1400 acres of Federal coal in fee located in T. 48 N., R. 71 W., secs. 29, 30, 31 and 32; in T. 47 N., R. 71 W., secs. 5 and 6; and T. 48 N., R. 71 W., sec. 31; and in T. 47 N., R. 72 W., sec. 1. This Federal coal is presently leased to Meadowlark, Inc.

The Wyoming State Office, Bureau of Land Management, is soliciting public comment on the public interest factors of this exchange proposal. All comments should be received by March 31, 1988. Specific areas of interest for public comments are as follows:

(1) What, if any, are the environmental impacts of the proposed exchange?

(2) What are the impacts of the proposed exchange on competitive coal leasing?

(3) Comments or thoughts on public interest involved with processing the proposal.

(4) Comments on the values associated with either the private lands to be acquired or the public coal to be transferred into private ownership.

FOR FURTHER INFORMATION CONTACT: All comments and requests for further information should be addressed to Mel Schlagel, Realty Specialist, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming, 82003, (307) 772-2070.

Hillary A. Oden,

State Director.

February 11, 1988.

[FR Doc. 88-3546 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-22-M

[NM-940-084520-1]

New Mexico; Filing of Plat of Survey

February 11, 1988.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on the dates shown.

A survey representing the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivisional lines, and the adjusted record meanders of the 1873 left bank of the Canadian River, in sections 1, 11 and 12, the subdivision of sections 1 and 11, and the survey and informative traverse of the meanders of a portion of the 1985 left bank of the Canadian River, in sections 1, 11 and 12, accretions to lots 6 and 7, section 1 and accretions to lot 2, section 11, Township 18 North, Range 17 West, Indian Meridian, Oklahoma, executed under Group 40, Oklahoma, filed February 11, 1988.

A survey representing the dependent resurvey of a portion of the north boundary, a portion of the Subdivisional lines, and the adjusted record meanders of the 1873 left bank of the Canadian River, in sections 6, 7 and 8, an informative traverse of the meanders of a portion of the 1985 left bank of the Canadian River, Township 18 North, Range 16 West, Indian Meridian, Oklahoma, executed under Group 40, Oklahoma, filed February 11, 1988.

These surveys were requested by the Area Director, Bureau of Indian Affairs, Anadarko, Oklahoma.

A survey representing dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the adjusted record meanders of the left bank of the Canadian River, in section 5, Township 14 North, Range 13 West, Indian Meridian, Oklahoma, executed under Group 44, Oklahoma, filed February 11, 1988.

This survey was requested by the BLM Area Manager, Oklahoma Resource Area Headquarters (ORAH), Oklahoma.

A survey representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, certain small holding claim boundaries in section 19, the subdivision of section 34 and the survey of lot boundaries in sections 19 and 34, Township 11 North, Range 6 East, New Mexico Principal Meridian, New Mexico, executed under Group 867, New Mexico, filed February 11, 1988.

This survey was requested by the Area Manager, Rio Puerco Resource Area, Albuquerque District, New Mexico.

The supplemental plat representing the south one-half of section 30, New Mexico Principal Meridian, New Mexico, was prepared to show the full extent of lot 51, and lot 53, which were inadvertently misrepresented on the plat approved December 23, 1987, executed under Group 768, New Mexico, filed February 11, 1988.

The supplemental plat representing section 5, was prepared to amend a certain lotting, Township 20 North, Range 10 East, New Mexico Principal Meridian, New Mexico, executed under Group 781, New Mexico, filed February 11, 1988.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from the office upon payment of $2.50 per sheet.

Kelley R. Williamson,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 88-3547 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-08-4520-12; GP8-069]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 14 S., R. 10 W.
T. 14 S., R. 11 W.
The above listed plats were accepted October 23, 1987 and officially filed November 9, 1987.
T. 17 S., R. 4 E.
T. 36 S., R. 47 E.
The above listed plats were accepted October 16, 1987 and officially filed November 9, 1987.
T. 38 S., R. 1 E.
T. 37 S., R. 1 E.
The above listed plats were accepted November 6, 1987 and officially filed December 4, 1987.
T. 9 S., R. 2 E.
The above listed plat was accepted November 25, 1987 and officially filed December 4, 1987.
T. 25 S., R. 7 W.
The above listed plat was accepted November 25, 1987 and officially filed December 9, 1987.
T. 26 S., R. 12 W.
T. 18 S., R. 45 E.
The above listed plats were accepted December 4, 1987 and officially filed December 9, 1987.
T. 6 S., R. 13 E.
The above listed plat was accepted December 11, 1987 and officially filed December 18, 1987.
T. 2 S., R. 6 W.
The above listed plat was accepted December 18, 1987 and officially filed January 5, 1988.
T. 7 S., R. 9 W.
The above listed plat was accepted December 31, 1987 and officially filed January 5, 1988.
T. 34 S., R. 14 W.
The above listed plat was accepted December 23, 1987 and officially filed January 5, 1988.

Washington

T. 7 N., R. 13 E.
The above listed plat was accepted December 23, 1987 and officially filed January 5, 1988.

The above-listed plats represent dependent resurveys, corrective dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, OR 97208

Dated: February 5, 1988.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-3494 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-33-M

[CA-010-08-4212-13; Casefile # CA 20920]

Realty Action; Exchange of Public and Private Lands in San Luis Obispo County, CA

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of Realty Action—CA 20920.

SUMMARY: The following described lands have been determined to be

suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.28S., R.11E.,
Sec. 18, Lot 6;
Sec. 20, Lot 2;
Sec. 29, W½SW¼, SE¼SW¼;
Sec. 30, Lots 2, 3, 4, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31, Lot 16;
Sec. 32, Lots 12, 13, 14, 15, 16.
T.28S., R.12E.,
Sec. 31, Lots 1, 2, 3, 6, SW¼SE¼;
Sec. Sec. 32, Lot 1.
T.29S., R.13E;
Sec. 25, S½;
Sec. 36, NW¼NE¼, N½NW¼.
T.29S., R.14E,
Sec. 7, Lot 2, NE¼, SE¼NW¼, SE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 8, NW¼NE¼, NW¼;
Sec. 17, W½NW¼;
Sec. 18, Lot 3, NE¼, E½NW¼, NE¼SW¼;
Sec. 19, SE¼NE¼, E½SE¼;
Sec. 20, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 25, S½SW¼, W½SE¼;
Sec. 29, E½NW¼, SW¼NW¼, SW¼, W½SE¼;
Sec. 31, N½NE¼, SE¼NE¼, NE¼NW¼;
Sec. 32, NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 33, N½NW¼;
Sec. 35, S½NE¼.
T.29S., R.15E.,
Sec. 31, SE¼NW¼.
T.30S., R.14E.,
Sec. 1, Lots 22, 23;
Sec. 2, Lots 5, 7, 8, 9, 10, N½SW¼, SW¼SW¼;
Sec. 3, Lot 4 W½ Lot 5, E½ Lot 6, 7, 8, 9, 10, S½
Sec. 4, SE¼;
Sec. 13, Lots 4, 6;
Sec. 14, Lots 1, 2;
Sec. 15. :pts 5, 12, 13, 14;
Sec. 21, Lots 2, 3, 4.
Containing 6054.14 acres of public land, more or less.

In exchange for these lands, the United States will acquire the surface estate of the following lands from Saul Yarmak and Van Ward.

Mt. Diablo Meridian, California

T.30S., R.19E.,
Sec. 35, that portion lying south and east of the centerline of San Diego Creek Road.
Containing 617 acres of land, more or less.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a portion of the non-federal lands within the proposed Carrizo Natural Heritage Reserve. This Reserve would promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna.

The ultimate goal of the Bureau of Land Management is to acquire approximately 155,000 acres within the Reserve. A secondary purpose of the exchange is to consolidate the Bureau lands in San Luis Obispo County and reduce the number of scattered, isolated Bureau parcels that are difficult for the Bureau to manage. The public interest will be well served by completing the exchange.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

The exchange will be on an equal value basis. Acreage of the public land will be adjusted to approximate equal values. Full equalization of value will be achieved by a cash payment to the United States in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands transferred from the United States will retain the following reservations

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 [43 U.S.C. 945).

2. All oil and gas together with the right to explore, prospect for, mine, and remove the same under all applicable laws and regulations.

Lands transferred from the United States will be subject to

1. The following right-of-way issued under the Act of October 21, 1976 (43 U.S.C. 1761):

SO34527, Electric line, PG&E; Sec. 25, T.29S., R.14E., MDM.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Caliente Resource Area Office, 520 Butte Street, Bakersfield, California 93305; (805) 861–4236.

DATE: For a period up to and including March 21, 1988, interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: January 27, 1988.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 88–2297 Filed 2–3–88; 8:45 am]

BILLING CODE 4310-40-M

[NM-010-3110-10-7201, NM 65305]

New Mexico; Realty Action Exchange, Federal Minerals in Cibola, Valencia, Catron and Socorro Counties, NM for Private Minerals Within El Malpais National Conservation Area and National Monument

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The following described Federal mineral estate which is located under private surface estate within Cibola and Valencia Counties has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The Federal mineral estate located under private surface within Catron and Socorro Counties is subject to disposal pending final approval of the Socorro Resource Management Plan.

New Mexico Principal Meridian

T. 3N., R. 20W.,
Section 3, Lots 1–4, S½N½, S½;
Section 4, Lots 1–3, S½N½, S½;
Section 5, Lots 2–4, S½N½, S½;
Section 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Section 7, Lots 1–2, NE¼, E½NW¼;
Section 8, N½;
Section 9, N½;
Section 10, N½;
Section 11, N½.
T. 4N., R. 3W.,
Section 24, E½, SW¼,
T. 4N., R. 8W.,
Section 4, Lots 1–4, S½N½, S½.
T. 4N., R. 12W.,
Section 8, N½, SE¼;
Section 10, N½, SW¼.
T. 4N., 14W.,
Section 4, Lots 1–12, SW¼, N½SE¼, SW¼SE¼;
Section 6, Lots 1–13, E½SW¼, SE¼;
Section 8, W½NE¼, NW¼, S½;
Section 10, All;
Section 14, All;
Section 20, W½NE¼, W½, SE¼;
Section 22, All;
Section 24, All;
Section 28, NE¼NE¼, S½N½, S½;
Section 29, All;
Section 31, S½NE¼, E½SW¼, SE¼;
Section 33, All;
Section 34, All.
T. 4N., R. 15W.,
Section 12, All.
T. 5N., R. 3W.,
Section 18, Lots 1–4, E½, E½W½;

Section 20, N½, SW¼.
T. 5N., R. 7W.,
Section 4, Lots 1–4, S½N½, S½;
Section 6, Lots 1–2, S½NE¼, SE¼;
Section 8, All;
Section 14, E½;
Section 18, Lots 1–4, E½, E½W½;
Section 20, W½;
Section 26, All;
Section 30, Lots 1–4, E½, E½W½;
Section 34, N½, N½SW¼, E½SE¼.
T. 5N., R. 11W.,
Section 10, All (O&G only);
Section 20, All.
T. 5N., R. 12W.,
Section 20, S½N½, S½.
T. 5N., R. 13W.
Section 18, Lots 1–4, E½, E½W½;
Section 30, Lots 1–4, E½, E½W½ (O&G only).
T. 5N., R. 14W.
Section 4, Lots 1–4, S½N½;
Section 6, Lots 1–7, S½NE¼, SE¼NW¼, SE¼;
Section 8, N½, N½S½, SW¼SW¼, S½SE¼;
Section 10, All;
Section 12, All;
Section 14, All;
Section 18, Lots 1–4, E½, E½W½;
Section 22, All;
Section 24, E½;
Section 26, All;
Section 28, All;
Section 30, Lots 1–4, E½, E½W½;
Section 34, All.
T. 5N., R. 15W.,
Section 8, All;
Section 10, All;
Section 12, All;
Section 14, All;
Section 22, All;
Section 24, All;
Section 26, All.
T. 6N., R. 16W.,
Section 6, Lots 1, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 6N., R. 17W.,
Section 4, Lots 1–4, S½N½, S½;
Section 8, All;
Section 10, N½, W½SW¼, SE¼SW¼, SW¼SE¼;
Section 18, Lots 1, 2, 4, E½E½, NW¼NE¼, E½NW¼, SE¼SW¼, SW¼SE¼;
Section 24, All;
Section 26, N½;
Section 28, All.
T. 6N., R. 20W.,
Section 4, Lot 4, SE¼NE¼, SW¼NW¼, NE¼SE¼;
Section 10, W½NE¼, E½NW¼;
Section 14, W½E½, NW¼.
T. 7N., R. 17W.,
Section 20, All;
Section 28, W½.
T. 7N., R. 20W.,
Section 20, S½;
Section 34, N½.
Containing 41,984.15 acres.

In exchange for this Federal mineral estate, the United States has selected approximately 41,728.96 acres of privately-owned minerals within Cibola County in the El Malpais National Conservation Area and National Monument and south of Grants, New Mexico, as listed below:

New Mexico Principal Meridian

T. 6N., R. 11W.,
Section 1, All;
Section 3, Lots 1–4, S½N½, S½;
Section 5, Lots 1–4, S½N½, S½;
Section 7, Lots 1–4, E½, E½W½;
Section 9, All;
Section 11, All;
Section 15, All;
Section 17, All;
Section 19, Lots 1–4, E½, E½W½;
Section 21, All;
Section 27, All;
Section 29, All.
T. 6N., R. 12W.,
Section 1, Lots 1–4, S½N½, S½.
T. 7N., R. 10W.,
Section 7, Lots 1–4, E½, E½W½;
Section 19, Lots 1–4, E½, E½W½.
T. 7N., R. 11W.,
Section 1, Lots 1–4, S½N½, S½;
Section 3, Lots 1–4, S½N½, S½;
Section 5, Lots 1–4, S½N½, S½;
Section 7, Lots 1–4, E½, E½W½;
Section 9, All;
Section 11, All;
Section 13, All;
Section 15, All;
Section 17, All;
Section 19, Lots 1–4, E½, E½W½;
Section 21, All;
Section 23, All;
Section 25, All;
Section 27, All;
Section 29, All;
Section 31, Lots 1–4, E½, E½W½;
Section 33, All;
Section 35, All.
T. 7N., R. 12 W.,
Section 1, Lots 1–4, S½N½, S½;
Section 3, Lots 1–4, S½N½, S½;
Section 5, Lots 1–4, S½N½, S½;
Section 7, Lots 1–4, E½, E½W½;
Section 9, All;
Section 11, All;
Section 13, All;
Section 15, All;
Section 17, All;
Section 19, Lots 1–4, E½, E½W½;
Section 21, All;
Section 23, All;
Section 25, All;
Section 27, All;
Section 35, All;
T. 8N., R. 10W.,
Section 9, N½, SW¼, NW¼SE¼;
Section 11, All;
Section 15, All;
Section 17, NW¼NE¼, W½.
T. 8N., R. 12W.,
Section 1, Lots 1–4, S½N½, S½;
Section 3, Lots 1–4, S½N½, S½;
Section 9, All;
Section 11, All;
Section 13, All;
Section 15, All;
Section 21, All;
Section 23, All;
Section 25, All;
Section 27, All;
Section 29, All;
Section 31, Lots 1–4, E½, E½W½;
Section 33, All;
Section 35, All.
Containing 41,728.96 acres.

Upon completion of the final appraisal, the actual acreage exchanged will be adjusted to reflect equal values as much as possible.

The purpose of the exchange is to consolidate Federal mineral ownership for the Federal government within the recently enacted El Malpais National Monument (NM) and National Conservation Area (NCA). This action is consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Resource Management Plan approved January 16, 1986 and the Draft Socorro RMP completed on January 15, 1988.

The purpose of this Notice of Realty Action is twofold. First, this notice will provide a response period of forty five (45) days during which public comments will be accepted regarding this exchange proposal. Secondly, this action as provided in 43 CFR 2201.1(b), shall segregate the Federal minerals as described in this Notice, to the extent that they will not be subject to appropriation under mineral leasing and mining laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the **Federal Register** of a termination of the segregation or two years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Albuquerque District Office, 435 Montano NE, Albuquerque, New Mexico 87107.

For a period of forty-five (45) days after publication of this Notice interested parties may submit comments to the District Manager at the above address.

Dated: February 10, 1988.

Michael F. Reitz,

Associate District Manager.

[FR Doc. 88-3446 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-FB-M

[CA-940-07-4520-12; (Group 928)]

Filing of Plat of Survey; California

February 9, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt Meridian, Del Norte County

T. 13 N., R. 3 E.

2. This plat, representing the metes and bounds survey of Tract 37,

Township 13 North, Range 3 East, Humboldt Meridian, California, under Group No. 928, was accepted February 2, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrtive needs of the Six Rivers National Forest, Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

February 9, 1988.

[FR Doc. 88–3504 Filed 2–18–88; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–07–4520–12; Group 808]

Filing of Plat of Survey; California

February 9, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lake and Yolo Counties

T. 12 N., R. 5 W.

2. This plat, representing the dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines, and a portion of Mineral Survey No. 6019, and the survey to complete a portion of the subdivisonal lines, Township 12 North, Range 5 West, Mount Diablo Meridian, California, under Group No. 808, was accepted February 8, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

February 9, 1988.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88–3505 Filed 2–18–88; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–07–4520–12; C–3–88]

Filing of Plat of Survey; California

February 9, 1988.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, San Bernardino

T. 11 N., R. 6 W.

2. This supplemental plat of the NE¼ of section 30, Township 11 North, Range 6 West, San Bernardino Meridian, California, was accepted February 5, 1988.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

February 9, 1988.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88–3506 Filed 2–18–88; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Development Operations Coordination Document; Marathon Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Marathon Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1149, Blocks 57 (portion) and 79 (portion), Lease OCS–G 1874, Blocks 79 (portion) and 80 (portion), West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 9, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Lousisian Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 10, 1988

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-3507 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-MR-M

Availability of Outer Continental Shelf Official Protraction Diagrams; Alaska OCS Region

1. Notice is hereby given that, effective with this publication, the following Official Protraction Diagrams, last approved or revised on the dates indicated, are on file and available at the Minerals Management Service, Alaska OCS Region, Anchorage, Alaska. In accordance with Title 30, Code of Federal Regulations, these Protraction Diagrams are the basic record for the descriptions of mineral and oil and gas lease sales in the geographic area they represent.

Outer Continental Shelf Protraction Diagrams

Description	Revision/ approval date
NR 2-6, Chukchi Sea (revised)	Oct. 26, 1987
NR 5-1, Dease Inlet (revised)	Jan. 12, 1988.
NR 5-4, Harrison Bay (revised)	Jan. 20, 1988.

2. Copies of these diagrams may be purchased for $2.00 each from the Records Manager, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Suite 110, Anchorage, Alaska 99508-4302. Checks or money orders should be made payable to the Department of the Interior—Minerals Management Service.

Alan D. Powers,

Regional Director.

[FR Doc. 88-3503 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Nonferrous Metals Surveys.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other government agencies.

Bureau Form Number: 6-1151-MA-ET AL (33 Forms).

Frequency: Monthly, Quarterly, and Annual.

Description of Respondents: Producers and Consumers of Nonferrous Metals.

Annual Responses: 13,413.

Annual Burden Hours: 15,420.

Bureau Clearance Officer: James T. Hereford (202) 634-1125.

February 11, 1988.

David S. Brown,

Deputy Director.

[FR Doc. 88-3500 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Reclamation

Availability of Planning Report/Final Environmental Statement, Umatilla Basin Project, OR

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Planning Report/Final Environmental Statement, Umatilla Basin Project, OR.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a Planning Report/Final Environmental Statement (PR/FES) on a proposed fish enhancement project that would help restore salmon and steelhead runs in the Umatilla River basin in Oregon. A key feature is a program whereby water would be pumped from the Columbia River for distribution to irrigators. This would permit some Umatilla River water now diverted or stored for irrigation use to remain in the river to improve flow conditions for fish in the lower basin. In addition to the pumping complex, improved fish passage facilities at some irrigation diversions are included in the plan.

ADDRESSES: Copies of the PR/FES are available for inspection at the following locations and at libraries in the project vicinity:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7423, C Street between 18th and 19th Street NW., Washington, DC 20240, Telephone: (202) 343-4991

Document Systems Management Branch, Library Section, Code D-823, Engineering and Research Center, Library, Room 450, Denver, CO 80225, Telephone: (303) 236-6963, Hours: 7:30 a.m.-4:00 p.m.

Office of Environment, Pacific Northwest Regional Office, Bureau of Reclamation, Room 442, P.O. Box 043-550 West Fort Street, Boise, ID 83724, Telephone: (208) 334-1207.

Single copies of the document may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director at the above addresses.

Date: February 11, 1988.

C. Dale Duvall,

Commissioner.

[FR Doc. 88-3449 Filed 2-18-88; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Masco Corporation, 21001 Van Born Road, Taylor, Michigan 48180.

2. Wholly-owned subsidiaries [1] which will participate in the operations, and their States of incorporation:

Alsons Corporation, Michigan
American Metal Products Company, Delaware
Ameri-Tec Products Company, Inc., Delaware
Aqua Glass Corporation, Tennessee
  Tombigbee Transport Corporation, Tennessee
Baldwin Hardware Corporation, Pennsylvania

[1] Directly owned subsidiaries appear at the left hand margin, first tier and second tier subsidiaries are indicated by single and double indention, respectively, and are listed under the names of their respective parent companies.

Brass-Craft Manufacturing Company, Michigan
Plumbers Quality Tool Mfg. Co., Inc., Michigan
Brass-Craft Holding Company, Michigan
Brass-Craft Western Company, Texas
Thomas Mfg. Company Inc. of Thomasville, North Carolina
Compac Corporation, Delaware
Dixie Furniture Company, Incorporated, North Carolina
Henry Link Corporation, North Carolina
Link-Taylor Corporation, North Carolina
Young-Hinkle Corporation, North Carolina
Lexington Industries, Inc., North Carolina
Drexel Heritage Furnishings Inc., New York
Drexel Heritage Advertising, Inc., North Carolina
Frederick Edward, Inc., North Carolina
Fieldstone Cabinetry, Inc., Iowa
KOA, Ltd., Iowa
Fillpro Products, Inc., California
Flint & Walling Industries, Inc., Delaware
Flint & Walling, Inc., Indiana
Fulton Manufacturing Corporation, Delaware
Gamco Products Company, Delaware
Henredon Furniture Industries, Inc., North Carolina
Henredon Advertising, Inc., North Carolina
Henredon Transportation Co., North Carolina
Hickorycraft, Inc., North Carolina
J.H. Industries, Inc., California
Fillpro Products, Inc., California
La Barge Mirrors, Inc., Michigan
Marbro Lamp Company, California
Marge Carson, Inc., California
The Marvel Group, Inc., Delaware
Masco Building Products Corp., Delaware
Masco Corporation of Indiana, Indiana
Delta Faucet Company, Michigan
Merillat Industries, Inc., Michigan
Reese Service Center of California, Inc., California
Trayco, Inc., Michigan
Watkins Manufacturing Corporation, California
J. Watkins Real Estate Subsidiary, Inc., California
Winfield Locks, Inc., California
Woodtec, Inc., Delaware

3. Divisions of parent corporation and location of principal office;

American Metal Products, California
Davis Manufacturing Company, Michigan

4. Divisions of Masco Building Products Corp. and location of principal office:

Artistic Brass Division, California
Bowers Division, California
Plumbing Fixtures Division, California
Thermador/Waste King Division, California
Weiser Lock Division, California

5. Divisions of Masco Corporation of Indiana and location of principal office:

Delta Faucet Company, Indiana
EPIC, Incorporated, Indiana
Peerless Aire Company, Indiana
Peerless Faucet Company, Indiana
Reese Products Company, Indiana

B. (1) Parent corporation and address of principal office:

Philip Morris Companies Inc., (a Virginia corporation), 120 Park Avenue, New York, NY 10017

Primary operating entity conducting CIH services:

Private Truck Operations, General Foods USA, 250 North Street, NC–2, White Plains, NY 10625

(2) Wholly owned subsidiaries which will participate in the operations, and states of incorporation:

(1) Abdulla of Bond Street, Ltd. (Delaware)
(2) Aliso Viejo Company (California)
(3) B. Muratti Sons & Company Inc. (New York)
(4) Birds Eye de Mexico, S.A. de C.V. (Mexico)
(5) Birds Eye, Inc. (Delaware)
(6) Brisk Brokerage, Inc. (Delaware)
(7) Brisk Transportation Inc. (Delaware)
(8) Charles Freihofer Baking Company, Inc. (New York)
(9) Colonial Heights Packaging Inc. (Delaware)
(10) Continental Equity Investments Inc. (California)
(11) Culinova Group, Inc. (Delaware)
(12) Crescent Distributing Company (Louisiana)
(13) Don's Prize, Inc. (Ohio)
(14) Eastern Projects, Inc. (California)
(15) Entenmann's Frozen Foods, Inc. (Florida)
(16) Entenmann's, Inc. (Delaware)
(17) Filter Materials Ltd. (Delaware)
(18) Fort Packaging Co., Inc. (Wisconsin)
(19) Franklin Baker Co. of the Philippines (Philippines)
(20) Gardners Good Foods, Inc. (New Jersey)
(21) General Foods Bakery Corporation (Delaware)
(22) General Foods Capital Corporation (Delaware)
(23) General Foods Caribbean Manufacturing Corp. (Delaware)
(24) General Foods Corporation (Delaware)
(25) General Foods Credit Corporation (Delaware)
(26) General Foods Credit Investors No. 1 Corporation (Delaware)
(27) General Foods Credit Investors No. 2 Corporation (Delaware)
(28) General Foods Credit Investors No. 3 Corporation (Delaware)
(29) General Foods Foreign Sales Corporation (U.S. Virgin Islands)
(30) General Foods Holding Inc. (Delaware)
(31) General Foods Inc. (Canada)
(32) General Foods, Inc. (Puerto Rico)
(33) General Foods Manufacturing Corporation (Delaware)
(34) General Foods Manufacturing Corporation of Mexico (Delaware)
(35) General Foods Trading Company (Delaware)
(36) Grant Holdings, Inc. (Pennsylvania)
(37) HAG GF Vertriebs & Marketing Corporation (Delaware)
(38) HNB Investment Corp. (Delaware)
(39) Highland Mutual Water Company (Colorado)
(40) Highlands Ranch Decorator Center, Inc. (Colorado)
(41) Highlands Ranch Development Corporation (Colorado)
(42) Highlands Ranch Escrow Company, Inc. (Colorado)
(43) Highlands Ranch Estates, Inc. (Colorado)
(44) Highlands Ranch Financial Corporation (Colorado)
(45) Highlands Ranch Mortgage Company, Inc. (Colorado)
(46) Highlands Ranch Real Estate Corporation (Colorado)
(47) Highlands Ranch Village, Inc. (Colorado)
(48) Hostess Food Products Limited (Ontario, Canada)
(49) Hudson Commercial Corporation (Delaware)
(50) International Tobacco Co. Inc., New York (Delaware)
(51) Italsalumi, Inc. (Illinois)
(52) Jack G. Raub Company (California)
(53) Kohrs Packing Company (Illinois)
(54) MVC Escrow Company (California)
(55) MVC Financial Corporation (California)
(56) Manextab Inc. (Delaware)
(57) Maxwell House, Inc. (Delaware)
(58) Miller Brands of Oklahoma, Inc. (Oklahoma)
(59) Miller Brands, Inc. (Florida) (Florida)
(60) Miller Brands, Inc. (Oregon) (Oregon)
(61) Miller Brands, Inc. (Washington) (Washington)
(62) Miller Brewing Company (Wisconsin)
(63) Miller Distributing of Oklahoma, Inc. (Oklahoma)
(64) Mission Viejo Business Properties Inc. (California)
(65) Mission Viejo Company (California)
(66) Mission Viejo Realty Group Inc. (California)
(67) New Town of Highlands Ranch, Inc. (Colorado)
(68) Oscar Mayer & Co. Inc. (Delaware)
(69) Oscar Mayer Foods Corporation (Delaware)
(70) PMCC Leasing Corporation (Delaware)
(71) Packaged Food & Beverage Co., Inc. (Delaware)
(72) Park Avenue Export Corporation (Delaware)

(73) Park Export Corporation (U.S. Virgin Islands)
(74) Peacock Foods Incorporated (California)
(75) Philip Morris (1974) Limited (Delaware)
(76) Philip Morris Asia (Services) Incorporated (Delaware)
(77) Philip Morris Asia Incorporated (Delaware)
(78) Philip Morris Credit Capital N.V. (Netherlands A.)
(79) Philip Morris Credit Corporation (Delaware)
(80) Philip Morris Duty Free Inc. (Delaware)
(81) Philip Morris Europe S.A. (Delaware)
(82) Philip Morris Export Corporation (Delaware)
(83) Philip Morris Incorporated (Virginia)
(84) Philip Morris International Capital N.V. (Netherlands A.)
(85) Philip Morris Marketing S.A. (Delaware)
(86) Philip Morris International Inc. (Delaware)
(87) Philip Morris International Finance Corporation (Delaware)
(88) Philip Morris Latin America Sales Corp. (Delaware)
(89) Philip Morris Limited (Delaware)
(90) Philip Morris Management Corp. (New York)
(91) Philip Morris Products Inc. (Delaware)
(92) Philip Morris Sales Inc. (Delaware)
(93) Philip Morris Services Inc. (Delaware)
(94) Professional Marketing Overseas Corporation (Delaware)
(95) Quality Industrial Plastics Co., Inc. (Delaware)
(96) Ronzoni Foods Corporation (New York)
(97) Sand Creek Cattle Company (Colorado)
(98) Shop-N Ride, Inc. (Colorado)
(99) Taylor Group, Inc. (Missouri)
(100) Thomas Garraway, Ltd. (Delaware)
(101) Vict. Th. Engwall & Co., Inc. (Delaware)
(102) Waterloo Malting Company, Inc. (Wisconsin)

C. 1. Parent corporation and address of principal office:

West Point-Pepperell, Inc. 400 West Tenth Street, West Point, Georgia 31833 (Georgia)

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices and states of incorporation:

Arrow Inter-America, Inc., 433 River Street, Troy, NY 12180 (Delaware)
Cluett Peabody & Co., Inc. 400 West Tenth Street, West Point, GA 31833 (Georgia)
Leroy, Inc., 9818 Reisterstown Rd., Owings Mills, MD 21117 (Maryland)
Shoreham Classics, Inc., 530 5th Ave., New York, NY 10036 (New York)
West Point Pepperell Trans. Co., 400 West Tenth Street, West Point, GA 31833 (Georgia)
Annedeen Hosiery Mill, Inc., 661 Plaid Street, Burlington, NC 27215 (North Carolina)
Cluett Apparel Outlet, Inc., 3522 175 Business Spur, Sault Ste. Marie, MI 49873 (Michigan)
Hometown Mfg. Co., Inc., Industrial Boulevard, Greensboro, GA 30642 (New York)
Old Mission Textiles, Inc., 400 West Tenth Street, West Point, GA 31833 (Georgia)
West Point Pepperell Stores, Inc., 400 West Tenth Street, West Point, GA 31833 (Georgia)

Noreta R. McGee,

Secretary.

[FR Doc. 88-3533 Filed 2-18-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31210]

East Portland Traction Co.; Acquisition and Operation Exemption; Portland Traction Co.

East Portland Traction Company (East Portland) has filed a notice of exemption to acquire and operate certain properties of Portland Traction Company (Portland). The involved properties consist of a portion of the Portland rail line from milepost 0.26 at East Portland in Multnomah County, OR, where interchange is made with Southern Pacific Transportation Company (Southern), to milepost 4.54 (East 17th Street) in the Milwaukie Industrial Park, at Milwaukie in Clackamas County, OR, where the line branches into several industrial spurs, plus 2.11 miles of secondary and yard trackage. Total trackage to be operated, then, is 6.39 miles. Portland is owned by Union Pacific Railroad Company and Southern. East Portland is a newly formed corporation organized for the sole purpose of acquiring and operating the involved portion of line. The remaining segment of Portland's line east of milepost 4.54 is slated for abandonment. East Portland will grant overhead trackage rights to Portland to reach the trackage east of milepost 4.54 until such time as that portion is abandoned. The transaction is expected to be consummated on or about February 15, 1988. Any comments must be filed with the Commission and served on Richard A. Samuels, President, East Portland Traction Company, 1952 SE. Ochoco Street, Milwaukie, OR 97222.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 5, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-3275 Filed 2-18-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31223]

Michigan Interstate Railway Co., Debtor; Continuance in Control Exemption; Temperance Yard Corp.

Michigan Interstate Railway Company, Debtor, d/b/a the Ann Arbor Railroad System (MI), a Class III railroad, has filed a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) regarding its continuance in control of the Temperance Yard Corporation (TYC), upon its acquisition and operation of the Temperance Yard facility from the Grand Truck Western Railroad Company (GTW).

TYC, a wholly-owned subsidiary of Old Post Office Corporation, Inc., which in turn is a wholly owned subsidiary of MI, has filed concurrently a notice of exemption in Finance Docket No. 31222, *Temperance Yard Corporation—Acquisition and Operation Exemption—Temperance Yard of Grand Trunk Western Railroad Company in Toledo, OH*, relating to TYC's purchase and operation of all GTW's real property, right-of-way, and improvements thereon, including buildings located within GTW's Temperance Yard facility in Toledo, including industry sidetracks into industries located adjacent to the yard property.

MI indicates that: (1) MI and TYC will have physically separated properties and will not connect with each other or any other railroads within their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect MI and TYC with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction is exempt from the prior

review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employee affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-3475 Filed 2-18-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31120]

Norfolk and Western Railway Co.; Trackage Rights; Southern Railway Co.; Corrected Notice of Exemption [1]

Southern Railway Company has agreed to grant local trackage rights to Norfolk and Western Railway Company, beginning at milepost F-31.1 and ending at milepost F-32.6, a total distance of 1.5 miles in South Boston, VA. The trackage rights became effective on October 1, 1987.

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.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-3476 Filed 2-18-88; 8:45 am]

BILLING CODE 7035-01-M

[1] The Notice was served and published October 14, 1987 (52 FR 38156). This corrects the inadvertent use of the term overhead trackage rights instead of local trackage rights in the first sentence of the first paragraph.

[Finance Docket No. 31217]

Rail-West, Inc.; Continuance in Control Exemption; Willamina and Grand Ronde Railway Co.

Rail-West, Inc., (RWI) a noncarrier in control of a carrier, Willamette Valley Railroad Company (WVRC), has filed a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) regarding its continuance in control of Willamina & Grand Ronde Railway Company (W&GRRC), upon its becoming a nonconnecting carrier.

W&GRRC, a wholly owned noncarrier subsidiary of RWI, has filed concurrently a notice of exemption in Finance Docket No. 31216, *Willamina & Grand Ronde Railway Company—Acquisition and Operation Exemption—Willamette Valley Railroad Company*, relating to W&GRRC's purchase and operation of a 5.2-mile line of railroad in Polk and Yamhill Counties, in OR. The line will be purchased from WVRC.

RWI indicates that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Rr.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 2, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-3276 Filed 2-18-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31222]

Temperance Yard Corp.; Acquisition and Operation Exemption; Temperance Yard of Grand Trunk Western Railroad Co. in Toledo, OH [1]

Temperance Yard Corporation (TYC) has filed a notice of exemption to acquire and operate Temperance Yard (Yard) in Toledo, OH from the Grand Trunk Western Railroad Company (GTW). TYC will also obtain incidental trackage rights over Toledo Terminal Railroad Company lines between the Yard and Hallett Tower in Ottawa Yard by means of an assignment from GTW to enable TYC to move cars to and from GTW's leased track. Any comments must be filed with the Commission and served on Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson & Hand, Suite 1000, 1660 L Street NW., Washington, DC 20036.

Michigan Interstate Railway Company, Debtor d/b/a the Ann Arbor Railroad System, which indirectly owns TYC, has filed concurrently a notice of exemption in Finance Docket No. 31223, *Michigan Interstate Railway Company, Debtor—Continuance in Control Exemption—Temperance Yard Corporation*, to continue its control of TYC.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-3477 Filed 2-18-88; 8:45 am]

BILLING CODE 7035-01-M

[1] TYC suggests that the Yard is a classification and industrial switching facility and its acquisition and operation are excepted from the Commission's jurisdiction by 49 U.S.C. 10907. It appears from the evidence on this record that the Yard track is used for through train movements and it effectively extends railroad service to new territory by allowing service to present and new industries that are located or will locate adjacent to the Yard. Under these circumstances, the exception of 49 U.S.C. 10907 would not then apply. *Nicholson v. I.C.C.*, 711 F.2d 364 (D.C. Cir., 1983), *cert. denied* 104 S. Ct. 739 (1984). However, publication of this notice should not be considered as determinative of whether section 10907 is applicable here. Instead, this notice is being published to complete the regulatory process should the proposed transaction be subject to our jurisdiction. If the proposed transaction indeed is not subject to our jurisdiction, then this publication would simply have been unnecessary.

[Docket No. AB-55 (Sub-No. 232X)]

CSX Transportation, Inc.; Abandonment Exemption; Sumter, Lake, and Polk Counties, FL

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 41.42-mile line of railroad between milepost SX–777.68 near Center Hill and milepost SX–819.1 near Auburndale, in Sumter, Lake, and Polk Counties, FL.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective March 20, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by February 29, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 10, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by February 24, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: February 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–3478 Filed 2–18–88; 8:45 am]

BILLING CODE 7035-01-M

[1] See Ex Parte No. 274 (Sub-No. 16) *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, ——I.C.C. 2d——, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[Finance Docket No. 31216]

Williamina and Grand Ronde Railway Co., Acquisition and Operation Exemption; Willamette Valley Railroad Co.

Willamina and Grand Ronde Railway Company (W&GRRC), a noncarrier, has filed a notice of exemption to acquire and operate 5.2 miles of rail line of Willamette Valley Railroad Company (WVRC), located in Polk and Yamhill Counties, OR. The line extends from milepost 0.0 near Willamina to milepost 5.2 near Fort Hill. The agreement for transfer of the lines between W&GRRC and WVRC will be consummated on or about February 1, 1988.

A transaction relating to the control of W&GRRC by Rail-West, Inc., is the subject of a notice of exemption filed concurrently in Finance Docket No. 31217, *Rail-West, Inc.—Continuance in Control Exemption—Willamina and Grand Ronde Railway Company*. Any comments must be filed with the Commission and served on:

David P. Root, Pres., Willamina and G.R. Ry. Co., 635 No. Walnut St., Independence, OR 97351

Fritz R. Kahn, Suite 1000, 1660 L Street NW., Washington, DC 20036

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 2, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–3277 Filed 2–18–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Cercla

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 2, 1988, a proposed Consent Decree in *United States v. American Sandblasting and Coating Company, Inc., et al., Civil No. 86–122B–CV–W–6 was lodged with the United States District Court for the Western District of Missouri.*

The Consent Decree was made and entered into by and between the United States and American Sandblasting and Coating Company, Inc. and its Statutory Trustee.

A civil action was brought under the Clean Air Act and the Missouri State Implementation Plan (SIP) alleging the emission of sand particulate matter from defendants' sandblasting operation in violation of the SIP and the Clean Air Act.

The Decree provides for a penalty of $5,000 and the construction of sliding walls to control emissions. In the event that operations are terminated, the failure to erect closure walls would require an additional penalty of $20,000.

The proposed Decree may be examined at the office of the United States Attorney for the Western District of Missouri, 540 U.S. Courthouse, 811 Grand Ave., Kansas City, Missouri 64106; at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th and Pennsylvania Avenue, Washington, DC 20530.

The Department of Justice will receive written comments relating to the proposed partial consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. American Sandblasting & Coating Company, Inc., et al., Civil No. 86–122B–CV–W–6, Department of Justice Reference No. 90–5–2–1–1015.*

In requesting a copy please enclose a check in the amount of $1.40 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-3597 Filed 2-18-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Final Judgment by Consent Pursuant to the Clean Air Act; Congoleum Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 1, 1988 a proposed Consent Decree in *United States v. Congoleum Corp.*, Civil Action No. 86-0028 was lodged with the United States District Court for the Eastern District of Pennsylvania.

The compliant filed by the United States alleged that Congoleum Corporation operated two rotogravure printing presses in Marcus Hook, Pennsylvania in violation of the standards for emission of volatile organic compounds (VOC) contained in the Pennsylvania State Implementation Plan, 25 Pa. Admin. Code § 129.67, promulgated pursuant to the Clean Air Act, 42 U.S.C. 7413. The Complaint sought civil penalties of up to $25,000 per day of violation. Congoleum Corporation has executed the Consent Decree agreeing to pay a total penalty of $300,000, to be shared equally between the United States and the Commonwealth of Pennsylvania, and to implement specific emission control measures which will bring the two rotogravure printing presses into compliance with the SIP requirements by December 31, 1987.

The Department of Justice will receive, for a period of thirty days from the date of this publication, comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Congoleum Corp.*, Civil Action No. 86-0028, DOJ Ref. No. 90-5-2-1-859. The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 3100 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice at the aforementioned address. In requesting a copy, please enclose a check in the amount of $4.00 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-3598 Filed 2-18-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Pasadena, TX, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on January 27, 1988, a proposed First Amended Consent Decree in *United States v. City of Pasadena, Texas, et al.*, Civil Action No. H-84-3896, was lodged with the United States District Court for the Southern District of Texas. This First Amended Consent Decree settles the United States' claims for stipulated penalties that have accrued under a consent decree entered into between the United States and the City of Pasadena on January 28, 1986. The original consent decree settled an action commenced by the filing of a complaint by the United States on September 24, 1984, under Section 309 of the Clean Water Act, 33 U.S.C. 1319. The complaint alleged, among other things, that the City had violated the Clean Water Act, the conditions and limitations of its National Pollutant Discharge Elimination System permits, and administrative orders issued by the Environmental Protection Agency ("EPA").

Under the terms of the proposed First Amended Consent Decree, the City agrees to complete the compliance program mandated by the original decree on a schedule slightly modified from that contained in the original decree. The dates for completing the tasks contained in the compliance program have all passed, and the City has met all of those deadlines. The First Amended Consent Decree also requires the City to pay a civil penalty of $155,000 in settlement of the City's liability for stipulated penalties under the original consent decree up to the date of lodging the First Amended Consent Decree.

The Department of Justice will receive comments relating to the proposed partial consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States v. City of Pasadena, Texas, et al.*, D.J. Ref. 90-5-1-1-2178A.

The proposed partial consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: B. Ralph Corley, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2129.

United States Attorney's Office

Contact: Robert Darden, Assistant United States Attorney, U.S. Courthouse and Federal Building, 515 Rusk, Houston, Texas 77002, (713) 229-2691.

Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed partial consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $1.50 payable to Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-3548 Filed 2-18-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications, on behalf of Bellcore and NEC Corporation, simultaneously with the Attorney General and the Federal

Trade Commission disclosing: (1) The identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

NEC is a Japanese corporation with its principal place of business at 33–1, Shiba 5-chome, Minato-Ku, Tokyo 108, Japan.

Bellcore and NEC entered into an agreement effective November 9, 1987 to collaborate in research on broadband technology and the establishment of standards for interfacing and cross-connecting signals in particular formats, such as the emerging SONET format.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 3596 Filed 2–18–88; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on January 12, 1988, disclosing a change in the membership of COS. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, and November 16, 1987, COS filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642) and December 18, 1987 (52 FR 48164), respectively.

On November 17, 1987, the Corporation for Open Systems International and the Standards Promotion and Application Group Services, SA (SPAG) entered into a written agreement to permit the test systems of COS and SPAG to be used as an integrated test system in both Europe and North America and to provide a framework for harmonization of future functional profiles, test methodology, and test systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–3616 Filed 2–18–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Branch Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-

Bacon and Related Acts" are listed by Volume, State, and page number(s)

Volume II:

Minnesota:
MN88–13 ..... pp.580k–580l.
MN88–14 ..... pp.580m–580n.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT88–1 ..... pp.62–63,66.
Delaware:
DE88–2 (January 8, 1988) ..... p.94.

Volume II:

Minnesota:
MN88–7 (January 8, 1988) ..... pp.550–551.
MN88–8 (January 8, 1988) ..... pp.569–570.
Missouri:
MO88–2 (January 2, 1988) ..... pp.603–604.
MO88–8 (January 8, 1988) ..... p.664.
MO88–11 (January 8, 1988) ... p.662.
New Mexico:
NM88–1 (January 8, 1988) ..... p.695.
Ohio:
OH88–2 (January 8, 1988) ..... pp.739–740,744.
OH88–29 (January 8, 1988) ... pp.820–821,823,
Texas: pp.828,831.
TX88–22 (January 8, 1988) .... pp.989–990.
Listing by Location (index) ..... pp.xlvi–xlvii.

Volume III:

California:
CA88–1 (January 8, 1988) ..... pp.40–42.
CA88–4 (January 8, 1988) ..... pp.70–71,74, pp.78,82, pp.84–85,87.
Hawaii:
HI88–1 (January 2, 1988) ..... p.132.
Idaho:
ID88–1 (January 8, 1988) ..... pp.142–144.
North Dakota:
ND88–2 (January 8, 1988) ..... pp.228–231.
Washington:
WA88–1 (January 8, 1988) .... pp.361–384.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 12th day of February 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–3482 Filed 2–18–88; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978; Permit Applications

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On January 7, 1988, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Two permits were issued to the following individual on February 9, 1988:

David F. Parmelee, University of Minnesota.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88–3549 Filed 2–18–88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment, submitted by application dated December 7, 1987, would revise the TS Sections 3/4.7.10, 6.4, and 6.9, and Bases section 3/4.7.10 to update the TS's to reflect current plant design, testing, and compensatory measures relating to the fire protection features and programs at the facility.

The Need for the Proposed Action

Certain of the changes proposed are administrative in nature and are needed for clarification or for reformatting while others are needed to reflect current plant design, or in some cases, represent more stringent requirements. This amendment would represent a step towards eventual conformance of the TS's with Generic Letter 86–10.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed amendment and has determined that there would be no increase in any radiological effluents offsite. The Commission has also determined that the probability of accidents has not been increased by the proposed changes and that post-accident radiological releases would not be greater than previously determined. Neither does the proposed amendment otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential non-radiological impacts, the proposed amendment involves a change in surveillance or reporting requirements. It does not affect non affect non-radiological plant effluents and has no other environmental impact. Therefore,

the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in a larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

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, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 10th day of February 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-3536 Filed 2-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-3 (50-261)]

Carolina Power and Light Company; Issuance of Amendment to Materials License SNM-2502

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Materials License No. SNM-2502 held by the Carolina Power and Light Company for the receipt and storage of spent fuel at the H.B. Robinson Independent Spent Fuel Storage Installation, located on the H.B. Robinson Steam Electric Plant Unit No. 2 site, Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical specifications making clerical changes and providing for drawing modifications which do not affect fuel receipt, handling, and storage safety.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated November 25, 1987, and (2) Amendment No. 2 to Materials License No. SNM-2502, and (3) the Commission's letter to the licensee dated February 11, 1988. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room at the Hartsville Memorial Library, 220 N. Fifth Street, Hartsville, South Carolina 29550.

Dated at Silver Spring, Maryland this 11th day of February 1988.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-3537 Filed 2-18-88; 8:45 am]

BILLING CODE 7590-01-M

Docket No. 50-440]

Cleveland Electric Illuminating Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58 issued to the Cleveland Electric Illuminating Company (CEI), the Duquesne Light Company, the Ohio Edison Company, the Pennsylvania Power Company, and the Toledo Edison Company (the licensees) for operation of the Perry Nuclear Power plant, Unit No. 1, located in Lake County, Ohio. The licensee's application for amendment was dated February 12, 1988.

The amendment would modify Technical Specification (TS) 3.4.3.1 to delete the requirement that the upper drywell air coolers condensate flow rate monitoring system be operable so long as the drywell floor drain monitoring system remains operable.

Current TS's require three combinations of reactor coolant system (RCS) leakage detection systems to be operable. These are:

1. Drywell atmosphere particulate or gaseous radioactivity monitoring system;

2. Drywell floor drain sump and equipment drain sump flow monitoring system; and

3. Upper drywell air coolers condensate flow rate monitoring system.

With only two of the above systems operable, operation may continue for 30 days, provided certain conditions are met, otherwise the plant will be in hot shutdown within 12 hours and cold shutdown within the next 24 hours.

The upper drywell cooler condensate flow monitoring system became inoperable on February 6, 1988. Without the requested change, the plant will be required to be shut down on March 7, 1988. As there is not sufffficient time to allow for a full 30 days notice of this proposed amendment in the **Federal Register**, the licensees have requested that the amendment be processed under exigent circumstances in accordance with 10 CFR 50.91(a)(6).

The NRC staff has reviewed the circumstances resulting in the submittal of the proposed TS changes. Failure to act would result in shutdown of the Perry Nuclear Power Plant on March 7, 1988. Further, the licensees could not have anticipated the need for the proposed change prior to the upper drywell air coolers condensate flow

monitoring system becoming inoperable on February 6, 1988. Accordingly, the NRC staff has determined that sufficient justification exists for consideration of these amendments on an emergency basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The COmmission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's proposed change and has proposed to determine that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would permit continued plant operation with the upper drywell air cooler condensate flow rate monitoring system inoperable, as long as the drywell floor drain flow monitoring system was operable. The drywell floor drain flow monitoring system is class 1E powered, designed to withstand OBE loads, and has a sensitivity of detection of one (1) gpm within 1 hour.

The licensees have stated that the total flow coming from the upper drywell coolers drain system is collected in the drywell floor drain sump and will be monitored by the drywell floor drain sump flow monitoring system whether the upper drywell cooler condensate flow monitoring system is operable or not. Therefore, any flow from the upper drywell coolers, which would be indicative of a possible steam leak, would still be monitored and quantified. Thus, there is no increase in the probability of an accident previously evaluated. Since these systems are used to detect minor drywell leakages, but not used to mitigate the results of any accidents this proposed change will not increase the consequences of any previously evaluated accident.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves the reactor coolant system leakage detection systems, a group of systems used to monitor for reactor coolant leaks within the drywell. Since these system are used for monitoring only, the change cannot create a new or different kind of accident from any previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not change allowable leakage rates or how those leakage rates will be classified. It attempts to take credit for a redundancy the licensees claim exists between the upper drywell cooler condensate drain flow monitoring system and the drywell floor drain sump flow monitoring system. As such, the proposed change does not involve a reduction in the margin of safety.

Therefore, based on these considerations and the three criteria given above, the Commission proposes to determine that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in an untimely and unnecessary shutdown of Unit 1 on March 7, 1988, with no enhancement of safety. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Any comments received by March 7, 1988 will be considered in making any final determination. Comments on the proposed determination may be submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m.–5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

For further details with respect to this action, see the application for amendment dated February 12, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 17th day of February, 1988.

For the Nuclear Regulatory Commission

Timothy G. Colburn,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–3717 Filed 2–18–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, March 2, 1988
Wednesday, March 9, 1988
Wednesday, March 23, 1988
Wednesday, March 30, 1988

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and

formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

Federal Prevailing Rate Advisory Committee.

February 11, 1988.

[FR Doc. 88–3489 Filed 2–18–88; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Meeting

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–483), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATE AND TIME: February 22, 1988—Business Meeting—beginning at 10:00 a.m.

ADDRESS: Room B318, Rayburn House Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsely, Commission Staff Manager, 1825 K Street NW., Suite 310, Washington, DC 20006, 202/634–6501.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to review and discuss health care financing, the report f the Commission and other matters. The business meeting is open to the public.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 88–3700 Filed 2–18–88; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25344; File No. SR–CBOE–88–01]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Issuance of Permits and Other Trading Rights

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 25, 1988 the Chicago Board Options Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The addition is italicized; there are no deletions.

Number of Memberships

Section 2.1.(a) Membership in the Exchange shall be made available by the Exchange at such times, under such terms and in such number as shall be proposed by the Board and approved by the affirmative vote of the majority of the members present in person or represented by proxy at a regular or special meeting of the membership. *Such an affirmative vote by the members shall be required for the issuance of all new membership, whether regular or special, whether having expanded or limited rights, whether designated memberships or permits or as a clasification using any other description, which grant the holders thereof the right to enter into securities transctions at the Exchange.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements is set forth below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for the Proposed Rule Change

The purpose of this proposed rule change is to amend the Exchange's constitution to require that an affirmative membership vote is necessary for the issuance of permits or other rights that grant holders access to the Exchange's trading floor for the purpose of effecting securities transactions. In the past, the Exchange has issued permits either when the membership approved them in an affirmative vote or when a quorum was not obtained. That approach gave the membership an opportunity to disapprove proposed permits.

Pursuant to section 3.4 of the Exchange's constitution, a Special Meeting of the membership was held at the request of more than 150 voting members. At this Special Meeting the membership approved the proposed amendment to the Exchange's constitution requiring that proposed permits be approved by an affirmative membership vote.

The statutory basis for the proposed rule change is section 6(b) of the Securities Exchange Act of 1934, in that it is not in conflict with the requirements for registration as a national securities exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competion

The proposed rule change will not impose any burden on competion.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organiation consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 11, 1988.

For the Commisison by the Divison of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

Dated: February 11, 1988.

[FR Doc. 88-3551 Filed 2-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25321, File No. SR-CBOE-87-50]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On October 23, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that would clarify existing index exercise advice procedures and require that such advice forms be submitted for all index option contracts that are to be exercised.

The proposed rule change was noticed in Securities Exchange Act Release No. 25209, 52 FR 49557 (December 31, 1987). The COBE amended its filing on January 13, 1988. No comments were received on the proposed rule change.

The CBOE contends that violations of Rule 11.1 have occurred due to the complexity of the rule regarding the calculation of the quantity for which an exercise advice was to be submitted and the requirements for time stamping exercise instruction memoranda and advice forms. [3] In this regard, the CBOE states that the purpose of the proposed rule change is to rewrite the rule to provide additional clarity to the Exchange's index advice procedures.

Under the proposed rule change, interpretation .02 of Rule 11.1 will require that an exercise instruction memoranda must be prepared and time stamped after the contracts to be exercised have been purchased. It can not be prepared, time stamped, or submitted prior to the purchase of the contracts.

Interpretation .03 of the proposed rule change contains the requirement that an index exercise advice must be submitted for all index option contracts that are to be exercised. The procedures for cancelling such advices and the requirements regarding time stamped are also explained. In addition, Interpretation. 03 provides that the failure of any member to follow the Exchange's index advice procedures may be referred to the Business Conduct Committee and result in the assessment of a fine, which may include but is not limited to a disgorgement of potential economic gain obtained or loss avoided by the subject exercise. Finally, on January 13, 1988, the Exchange submitted to the Commission a proposed amendment to Interpretation .03 of the proposed rule change. The proposed amendment provides that if the close of trading of such index options shall be at a time other than 3:15 p.m. (Chicago Time) the rule would permit exercise and submission of exercise notices until the designated close. The Exchange states that the purpose of the proposed amendment is to clarify further the intent of the existing and proposed rule that cash-settled index options may not be exercised and exercise advices may not be delivered after the close of trading.

Interpretation .04 of the proposed rule change reiterates that the exercise cut off time for index option contracts shall be 5:30 p.m. (Chicago Time) on the business day prior to expiration.

Interpretation .05, which is new, states that the existing Exchange interpretation concerning the cut-off time provision for exercise advice forms is subject to the authority of the Exchange to halt trading, open trading, and conduct rotations. Thus, if trading is halted, the proposed rule change provides that the Exchange may restrict exercises, and if trading is extended, (for example, for a closing trading rotation under Rule 6.2), exercise advice forms may be received during such a rotation.

The CBOE states that the statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it is designed to enforce just and equitable principles of trade.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[4] and the rules and regulations thereunder. More specifically, the Commission believes that the proposed rule change will clarify the Exchange's index advice procedures without changing the intent of the previous rule. Requiring the submission of exercise advice forms for all index options being exercised will eliminate confusion among member firms as to exactly when said notices must be submitted.[5] As a result, the CBOE expects that non-compliance with the provisions of Rule 11.1 because of confusion should be reduced or eliminated. At the same time, the new rule change will not increase substantially the burden on members to file notices, as members currently must prepare notices for exercises of less than 25 contracts. The proposed change will only require members to file them with the Exchange. In addition, the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4(1986).

[3] Under existing Rule 11.1, Interpretation and Policy. 02, member organizations intending to submit an exercise notice for 25 or more index option contracts in the same series on the same day on behalf of an individual customer, market maker or firm account must deliver an exercise advice form prescribed by CBOE at a place designated by CBOE by 3:15 p.m. Chicago Times. The calculation of the quantity to exercise involves aggregation accounts under common control, even though each of the aggregated individual accounts did not exercise more than 24 contracts. For members intending to exercise fewer than 25 index option contracts in the same series on the same business day on behalf of an individual customers, market maker or firm account, however, the exercise notices need only be received or prepared by the member organization by 3:15 p.m.

[4] 15 U.S.C. 78f (1982).

[5] In light of the heavy trading volume of option contracts on the S&P 100 (OEX), the new rule will simplify the Exchange's policy for the exercise of index option contracts, and more specifically options on OEX. In this regard, the rule change will eliminate the complexity of the rule regarding the calculation of the quantity for which an exercise advice is to be submitted, and instead require the submission of such advices for all exercises.

Commission has not received any comments objecting to the proposed change.

Moreover, although the exchange's policy consistently has been to prohibit submission of exercise notices before the options being exercised are purchased, the Commission agrees that it is logical for the Exchange to state expressly that submission of exercise notices before the index option positions being exercised are purchased is a violation of the rule. The Exchange will be able to detect incidents where exercise notices were submitted before the index options actually were purchased because all notices must be time stamped.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: February 5, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-3552 Filed 2-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25342; File No. SR-NYSE-88-01]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Reinstating the Effectiveness of the Exchange's "Procedures for Competing Specialist" to April 30, 1988

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change would reinstate the effectiveness of the Exchange's "Procedures for Competing Specialists", as described in File No. SR-NYSE-77-6 and Amendment No. 1 thereto, to April 30, 1988.[1] The last extension of the Commission's approval of the Exchange's "Procedures for Competing Specialists" expired on June 1, 1987.[2] The procedures provide Exchange members with a clear statement of the qualifications required to become a specialist and the procedures to be followed. The procedures are also designed to guide the Exchange's Market Performance Committee in its consideration and approval of such applications to compete.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this filing is to reinstate the effectiveness of the Exchange's "Procedures for Competing Specialists" to April 30, 1988. As described in more detail in File No. SR-NYSE-77-6, and Amendment No. 1 thereto, the "Procedures for Competing Specialists" reflect the Exchange's endorsement of a system of competition between Exchange specialists by reaffirming the ability of Exchange members to register and act as specialists in stocks which are also assigned to other specialists. The Commission, in its original order approving the "Procedures for Competing Specialists" pilot for a six-month period,[3] requested the Exchange to respond to nine specific requests relating to the application of specified Exchange rules and policies to competing specialists situations. The Commission also anticipated that rules and procedures other than those specified may require amendments as the Exchange monitors the activities of competing specialists during the six-month period of effectiveness.

The Exchange intends to request permanent approval of the "Procedures for Competing Specialists", and to respond to the Commission's nine specific requests for information concerning the application of specified Exchange rules and policies as to competing specialist situations prior to April 30, 1988.

The Exchange requests this reinstatement of the effectiveness of the Exchange's "Procedures for Competing Specialists" for two reasons:

(1) To finalize its response to the Commission's specific request for information based on experience gained monitoring the activities of competing specialists; and

(2) To evaluate the adequacy of certain guidelines, particularly Procedure number 11, in light of the experience gained as a result of the voluntary withdrawal of specialist organizations from a competitive situation.

(2) Basis Under the Act for Proposed Rule Change

The procedures and policies as to competing specialist situations will facilitate and enable the implementation of a system of competing specialists; and they are, therefore, based on section 11(b) of the Securities Exchange Act of 1934 which provides for Exchange rules to permit members to be registered as specialists; and section 11A(a)(1)(C)(ii) which states the Congress finds that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The procedures and policies as to competing specialist situations will facilitate the implementation of a system of competing specialists on the Exchange Floor; thus, they do not impose any burden on competition but rather provide for increased competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1986).

[1] These procedures were initially approved by the Commission for a six month period in Securities Exchange Act Release No. 23202, May 5, 1986, 51 FR 17424.

[2] Securities Exchange Act Release No. 24183, March 5, 1987, 52 FR 7721.

[3] *See* note 1, *supra.*

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-1 and should be submitted by March 11, 1988.

IV. Findings and Order Granting Accelerated Approval

As noted previously, the Commission initially approved the effectiveness of the NYSE's "Procedures for Competing Specialists" for a six month period.[4] The Commission subsequently approved an extension of these procedures until February 1, 1987,[5] to provide the Exchange additional time to gain experience monitoring the activities of competing specialists in order to facilitate the Exchange's review of the effectiveness of these procedures and the impact of other NYSE rules and procedures as they apply to competing specialists. The Commission approved a second extension, until June 1, 1987, of these procedures in order to provide the Exchange time to finalize its responses to questions originally posed by the Commission regarding the effectiveness of the NYSE's procedures for competing specialists, and to evaluate its procedures in light of the voluntary withdrawal of specialist organizations from a competitive situation. [6] The Commission's approval of the Exchange's procedures expired on June 1, 1987.

The NYSE now proposes that the Exchange's procedures for competing specialists be reinstated until April 30, 1988. The Exchange states in its filing that it needs additional time to finalize its responses to the Commission's original questions and to evaluate the adequacy of its procedures. The Exchange also states that it intends to request permanent approval of its procedures for competing specialists and that it will respond to the Commission's original request for information regarding the review of the effectiveness of these procedures.

The Commission believes it is appropriate to approve, until April 30, 1988, the period of effectiveness of the procedures for competing specialists. The Commission expects the NYSE to complete its responses to the questions originally posed by the Commission, along with the Exchange's evaluation of the procedures for voluntary withdrawal of specialists from a competitive situation, and submit them to the Commission by no later than March 15, 1988. For these reasons the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 11, 1988.

[FR Doc. 88-3553 Filed 2-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25323; File No. SR-NYSE-87-46]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Extension of the Effectiveness of NYSE Rule 103A from December 31, 1987 to March 31, 1988

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend the effectiveness of NYSE Rule 103A until March 31, 1988.

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stock(s) if the specialist has consistently received evaluations by Floor brokers on the quarterly Specialist Performance Evaluation Questionnaire ("SPEQ") which are below a level of acceptable performance as specified in the Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to extend the effectiveness of NYSE Rule 103A to March 31, 1988.

As described in more detail in File No. SR-NYSE-81-11, Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stocks if the specialist has consistently received evaluations by Floor brokers on the quarterly SPEQ which are below a level of acceptable performance as specified in the Rule.

As described in File No. SR-NYSE-85-14, and File No. SR-NYSE-86-19, the

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[4] See note 1, supra.

[5] Securities Exchange Act Release No. 23869, December 9, 1986, 51 FR 45417.

[6] See note 2, supra.

Exchange conducted a pilot program to test revisions to the current SPEQ and its associated processes.

The Market Performance Committee's Subcommittee on Performance Measures and Procedures (the "Subcommittee") has concluded its analysis of data produced by the revised SPEQ, and has developed additional measures and standards of specialist performance, such as DOT turnaround performance, which were incorporated into a revised Rule 103A. The Exchange filed for approval to implement a pilot program to test the revisions to Rule 103A developed by the Subcommittee in SR-NYSE-87-25 which is pending before the Commission.[1]

The Exchange is requesting this extension of current Rule 103A so that the Rule may remain in effect while the Commission considers the proposed revisions to the Rule previously filed. The Exchange continues to view the current Rule as providing a basis for ongoing performance improvement initiatives, such as counseling of specialist units by the Market Performance Committee, which has proven to be effective in improving both individual and overall specialist performance on the Exchange. The Exchange intends that the Market Performance Committee will continue its counseling procedures during the periods of the Commission's consideration of the Exchange's filing requesting approval to implement a pilot program to test the proposed revisions to Rule 103A. Upon Commission approval to implement a pilot program to test revisions to the Rule, the Exchange intends to notify its members that revised Rule 103A is effective and supersedes current Rule 103A.

(2) Basis Under the Act for Proposed Rule Change

The statutory basis for the proposed rule change in section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

[1] *See*, Securities Exchange Act Release No. 24919 (September 15, 1987) 52 FR 5821.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

Since Rule 103A has proven to be an effective means of improving specialist performance, thereby adding to the overall quality of the NYSE market, the Exchange requests that the Commission find good cause to approve the proposed rule change on an accelerated basis, and in any event prior to December 31, 1987, the date on which Rule 103A is scheduled to expire.

IV. Solicatation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to the file number in the caption above and should be submitted by March 11, 1988.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder, in that it will permit the current Rule 103A pilot program to remain in effect while the Commission considers for approval the NYSE's proposal to commence a two-year pilot program to test revisions to Rule 103A.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after date of publication of notice thereof in that it will enable Rule 103A to remain in effect on an uninterrupted basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved, effective, nunc pro tunc, December 31, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegeted authority.

Dated: February 5, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-3554 Filed 2-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25335; File No. PHLX 87-38]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Specialist Privileges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 24, 1987 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") pursuant to Rule 19b-4, hereby proposes a rule change that provides guidance to the PHLX Allocation, Evaluation and Securities Commitee in allocating securities in new trading segments and additional types of options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the purposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change.

In June, the Commission approved a rule change allowing the PHLX to offer European style option contracts on the Value Line index, upon which the PHLX already trades American style option contracts. In September, after Commission approval, the PHLX commenced evening hours trading of certain currency options contracts. Both of these initiatives have raised certain questions regarding the granting of specialist privileges in accordance with these initiatives.

After careful consideration, the Board of Governors has determined to establish a general policy of according existing specialist units an automatic right to trading privileges in products they trade in any extended trading segment touching and contiguous to their existing trading segment. In addition, the policy grants allocation priority to existing specialist for any non-contiguous trading segment or if additional options types are listed for allocation. The policy requires a written decision to be prepared by the Allocation, Evaluation and Securities Committee if the Committee does not allocate an existing specialist applicant the privileges in any of the latter two allocation areas.

The policy reflects the close nexus between European and American style options contracts on the same underlying instrument and the preference for continuity in the existing day specialist being the specialist in any extended or evening hours trading session.

The policy provides the flexibility for those existing specialists who cannot or do not wish to take on the added responsibility of trading additional types of options albeit similar to ones that they currently trade, or trading during an extended or evening trade session, the ability to not take on additional specialist responsibilities without jeopardizing their existing trading interest. The rule change would also ensure that the Allocation, Evaluation and Securities Committee retains flexibility in ensuring that allocations continue to be in the best interest of the Exchange while preserving existing specialists' interests that a valuable privilege is not deprived them without a full and fair written record of why such action was taken.[1]

The proposed rule change is consistent with section 6(b)(5) of the Exchange Act and particularly in that section it is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and promote the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendents, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 10, 1988.

[FR Doc. 88-3555 Filed 2-18-88; 8:45 am]

BILLING CODE 8010-01-M

[1] If an existing specialist or other party is aggrieved by a Committee allocation decision, it can appeal that decision to the PHLX Board. *See* PHLX By-Law Section 11-1.

[Release No. IC-16270; 812-7992]

Command Government Fund et al.; Application

February 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Command Government Fund, Command Money Fund, Command Tax-Free Fund, Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., Prudential-Bache California Municipal Fund, Prudential-Bache Equity Fund, Inc., Prudential-Bache Equity Income Fund, Prudential-Bache FlexiFund, Inc., Prudential-Bache Global Fund, Inc., Prudential-Bache Global Genesis Fund, Inc., Prudential-Bache Global Natural Resources Fund, Inc., Prudential-Bache GNMA Fund, Inc., Prudential-Bache Government Plus Fund, Inc., Prudential-Bache Government Plus Fund II, Prudential-Bache Government Securities Trust, Prudential-Bache Growth Opportunity Fund, Inc., Prudential-Bache High Yield Fund, Inc., Prudential-Bache IncomeVertible Plus Fund, Inc., Prudential-Bache MoneyMart Assets, Inc., Prudential-Bache Municipal Bond Fund, Prudential-Bache Municipal Series Fund, Prudential-Bache National Municipals Fund, Inc., Prudential-Bache Option Growth Fund, Inc., Prudential-

Bache Research Fund, Inc., Prudential-Bache Tax-Free Money Fund, Inc., Prudential-Bache Utility Fund, Inc. and Prudential Institutional Liquidity Portfolio, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from Section 32(a)(1).

Summary of Application: Applicants seek an order to permit them and any future funds having as adviser, administrator or manager The Prudential Insurance Company of America, Prudential Mutual Fund Management, Inc. or Prudential-Bache Securities Inc., to file with the SEC financial statements signed or certified by an independent accountant selected at a board of directors meeting held more than thirty but not more than ninety days before or after the beginning of their fiscal years.

Filing Date: The application was filed on November 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on March 7, 1988. Request a hearing in writing, giving the nature of your interest, the reason for 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 attorneys, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Paul H. Dykstra, Esq., Gardner, Carton & Douglas, Quaker Tower, 321 North Clark Street, Chicago, Illinois 60610–4795.

FOR FURTHER INFORMATION CONTACT: Sherry Hutchins Perkins, Staff Attorney (202) 272–3026 or Brion R. Thompson, Special Counsel (202) 272–3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Applicants are open-end management investment companies registered under the 1940 Act and incorporated under the laws of either Maryland or Massachusetts. Each Applicant is advised by the Prudential Insurance Company of America or Prudential-Bache Securities Inc.

2. Each of the Applicants is governed by a Board of Directors or Board of Trustees (hereinafter "Board" or "directors"), at least 40% of the members of which are not "interested persons" as defined in section 2(a)(19) of the 1940 Act. The membership and size of the Boards varies, although most directors are directors of more than one Applicant. Massachusetts Applicants are not required by state law to hold annual shareholders' meetings, and Maryland Applicants are no longer required to hold annual shareholders' meetings by a recent change in state law. Nevertheless, all Applicants hold regulatory scheduled board meetings four times a year. Applicants have various fiscal years.

3. In order to allow the directors to review annual financial statements as promptly as possible following the fiscal year-end, each Applicant typically holds quarterly Board meetings promptly after substantial completion of the annual audit, which is normally thirty or fifty days following the fiscal year-end. In-person Board meetings of the Applicants are held once a quarter, approximately ninety days apart. Because of the timing of the Board meetings that follow completion of the annual audits and the desire to have Board meetings relatively evenly spaced in order to be held approximately ninety days apart, it is not always practicable to have each of the Applicants' Board meetings within thirty days before or after the beginning of the Applicants' respective fiscal years as required by section 32(a)(1) of the 1940 Act.

4. Each Applicant proposes to select an independent accountant at a regularly scheduled Board meeting, held within ninety days before or after the beginning of its fiscal year. The application of section 32(a)(1) to the Applicants would require additional meetings of the Board for the sole purpose of selecting the independent accountants.

Applicants' Legal Analysis

1. Each Applicant submits that it would be desirable for it to consider the selection of its independent accountant at a regularly scheduled Board meeting during its fiscal year. Expanding the thirty day window under section 32(a)(1) to ninety days will permit a regular and systematic consideration of the independent accountant for complexes at a meaningful interval of time. This is preferable to incurring the expense of holding extra Board meetings solely for the purpose of selecting an independent accountant if the thirty day window is not expanded.

2. By permitting the scheduling of the selection of the independent accountant through expanding the window from thirty to ninety days, the SEC will allow a director review procedure to be put in place that will ensure that selection of the Applicants' independent accountants is considered on a systematic basis that will (i) provide detailed review by the Applicants' respective audit committees of the services furnished to the Applicants and (ii) result in enhanced consideration of all information developed by the respective audit committees. Moreover, the process will more accurately reflect the reality of doing business in complexes having a substantial number of investment companies, a situation which is markedly different from the time the 1940 Act was passed when investment companies primarily operated on an individual basis or in small investment company groups. Each Applicant further submits that the granting by the SEC of the relief requested will benefit its stockholders through cost savings.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–3611 Filed 2–18–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16269; 811–2925]

The M.E.S.B.I.C., Inc.; Investment Company Deregistration

February 12, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: The M.E.S.B.I.C., Inc.

Relevant 1940 Act Section: Order requesting deregistration under Section 8(f) and Rule 8f–1.

Summary of Application: Applicant seeks an order declaring that Applicant had ceased to be an investment company.

Filing Date: The application was filed on September 23, 1980. A letter was submitted as an exhibit to the application on December 24, 1987, by the Small Business Administration regarding Applicant's liquidation status.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this

application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 7, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 3830 West Flagler Street, Coral Gables, Florida 33134.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney, (202) 272–3026 or Brion R. Thompson, Special Counsel, (202) 272–3016, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant was organized as a Florida Corporation on July 5, 1977. On May 16, 1979, Applicant registered as a closed-end, diversified management investment company under the 1940 Act, however the initial public offering of its shares never commenced.

2. Applicant seeks deregistration under the 1940 Act by continuing to operate as a privately-owned, privately-managed venture capital corporation and by performing advisory services for other businesses only as an adjunct to its business. Applicant was licensed by the Small Business Administration ("SBA") under the authority of the Small Business Investment Act of 1958. As a Minority Enterprise Small Business Investment Company, Applicant was subsidized by the Federal government as an incentive to attract private investors to place their funds into businesses owned by disadvantaged Americans.

3. Applicant was the recipient of $2,100,000 in SBA funding, of which $600,000 was in the form of preferred stock. On the basis of regulatory violations engaged in by Applicant, the SBA initiated litigation and was ultimately awarded a judgment against Applicant by order dated October 5, 1983, pursuant to which the SBA was appointed receiver for Applicant. Applicant states that it also has been involved in other litigation involving routine debt collection.

4. The SBA recently informed the Commission by letter that Applicant currently is inactive and as a corporate entity was involuntarily dissovled under Florida State law on December 16, 1981. The SBA does not object to the deregistration of Applicant under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–3612 Filed 2–18–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 01/01–0344]

First New England Capital Limited Partnership; Application for License To Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by First New England Capital Limited Partnership (FNECLP), 255 Main Street, Hartford, Connecticut 06106, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The proposed officers, directors, and owners of FNECLP are as follows:

Name and address	Position	Percentage of ownership
FINEC Corp., 255 Main Street, Hartford, CT 06106	Corporate General Partner	12.5
The Bank Mart, 948 Main Street, Bridgeport, CT 06604	Limited Partner	25.0
Mechanics Savings Bank, One Financial Plaza, Hartford, CT 06103	Limited Partner	25.0
New England Savings Bank, 63 Eugene O'Neill Drive, New London, CT 06320	Limited Partner	12.5
New Haven Savings Bank, 195 Church Street, New Haven, CT 06510	Limited Partner	25.0
Officers and Directors of Corporate General Partner:		
George J. Ritter, 248 Whitney Avenue, Hartford, CT 06105	Chairman of the Board	
Richard C. Klaffky, 105 Knob Hill Road, Glastonbury, CT 06033	President Director	
Paul F. Romanelli, 265 Natchung Drive, Glastonbury, CT 06033	Treasurer Director	
John L. Ritter, 62 Garfield Road, West Hartford, CT 06107	Secretary, Vice President Director	
Thomas D. Lips, 105 Foote Road, South Glastonbury, CT 06073	Director	
Grant M. Wilson, 870 Westford Road, Carlisle, MA 01741	Director	
Stephen B. Hazard, 109 Huntingridge Drive, South Glastonbury, CT 06073	Director	
John M. Ramey, 9 Winding Lane, Westport, CT 06880	Director	
John H. Filer, 627 Fern Street, West Hartford, CT 06107	Chairman of Advisory Board	
Richard Suisman, 148 Kenyon, Hartford, CT 06105	Member of Advisory Board	

The Applicant will begin operations with a capitalization of $4,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business in the states of Connecticut, Massachusetts, and Rhode Island. Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published

in a newspaper of general circulation in Hartford, Connecticut.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment

[FR Doc. 88-3530 Filed 2-18-88; 8:45 am]

BILLING CODE 8025-01-M

Frontenac Capital Corp.; Application for Conflict of Interest Transaction

Notice is hereby given that Frontenac Capital Corporation (FCC), 208 South LaSalle Street, Chicago, Illinois 60604, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1988)) for an exemption from the provisions of the cited Regulations.

FCC proposes to invest $77,978 in PFM Holding Corp. (PFM), 180 N. Michigan Avenue, Chicago, Illinois 60601, which is the parent of Contemporary Books, Inc.

The proposed financing is brought within the purview of § 107.903(b)(1) of the Regulations because Frontenac Venture IV and the Illinois Venture Fund, associates of FCC, own in excess of 10 percent of PFM as a result of an earlier financing in which all three associated companies participated.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Chicago, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 10, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-3529 Filed 2-18-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1051]

Delegation of Authority No. 145-5; Foreign Assistance Act of 1961 and Certain Related Acts

By virtue of the authority vested in me by the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.*, in particular section 531(b) thereof, and Executive Order 12163 of September 29, 1979, 44 FR 56673, as amended, State Department Delegation of Authority No. 145 of February 4, 1980, 45 FR 11655, as amended, is hereby further amended as follows:

(a) Section I is amended by adding a new subsection (j) to read as follows:

(j) To the Assistant Secretary for Inter-American Affairs:

Those functions conferred upon the President by section 534(b)(3) of the Act, to be exercised in cooperation with the Administrator of the Agency for International Development within the International Development Cooperation Agency, together with authorities under other provisions in chapter 4 of part II or part III of the Act which may be necessary to implement such functions.

(b) Section 2 is amended by inserting after the first sentence the following:

The functions conferred on the President by section 534 of the Act, with the exception of those contained in subsection (b)(3), are hereby delegated to the Administrator of the Agency for International Development within the United States International Development Cooperation Agency, who shall exercise such functions in cooperation with the Assistant Secretary of State for Inter-American Affairs.

George P. Shultz,

Secretary of State.

January 22, 1988.

[FR Doc. 88-3550 Filed 2-18-88; 8:45 am]

BILLING CODE 4710-10-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on U.S. Negotiations with Costa Rica in the Context of the Accession of Costa Rica to the General Agreement on Tariffs and Trade (GATT)

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written public comments on Costa Rica's announced intention to accede to the GATT and on the bilateral negotiations that will accompany Costa Rican accession. Comments received will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Costa Rican accession and for the bilateral negotiations concerning the terms of its accession to the General Agreement.

1. Written Comments

The Chairman of the Trade Policy Staff Committee invites written public comments on the issues that will be addressed in the course of examination by the Contracting Parties to the GATT of the request by Costa Rica for accession and during bilateral negotiations in the context of Costa Rican accession to the GATT addressing the terms of its accession, including tariff concessions. The Committee is particularly interested in views on the impact on U.S. trade of Costa Rican accession to the GATT, on specific bilateral issues covered by the provisions of the General Agreement that should be addressed in the accession negotiations, on items of specific interest to U.S. exporters to Costa Rica and on the experiences of U.S. firms in trading with Costa Rica.

All comments will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Costa Rican accession and for bilateral negotiations concerning both the substantive terms of Costa Rican accession and the establishment of a GATT schedule of tariff concessions.

Persons wishing to submit written comments should provide a statement, in twenty copies, by noon, Monday, March 7, 1988, to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, Room 521, 600 17th Street, NW., Washington, DC 20506.

Submissions should indicate clearly any information for which business confidential treatment is requested and why such information should be accorded proprietary treatment. An nonconfidential summary must be included. In addition, submissions should indicate at the cover page that business proprietary information is included and each page subject to a request for proprietary treatment must be marked at the top: "BUSINESS CONFIDENTIAL."

2. Background

On June 2, 1987, Costa Rica informed the GATT Contracting Parties of its desire to accede to the General Agreement pursuant to Article XXXIII. A Working Party to examine this request, composed of interested GATT members, will meet for the first time on March 9, 1988. The Working Party will consider the application of Costa Rica

for full accession, examine its foreign trade regime, and submit to the GATT Council recommendations that will include a draft Protocol of Accession.

The Protocol of Accession that Costa Rica negotiates with the Contracting Parties will set forth the agreed terms of Costa Rica's GATT membership, including the relationship of its foreign trade regime to the Articles of the General Agreement. Aspects of a country's foreign trade regime that are normally examined in such negotiations include: licensing requirements, quantitative trade restrictions, subsidy practices, nontariff charges and taxes, customs valuation and classification procedures, and state trading practices and monopolies. In addition, as part of the accession process, Costa Rica will also conduct bilateral negotiations with interested GATT members to formulate a schedule of tariff concessions that will become part of its Protocol of Accession. These concessions will consist of Costa Rica's agreement to bind the tariffs applied to certain imports, restricting its ability to increase the tariff rate applied to those items without offering appropriate compensation.

The advantages to Costa Rica of GATT membership are several. As a GATT member, Costa Rica will enjoy a multilateral guarantee of unconditional most favored nation treatment that is more comprehensive than that available through bilateral agreements. The bindings on tariffs maintained in the tariff schedules of other GATT contracting parties will be extended to Costa Rican imports as obligations under the GATT, and Costa Rica will enjoy the injury test on duty free trade involved in U.S. countervailing duty investigations. Costa Rica will also have recourse to GATT procedures to protect itself from unfair or unreasonable trade actions by its trading partners. Through the dispute settlement provisions in the General Agreement, member countries are able to utilize a multilateral forum, largely independent of the political pressures influencing bilateral relationships, to resolve disputes. As an applicant for GATT contracting party status, Costa Rica will also have the opportunity to fully participate in all aspects of the Uruguay Round of Multilateral Negotiations.

In return for these benefits, Costa Rica will be expected to conduct its trade policies in accordance with the rules set out in the General Agreement and to establish its own schedule of tariff concessions.

3. Additional Information

Any questions with regard to the proposed accession of Costa Rica to the GATT should be directed either to Cecilia Leahy Klein, Director for GATT Affairs (telephone: 202–395–3063), or Melissa Coyle, Director, Caribbean Basin Affairs (telephone: 202–395–5190), Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

Donald Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 88–3535 Filed 2–18–88; 8:45 am]

BILLING CODE 3190–01–M

Investment Policy Advisory Committee Services Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Investment Policy Advisory Committee to be held Tuesday, February 23, 1988, from 9:00 a.m. to 12:00 p.m. and the Services Policy Advisory Committee to be held Thursday, February 25, 1988, from 2:00 p.m. to 5:00 p.m. in Washington, DC will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Inquiries may be directed to Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washinton, DC 20506.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88–3508 Filed 2–18–88; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

[Order 88–2–32; Dockets 45.101 and 45.102]

Applications of Milam International, Inc. d/b/a International Jet Airlines for Certificate Authority

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Milam International, Inc. d/b/a International Jet Airlines fit and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than February 29, 1988.

ADDRESSES: Objections and answers to objections should be filed in Dockets 45101 and 45102 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6420), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC. 20590, (202) 366–2340.

Dated: February 12, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–3564 Filed 2–18–88; 8:45 am]

BILLING CODE 4910–62–M

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 87–12–11 set the currently effective two-month SFFL applicable through January 31, 1988.

In establishing the SFFL for the two-month period beginning February 1, 1988, we have projected nonfuel costs based on the year ended September 30, 1987 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 88–2–30 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.1961
Latin America	1.1628
Pacific	1.5516
Canada	1.1392

For further information contact: Julien R. Schrenk (202) 366–2441. By the Department of Transportation.

Matthew V. Scoozza,

Assistant Secretary for Policy and International Affairs.

Date: February 11, 1988.

[FR Doc. 88–3488 Filed 2–18–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Railroad Administration

[FRA Waiver Petition Docket Number RSOR–87–3]

Petition for Relief; CSX Transportation, Inc.

In accordance with 49 211.9 and 211.41, notice is hereby given that CSX Transportation, Inc., has petitioned the Federal Railroad Administration (FRA) for permanent relief from the requirements of §§ 218.27(e) and 218.29 (a) and (b) of FRA's rules entitled Railroad Operating Practices.

Part 218, Subpart B, Blue Signal Protection of Workmen, requires protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment, whose activities require them to work on, under, or between such equipment and subject them to danger of personal injury posed by any movement of such equipment.

Sections 218.27(e) and 218.29 (a) and (b) require that a blue signal be attached to each controlling locomotive at a location where it is readily visible to the engineer or operator at the controls of that locomotive. CSX Transportation requests relief from these requirements for certain activities at its Huntington, West Virginia, yard, specifically those on the Erecting Bay Tracks number 3 through number 24 and the Finishing Tracks numbers 20, 22 and 23. CSX Transportation submits that these tracks are under the exclusive control of the Huntington locomotive shop's supervision and due to the nature of the major work to be performed, the locomotives are rendered inoperable. Hence, under these circumstances, it is their belief that the absence of such a blue signal device would not compromise safety.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Communications concerning this proceeding should identify the appropriate FRA Waiver Petition Docket Number RSOR–87–3 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before April 15, 1988, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on February 8, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–3565 Filed 2–18–88; 8:45 am]

BILLING CODE 4910–86–M

[FRA Waiver Petition Docket Number RSOR–87–2]

Petition for Relief; Florida Central Railroad

In accordance with 49 CFR § 211.9 and 211.41, notice is hereby given that the Florida Central Railroad (FCEN) has petitioned the Federal Railroad Administration (FRA) for permanent relief from the requirements of § 218.9 (Program of Operational Tests and Inspections; Recordkeeping) and 217.11 (Program of Instruction on Operating Rules).

Section 218.9 requires (i) that operational tests and inspections be periodically conducted to determine the extent of compliance with the carrier's code of operating rules, timetables and special instructions and (ii) that related records be kept. Section 217.11 requires that each railroad employee whose activities are governed by the railroad's operating rules be periodically instructed on the meaning and application of the railroad's operating rules, in accordance with a program filed with the Federal Railroad Administrator as prescribed.

The recently formed FCEN operates as a Class III railroad with sixty miles of track in the Orlando, Florida, area. The FCEN has submitted a basic book of rules and indicates that its train service employees have passed a written test and are performing to the satisfaction of its rules examiner who is employed to serve as both locomotive engineer and rules examiner. Due to the low number of manhours worked, the already fully qualified train service employees, and the monitoring provided by its rules examiner, the FCEN feels the documentation required by the regulation poses an unnecessary hardship and expense.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Communications concerning this proceeding should identify the appropriate FRA Waiver Petition Docket Number RSOR–87–3 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before April 15, 1988, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on February 8, 1988.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–3566 Filed 2–18–88; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket No. RSRM–87–3]

Petition for Relief, Florida Central Railroad

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Florida Central Railroad (FCEN) has petitioned the Federal Railroad Administration (FRA) for permanent relief from the requirements of 49 CFR Part 221, Rear End Marking Device—Passenger, Commuter and Freight Trains.

Part 221 prescribes minimum requirements governing highly visible marking devices for the trailing end of the rear car of the aforementioned trains when operated on a standard gauge main track which is part of the general railroad system of transportation.

The recently formed FCEN operates as a Class III railroad with sixty miles of track in the Orlando, Florida, area. The FCEN has requested this waiver premised on its belief that its operating rules already provide adequate protection by disallowing multiple train movements in any block unless the added train movement is authorized by the occupying crew.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Communications concerning this proceeding should refer to FRA Waiver Petition Docket Number RSRM–87–3 and be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before April 15, 1988, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on February 8, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–3567 Filed 2–18–88; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket Number RSRM–87–2]

Petition for Relief; Florida Midland Railroad

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Florida Midland Railroad (FMR) has petitioned the Federal Railroad Administration (FRA) for permanent relief from the requirements of 49 CFR Part 221, Rear End Marking Device—Passenger, Commuter and Freight Trains.

Part 221 prescribes minimum requirements governing highly visible marking devices for the trailing end of the rear car of the aforementioned trains when operated on a standard gauge main track which is part of the general railroad system of transportation.

The recently formed FMR operates as a Class III railroad with 39.5 miles of track in central Florida. The FMR has requested this waiver premised on its belief that rear end marking devices serve no useful purpose in a single-crew operation on the three separate industrial switching segments it operates.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

Communications concerning this proceeding should refer to FRA Waiver Petition Docket Number RSRM–87–2 and be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before April 15, 1988, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on February 8, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–3568 Filed 2–18–88; 8:45 am]

BILLING CODE 4910–06–M

Petition for Exemption or Waiver of Compliance; National Railroad Passenger Corp. et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before April 15, 1988 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

National Railroad Passenger Corporation; Waiver Petition Docket Number LI–88–1

The National Railroad Passenger Corporation (Amtrak) requests a waiver of compliance with certain provisions of the Federal Railroad Administration's Locomotive Safety Standards in order to lengthen its RTG II Turbotrains. The provisions involved, at 49 CFR 229.141, state that multiple unit (MU) locomotives operating in trains having a total empty weight of 600,000 pounds or less shall resist a static end load of 400,000 pounds without any permanent deformation in any member of the body structure, and that MU locomotives operating in trains have a total empty weight of 600,000 pounds or more must withstand a static end load of 800,000 pounds.

The original RTG Turbotrains were built by ANF Industries in France, and the MU locomotives on these trains successfully passed the static end load test for an empty train test weighing less than 600,000 pounds without permanent deformation to any member of the body structure; in fact, not merely 400,000 pounds but 525,000 pounds of force were applied without permanent deformation (§ 229.141(b)(1)).

Modifications to the MU locomotives performed by Amtrak to make the RTG II Turbotrain operable in elecrified territory consisted of repowering, adding third-rail electric propulsion equipment, and altering the exterior appearance,

resulting in a total empty weight for a five-car train of 578,000 pounds. These modifications did not affect the MU locomotive body structure.

Five-car RTG II Turbotrains went into revenue service in New York State in September 1987. Due to the extremely heavy passenger load in the Empire State Corridor, Amtrak wishes to use an additional car in a six-car train set with a total empty weight of 674,000 pounds. For the six-car train to comply with § 229.141(a)(1), the MU locomotive on each end must resist permanent deformation when 800,000 pounds of force are applied. Amtrak states that the MU locomotives will not withstand the additional force without permanent deformation and, for that reason, seeks relief from the regulation.

New Jersey Transit Rail Operations; Waiver Petition Docket Number SA–87–11

The New Jersey Transit Rail Operations (NJTRO) requests a waiver of compliance with certain provisions of the Federal Railroad Administration Safety Applicance Standards. The waiver pertains to 32 General Electric U–34–CH locomotives built in 1971 and 1973 and owned by NJTRO and one General Electric U–34–CH locomotive built in 1978, owned by Metro-North Commuter Railroad and operated and maintained by NJTRO. All the locomotives are essentially identical and are employed in the Hoboken Division passenger pool as well as occasional work train and yard service assignments. NJTRO petitions for a waiver of compliance with 49 CFR 231.29, which requires that road locomotives with corner stairway openings be equipped with uncoupling mechanisms that can be operated safely from the bottom stairway opening step as well as from ground level.

NJTRO states that the required uncoupling mechanism can not be applied to this group of locomotives because (1) they have an excessively high breast plate (vertical end plate) that precludes access from the bottom step, (2) the locomotives incorporate a lock-type uncoupling lever which can only be operated from the ground rather than the step, and (3) the head end power cables between the locomotive and passenger coach must be removed by an employee positioned on the ground before the uncoupling mechanism can be operated.

Missouri Pacific Railroad Company; Waiver Petition Docket Number LI–87–11

The Union Pacific Railroad Company requests on behalf of its affiliate the Missouri Pacific Railroad Company (MP) a waiver of compliance with certain provisions of the Federal Railroad Administration Locomotive Safety Standards. The MP is seeking relief from 49 CFR 229.123, which requires locomotive pilots to be a minimum of 3 inches and a maximum of 6 inches above the top of the rail, for all locomotives that are used or will be used in hump or switch service in Neff Yard, Kansas City, Missouri. Four locomotives, UP 4202, 4203, 4204 and 4205, are in service there at present.

The railroad states that the locomotives are often required to move in the yard from one side of the hump to the other and must pass over the car retarders. The height of the retarders above the rail and angle of the rail are such that the locomotive contacts them, damaging the retarders and bending the pilots. The MP wishes to raise the pilot height to 8¾ inches above the top of the rail, to prevent damage to the equipment.

Issued in Washington, DC, on February 10, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–3569 Filed 2–18–88; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. T87–01; Notice 2]

Insurer Reporting Requirements; Reports on Sections 612 and 614 of the Motor Vehicle Theft Law Enforcement Act of 1984

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

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of two reports. The first is the 1987 Report to Congress on Motor Vehicle Theft pursuant to section 614 of Title VI of the Motor Vehicle Information and Cost Savings Act (MVICSA, Pub. L. 93–513). The second is a companion report which provides supporting theft data received from the agency's first annual insurer reports (Section 612 of the MVICSA).

Section 614 requires that the Secretary of Transportation shall transmit to Congress two reports on motor vehicle theft (one in October 1987 and one in October 1990, respectively). The first of these reports is to provide information on the theft and recoveries of stolen motor vehicles; information on the extent to which motor vehicles stolen annually are dismantled to recover parts or are exported, and a description of the market for such stolen parts; and insurance premiums charged because these vehicles are likely candidates for theft. The report also is to include an assessment of whether the identification of parts on motor vehicles will likely have a beneficial impact on theft and recoveries, decrease the trafficking in stolen parts, and stem the export and import of vehicles or parts; and whether parts-marking is cost effective.

The Section 612 report provides information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

The agency published a notice in the **Federal Register** on August 5, 1987 (52 FR 29113) requesting comments on a report to Congress which included reporting requirements of both sections 612 and 614. These sections were addressed in one consolidated report. After considering all comments, the agency divided the report to Congress into two reports. The 1987 Report to Congress would cover section 614. A second informational report would cover section 612. A final version of the 1987 Report to Congress was forwarded to Congress as required by Title VI on December 24, 1987.

ADDRESS: Interested persons may obtain a copy of the section 612 informational report and the 1987 Report to Congress by contacting the Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday.) Requests should refer to Docket No. T87–01; Notice 2. The Section 612 report can be requested in two forms: A 50-page text or the 50-page text with 483 pages of tables which form the appendices. The requestor should specify whether the text, or the text with appendices are desired for the section 612 report. There is a charge for these documents.

FOR FURTHER INFORMATION CONTACT: Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4808).

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (The Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98–547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which requires the Secretary of Transportation to issue a theft

prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Theft Act also addressed several other actions to reduce motor vehicle theft, such as: Increased criminal penalties for those who traffic in stolen vehicles and parts; curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment; establishment of penalties for dismantling vehicles for the the purpose of trafficking in stolen parts; and development of ways to encourage decreases in premiums charged consumers for motor vehicle theft insurance.

Section 614 of the Theft Act directs the Secretary to submit two reports to the Congress on motor vehicle theft. The first report is required in October 1987—three yeas after enactment of Title VI in October 1984, and the second report is required in October 1990—five years after enactment of the theft prevention standard in October 1985. The first report is to contain the following information as specified in section 614(a)(A)–(E) of the Theft Act:

(A) Data on the number of trucks, multipurpose passenger vehicles (MPV's), and motorcycles stolen and recovered annually;

(B) Information on the extent to which trucks, MPV's, and motorcycles, stolen annually, are dismantled to recover parts or are exported;

(C) A description of the market for such parts;

(D) Information concerning the premiums charged by insurers of comprehensive insurance coverage for trucks, MPV's and motorcycles, including any increase in such premiums charged because any such motor vehicle is a likely candidate for theft; and

(E) An assessment of whether the identification of parts of trucks, MPV's, and motorcycles is likely to: (i) Have a beneficial impact in decreasing the rate of theft of such vehicles; (ii) improve the recovery rate of such vehicles; (iii) decrease the trafficking in stolen parts of such vehicles; (iv) stem export and import of such stolen vehicles or parts; or (v) have benefits which exceed the costs of such identification.

The first report to Congress also should include a recommendation on whether and to what extent, the identification of trucks, MPV's, and motorcycles should be required by statute (Section 614(a)(3)).

In addition to the requirements set forth for the first report to Congress, the second report, due in October 1990, is required to include an evaluation of the effectiveness of the Federal Motor Vehicle Theft Prevention Standard (49 CFR Part 541) and an assessment of whether the theft standard should be extended to other classes of motor vehicles.

Title VI was designed to impede the theft of motor vehicles by creating a theft prevention standard which requires manufacturers of designated high-theft car lines to mark or inscribe them with a vehicle identification number. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

The first report to Congress on motor vehicle theft includes preliminary data received from the insurer reporting requirements of section 612 of Title VI and information received from various law enforcement groups. The report focuses its assessment of theft information in the following areas: Theft and recovery of motor vehicles, comprehensive insurance coverage related to theft, and actions taken by insurers to reduce theft. All areas requested by Congress are addressed. The time frame of the data covered by the report precedes the MY 1987 effective date of the theft prevention standard. Therefore, this report presents the status of motor vehicle theft as depicted by the insurance industry and rental and leasing companies before implementation of the requirements of the theft prevention standard.

Section 612 of the Theft Act requires subject insurers or designated agents to report annually to the agency on theft and recovery of vehicles; rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts. The subject insurance companies received more than 57 percent of the total premiums paid for all forms of motor vehicle insurance issued within the United States for 1984. Rental and leasing companies also are requried to provide annual theft reports to the agency.

The annual insurer reports provided under section 612 of the Theft Act are intended to aid in implementing the Theft Act and in fulfilling the Department's requirements to report to Congress on the effects of the Act. The first insurer reports were due to the agency on January 31, 1987. A detailed report on the first annual insurer reports, referred to as the section 612 report on motor vehicle theft, was prepared by the agency. The report includes theft and recovery data by vehicle type, make, line, and model which are tabulated by insurance company, state, and rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies is also included. The section 612 report provides the supporting data for the 1987 Report to Congress on Motor Vehicle Theft.

Issued on February 16, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–3615 Filed 2–18–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 12, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0367

Form Number: Form 4804 and Form 4802

Type of Review: Revision

Title: Transmittal of Information Returns Reported on Magnetic Media—Form 4804; Transmittal for Multiple Magnetic Media Reporting—Form 4802 (Continuation of Form 4804)

Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments of taxable income must file reports of this income with IRS. Forms 4804 and 4802 are used to provide a signature and the balancing totals for magnetic media filers of information returns.

Respondents: State or local governments; Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations

Estimated Burden: 43,211 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive

Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-3601 Filed 2-18-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 12, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511 Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1008
Form Numer: 8582
Type of Review: Resubmission
Title: Passive Activity Loss Limitations
Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. The worksheets 1 and 2 in the instructions are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheets 3 through 6 are used to allocate the loss allowed back to individual activities.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Burden: 17,823,191 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-3602 Filed 2-18-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 12, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0429
Form Number: 4506
Type of Review: Revision
Title: Internal Revenue Practice; Statement of Procedural Rules
Description: The public submits FOI requests in writing, signed by requester; reasonably describes records; agrees to pay fees for search and copies or states up to what amount will be paid; states whether copies are desired or inspection of the records is preferred.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Burden: 217,023
OMB Number: 1545-0957
Form Number: 8508
Type of Review: Revision
Title: Request for Waiver From Filing Information Returns on Magnetic Media
Description: Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.
Respondents: State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Burden: 15,000 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-3603 Filed 2-18-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 33
Friday, February 19, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, February 2, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4) and (c)(9)(B)).

Dated: February 3, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-3621 Filed 2-17-88; 10:03 am]

BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION

Board of Directors

TIME AND DATE: An open meeting will commence at 5:00 p.m. on Friday, February 26, 1988, and continue until all official business is completed.

PLACE: The Quality Inn Capitol Hill Hotel, Federal Ballroom, 415 New Jersey Avenue, NW., Washington, DC 20001.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Board of Directors Meeting (Open)

1. Approval of Agenda
2. Approval of Minutes
   —Meeting of January 29 1988.
3. Consideration of Proposed Revisions to Part 1607, Governing Bodies

Discussion and Public Comment follow each item.

CONTACT PERSONS FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: February 17, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-3706 Filed 2-17-88; 3:48 pm]

BILLING CODE 7050-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 22, 1988:

A closed meeting will be held on Wednesday, February 24, 1988, at 2:30 p.m. An open meeting will be held on Thursday, February 25, 1988, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, February 24, 1988, at 2:30 p.m., will be:

Formal orders of investigation.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Regulatory matter bearing enforcement implications.

Institution of injunctive action.

Consideration of *amici* participation.

The subject matter of the open meeting scheduled for Thursday, February 25, 1988, at 10:00 a.m., will be:

Consideration of whether to issue a Memorandum Opinion and Order with regard to WPL Holdings, Inc., a Wisconsin corporation which has been formed to become a public-utility holding company by means of the proposed acquisition of all of the common stock of Wisconsin Power and Light Company, a Wisconsin electric and gas utility company and an exempt holding company under the Public Utility Holding Company Act of 1935. For further information, please contact William Weeden at (202) 272-7683.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272-2014.

Jonathan G. Katz,

Secretary.

February 16, 1988.

[FR Doc. 88-3702 Filed 2-17-88; 3:39 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 33
Friday, February 19, 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.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Correction

In notice document 88-3339 appearing on page 4497 in the issue of Tuesday, February 16, 1988, make the following corrections:

1. On page 4497, in the first column, in the second line, "February 21, 1988" should read "February 23, 1988".

2. In the first column, in the file line at the end of the document, "83-3339" should read "88-3339".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 884 and 892

[Docket No. 78N-2742]

Radiology Devices; General Provisions and Classifications of 59 Devices

Correction

In rule document 88-857 beginning on page 1554 in the issue of Wednesday, January 20, 1988, make the following corrections:

1. On page 1554, in the third column, in the first complete paragraph, in the eighth line, "and" should read "made".

2. On page 1561, in the third column, in the second complete paragraph, in the sixth line, "for" should read "from".

3. On page 1563, in the third column, in the first complete paragraph, in the 21st line, "along" should read "alone".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864 and 868

[Docket No. 87N-0005]

Medical Devices; Proposed Exemptions From Premarket Notification for Certain Classified Devices

Correction

In proposed rule document 88-858 beginning on page 1574 in the issue of Wednesday, January 20, 1988, make the following corrections:

§ 864.2240 [Corrected]

1. On page 1577, in the third column, in § 864.2240(b), in the sixth line, "exempted" should read "exempt".

§ 864.3600 [Corrected]

2. On page 1578, in the first column, in § 864.3600(b), in the first and second lines, "device is" should read "devices are".

§ 864.4400 [Corrected]

3. On the same page, in the second column, in § 864.4400(b), in the first and second lines, "device is" should read "devices are".

§ 868.6175 [Corrected]

4. On page 1582, in the first column, in § 868.6175(b), in the seventh line, "§ 868.180" should read "§ 820.180".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 80D-0097 and 82D-0049]

Defect Action Levels for the Adulteration of Wheat Flour and Macaroni Products by Insects

Correction

In notice document 88-1011 beginning on page 1520 in the issue of Wednesday, January 20, 1988, make the following correction:

On page 1520, in the third column, in the third complete paragraph, the last line should read "January 20, 1988.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-129-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

Correction

In proposed rule document 88-2191 beginning on page 3047 in the issue of Wednesday, February 3, 1988, make the following correction:

§ 39.132 [Corrected]

On page 3048, in the first column, in § 39.132, under Fokker B.V., in the fifth line, "12 hours" should read "12 months".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Miscellaneous Technical Amendments to Bank Secrecy Act Regulations

Correction

In rule document 88-3041 beginning on page 4137 in the issue of Friday, February 12, 1988, make the following correction:

On page 4137, in the third column, under **EFFECTIVE DATE:**, the first sentence should read: "Amendments #1, #3, #4, #5, #6, #7, #8 and #9 are effective as of February 12, 1988".

BILLING CODE 1505-01-D

Federal Register

Friday
February 19, 1988

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Amendments to Test Methods and Procedures; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-32839]

Standards of Performance for New Stationary Sources; Amendments to Test Methods and Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to clarify the test methods and procedures section of each subpart by consolidating into one paragraph all test methods and procedures necessary to determine compliance with the applicable standards or related monitoring requirements. In the present regulations, procedures for conducting a measurement in the performance test required in § 60.8 have been written in segments and placed in several paragraphs. Sorting out all the various requirements has involved some effort. In addition, some procedures are not clearly delineated.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATE: *Comments.* Comments must be received on or before May 4, 1988.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 11, 1988, a public hearing will be held on April 4, 1988 beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 11, 1988.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–87–15, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Roger T. Shigehara, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

Docket. Docket No. A–87–15, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

The test methods and procedures section of each subpart is being revised primarily to clarify the section by consolidating all procedures that pertain to one measurement (e.g., particulate matter concentrations) under one paragraph, to delete repetitions of methods already referenced within a cited method (e.g., Methods 1, 2, and 3 are referenced by Method 5 and therefore are not listed again), and to separate alternative methods from reference methods. In addition, other changes are being made for consistency from one subpart or one section to another, procedures that were overlooked in the promulgation for requirements already in the subparts are being included, and technical errors are being corrected. Major amendments besides clarifications are listed below:

1. *Section 60.2:* Since the standards are based on reference methods, the applicable subpart rather than Appendix A is being used to define the reference methods. The title of Appendix A is being revised from "Reference Methods" to "Test Methods" in another rulemaking action to allow the inclusion of alternative methods in Appendix A.

2. *Section 60.8 (b) and (e):* Certain phrases or requirements are repeated in each subpart. Since they are generally applicable to all subparts, these phrases and requirements are being incorporated into the General Provisions.

3. *Sections 60.45(c)(1) and 60.47a(i)(1):* Methods 6A and 6B are being withdrawn to be consistent with newly revised § 60.46(b)(1). These methods should not be used for emission performance tests and continuous monitor relative accuracy tests.

4. *Section 60.44a:* Lignite fuel subject to the 340 ng/J standard is being added to the equation and a clarifying footnote is being added to the table.

5. *Section 60.54:* A procedure for Method 3 for a facility without a wet scrubber is being added. The grab-sampling technique of Method 3 is also being added.

6. *Sections 60.93, 60.123, and 60.133:* Sampling rate is being changed to sample volume.

7. *Sections 60.165, 60.175, 60.185:* The requirement for compressing the recorder scale during the performance evaluation test is being deleted.

8. *Sections 60.166, 60.176 and 60.186:* The specification for monitoring system drift not to exceed 2 percent of span value which is in subpart P and overlooked in subparts Q and R are being added. In addition, dry basis measurements of the SO_2 concentration is being specified.

Subparts Db, J, EE, MM, QQ, SS, TT, WW, and FFF are not being amended at this time. It has been determined that subparts, K, Ka, HHH, JJJ, and KKK require no amendments.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply clarify and in some instances add a procedure associated with emission measurement or process monitoring requirements that would apply irrespective of this rulemaking.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [Section 307(d)(7)(A)].

C. Office of Management and Budget Reviews

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices, and there will be no 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 rulemaking was not submitted to the Office of Management and Budget (OMB) for review because it amends a regulation already in place and does not contain cost implications nor impose additional burdens.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no changes are being made to testing requirements.

List of Subjects in 40 CFR Part 60

Air pollution control, Electric utility steam generating units, Gas turbines, Incinerators, Incorporation by reference, Intergovernmental relations, Phosphate fertilizer, Portland cement plants, Primary copper smelters, Primary lead smelters, Primary zinc smelters, Reporting and recordkeeping requirements, and Wool fiberglass insulation.

Date: January 28, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

It is proposed that 40 CFR Part 60 be amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

§ 60.2 [Amended]

2. Section 60.2 is amended by revising the definition of "Reference method" to read, "'Reference method' means any method of sampling and analyzing for an air pollutant as specified in the applicable subpart."

§ 60.8 [Amended]

3. In § 60.8(b), the first sentence is amended by removing the word "or" before the number "(4)", revising the period at the end of the sentence to a comma, and by adding the following phrase, to read as follows:

(b) * * * or (5) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

4. Section 60.8(e)(1) is amended by adding the following sentence to the end of the paragraph to read as follows:

(e) * * *

(1) * * * This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow during performance tests.

§ 60.45 [Amended]

5. Section 60.45(c)(1) is revised to read as follows:

(c) * * *

(1) Methods 3, 6, and 7, as applicable, shall be used for the performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems. Acceptable alternative methods for Methods 3, 6, and Method 7 are given in § 60.46(d).

6. In § 60.45(f)(3), the words "paragraph (d)" are revised to read "paragraph (a)".

7. Section 60.46 is revised to read as follows:

§ 60.46 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (d) of this section.

(b) The owner or operator shall determine compliance with the particulate matter, SO_2 and NO_x standards in §§ 60.42, 60.43, and 60.44 as follows:

(1) The emission rate (E) of particulate matter, SO_2, or NO_x shall be computed for each run using the following equation:

$$E = CF(20.9)/(20.9 - \%O_2)$$

where:

E = emission rate of pollutant, ng/J (lb/million Btu).

C = concentration of pollutant, ng/dscm (lb/dscf).

$\%O_2$ = oxygen concentration, percent dry basis.

F = factor as determined in § 60.45(f) (4), (5), or (6).

(2) Method 5 shall be used to determine the particulate matter concentration (C) at affected facilities without wet flue-gas-desulfurization (FGD) systems and Method 5B shall be used to determine the particulate matter concentration (C) after FGD systems. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). The probe and filter holder heating systems in the sampling train may be set to provide a gas temperature no greater than 160±14 °C (320±25 °F). The emission rate correction factor, integrated or grab sampling and analysis procedure of Method 3 shall be used to determine the O_2 concentration ($\%O_2$). The O_2 sample shall be obtained simultaneously with, and at the same traverse points as, the particulate sample. If the grab sampling procedure is used, the O_2 concentration for the run shall be the arithmetic mean of all the individual O_2 sample concentrations at each traverse point. If the particulate run has more than 12 traverse points, the O_2 traverse points may be reduced to 12 provided that Method 1 is used to locate the 12 O_2 traverse points.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(4) Method 6 shall be used to determine the SO_2 concentration. The sampling site shall be the same as that selected for the particulate sample. The sampling location in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). The sampling time and sample volume for each sample run shall be at least 20 minutes and 0.020 dscm (0.71 dscf). Two samples shall be taken during a 1-hour period, with each sample taken within a 30-minute interval. The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the O_2 concentration ($\%O_2$). The O_2 sample shall be taken simultaneously with, and at the same

point as, the SO_2 sample. The SO_2 emission rate shall be computed for each pair of SO_2 and O_2 samples. The SO_2 emission rate (E) for each run shall be the arithmetic mean of the results of the two pairs of samples.

(5) Method 7 shall be used to determine the NO_x concentration. The sampling site and location shall be the same as for the SO_2 sample. Each run shall consist of four grab samples, with each sample taken at about 15-minute intervals. For each NO_x sample, the emission rate correction factor, grab sampling and analysis procedure of Method 3 shall be used to determine the SO_2 concentration ($\%O_2$). The sample shall be taken simultaneously with, and at the same point as, the NO_x sample. The NO_x emission rate shall be computed for each pair of NO_x emission rate (E) for each run shall be the arithmetic mean of the results of the four pairs of samples.

(c) When combinations of fossil fuels or fossil fuel and wood residue are fired, the owner or operator [in order to compute the prorated standard as shown in §§ 60.43(b) and 60.44(b)] shall determine the percentage (w, x, y, or z) of the total heat input derived from each type of fuel as follows:

(1) The heat input rate of each fuel shall be determined by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned.

(2) ASTM Methods D 2015–77 (solid fuels), D 240–76 (liquid fuels), or D 1826–77 (gaseous fuels) (incorporated by reference—see § 60.17) shall be used to determine the gross calorific values of the fuels. The method used to determine the calorific value of wood residue must be approved by the Administrator.

(3) Suitable methods shall be used to determine the rate of each fuel burned during each test period, and a material balance over the steam generating system shall be used to confirm the rate.

(d) The owner or operator may use the following as alternatives to the reference methods and procedures in this section or in other sections as specified:

(1) For Method 5 or 5B, Method 17 may be used at facilities with or without wet FGD systems if the stack gas temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of Sections 2.1 and 2.3 of Method 5B may be used with Method 17 only if it is used after wet FGD systems. Method 17 shall not be used after wet FGD systems if the effluent gas is saturated or laden with water droplets.

(2) Particulate matter and SO_2 may be determined simultaneously with the Method 5 train provided that the following changes are made:

(i) The filter and impinger apparatus in Sections 2.1.5 and 2.1.6 of Method 8 is used in place of the condenser (Section 2.1.7) of Method 5.

(ii) All applicable procedures in Method 8 for the determination of SO_2 (including moisture) are used.

(3) For Method 6, Method 6C may be used.

(4) For Method 7, Method 7A, 7C, 7D, or 7E may be used. If Method 7C, 7D, or 7E is used, the sampling time for each run shall be at least 1 hour and the integrated sampling approach shall be used to determine the O_2 concentration ($\%O_2$) for the emission rate correction factor.

(5) For Method 3, Method 3A may be used.

§ 60.43a [Amended]

8. Section 60.43a(h)(1) is amended by revising both equations to read as follows:

$E_s = (340x + 520y)/100$ and
$\%P_s = 10$

9. Section 60.43a(h)(2) is amended by:

a. Revising both equations to read as follows:

$E_s = (340x + 520y)/100$ and
$\%P_s = (10x + 30y)/100$

b. Revising the first term in the nomenclature list to read "E_s".

c. Revising the second term in the nomenclature list to read as follows:

$\%P_s$ is the percentage of potential sulfur dioxide emission allowed.

§ 60.44a [Amended]

10. Section 60.44a(a)(1), NO_x emission limits table, is amended by:

a. Adding a superscript "2" to the end of the fifth item under "Fuel type" to read "furnace [2]".

b. Revising the sixth item under "Fuel type" to read as follows:

Any fuel containing more than 25%, by weight, lignite not subject to the 340 ng/J heat input emission limit [2].

c. Adding a footnote "2" at the end of the table to read as follows:

[2] Any fuel containing less than 25%, by weight, lignite is not prorated but its percentage is added to the percentage of the predominant fuel.

11. Section 60.44a(c) is amended by:

a. Revising the equation to read as follows:

$E_n = [86w + 130x + 210y + 260z + 340v]/100$

b. Revising the first term in the nomenclature list to read "E_n".

c. Moving the word "and" at the end of the term "y" to the end of the term "z" and adding the definition of the term "v" to the end of the nomenclature list to read as follows:

v is the percentage of total heat input delivered from the combustion of fuels subject to the 340 ng/J heat input standard.

§ 60.46a [Amended]

12. In § 60.46a(d)(3), the paragraph reference "(i)" is revised to read "(h)".

13. In § 60.46a(h), the phrase "sections 6.0 and 7.0 of Reference Method 19 (Appendix A)" is revised to read: "Section 7 of Method 19."

14. Section 60.47a is amended by revising paragraphs (f), (h), (i)(1), and (i)(2), and by adding a new paragraph (j) to read as follows:

§ 60.47a Emission monitoring.

* * * * *

(f) The owner or operator shall obtain emission data for at least 18 hours in at least 22 out of 30 successive boiler operating days. If this minimum data requirement cannot be met with a continuous monitoring system, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

* * * * *

(h) When it becomes necessary to supplement continuous monitoring system data to meet the minimum data requirements in paragraph (f) of this section, the owner or operator shall use the reference methods and procedures as specified in this paragraph. Acceptable alternative methods and procedures are given in paragraph (j) of this section.

(1) Method 6 shall be used to determine the SO_2 concentration at the same location as the SO_2 monitor. Samples shall be taken at 60-minute intervals. The sampling time and sample volume for each sample shall be at least 20 minutes and 0.020 dscm (0.71 dscf). Each sample represents a 1-hour average.

(2) Method 7 shall be used to determine the NO_x concentration at the same location as the NO_x monitor. Samples shall be taken at 30-minute intervals. The arithmetic average of two consecutive samples represents a 1-hour average.

(3) The emission rate correction factor, integrated bag sampling and analysis procedure of Method 3 shall be used to determine the O_2 or CO_2 concentration at the same location as the O_2 or CO_2 monitor. Samples shall be taken for at least 30 minutes in each hour.

Each sample represents a 1-hour average.

(4) The procedures in Method 19 shall be used to compute each 1-hour average concentration in ng/J (lb/million Btu) heat input.

(i) The owner or operator shall use methods and procedures in this paragraph to conduct monitoring system performance evaluations under § 60.13(c) and calibration checks under § 60.13(d). Acceptable alternative methods and procedures are given in paragraph (j) of this section.

(1) Methods 3, 6, and 7, as applicable, shall be used to determine the O_2, SO_2, and NO_x concentrations.

(2) SO_2 or NO_x (NO), as applicable, shall be used for preparing the calibration gas mixtures (in N_2, as applicable) under Performance Specification 2 of Appendix B of this part.

* * * * *

(j) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 6, Method 6A or 6B (whenever Methods 6 and 3 data are used) or 6C may be used. Each Method 6B sample obtained over 24 hours represents 24 1-hour averages. Methods 6A and 6B shall not be used for purposes of paragraph (i) of this section.

(2) For Method 7, Method 7A, 7C, 7D, or 7E may be used. If Method 7C, 7D, or 7E is used, the sampling time for each run shall be 1 hour.

(3) For Method 3, Method 3A may be used if the sampling time is 1 hour.

15. Section 60.48a is amended by redesignating paragraph (d) as paragraph (f), by adding a new paragraph (d), and by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 60.48a Compliance determination test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the methods in Appendix A of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this section for SO_2 and NO_x. Acceptable alternative methods are given in paragraph (e) of this section.

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.42a as follows:

(1) The dry basis F-factor (O_2) procedures in Method 19 shall be used to compute the emission rate of particulate matter.

(2) For the particulate matter concentration, Method 5 shall be used at affected facilities without wet FGD systems and Method 5B shall be used after wet FGD systems. The sampling time and sample volume for each run shall be at least 120 minutes and 1.70 dscm (60 dscf). The probe and filter holder heating system in the sampling train may be set to provide an average gas temperature of no greater than 160±14 °C (320±25 °F). For each particulate run, the emission rate correction factor, integrated or grab sampling and analysis procedures of Method 3 shall be used to determine the O_2 concentration. The O_2 sample shall be obtained simultaneously with, and at the same traverse points as, the particulate run. If the particulate run has more than 12 traverse points, the O_2 or traverse points may be reduced to 12 provided that Method 1 is used to locate the 12 O_2 traverse points. If the grab sampling procedure is used, the O_2 concentration for the run shall be the arithmetic mean of all the individual O_2 sample concentrations at each traverse point.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator shall determine compliance with the SO_2 standards in § 60.43a as follows:

(1) The percent of potential SO_2 emissions ($\%P_s$) to the atmosphere shall be computed using the following equation:

$$\%P_s = [(100 - \%R_f)(100 - \%R_g)]/100$$

where:

$\%P_s$ = percent of potential SO_2 emissions, percent.

$\%R_f$ = percent reduction from fuel pretreatment, percent.

$\%R_g$ = percent reduction by SO_2 control system, percent.

(2) The procedures in Method 19 may be used to determine percent reduction ($\%R_f$) of sulfur by such processes as fuel pretreatment (physical coal cleaning, hydrodesulfurization of fuel oil, etc.), coal pulverizers, and bottom and flyash interactions. This determination is optional.

(3) The procedures in Method 19 shall be used to determine the percent SO_2 reduction ($\%R_g$) of any SO_2 control system. Alternatively, a combination of an "as fired" fuel monitor and emission rates measured after the control system, following the procedures in Method 19, may be used if the percent reduction is calculated using the average emission rate from the SO_2 control device and the average SO_2 input rate from the "as fired" fuel analysis for 30 successive boiler operating days.

(4) The appropriate procedures in Method 19 shall be used to determine the emission rate according to § 60.46 (Subpart D).

(5) The continuous monitoring system in § 60.47a (b) and (d) shall be used to determine the concentrations of SO_2 and CO_2 or O_2.

(d) The owner or operator shall determine compliance with the NO_x standard in § 60.44a as follows:

(1) The appropriate procedures in Method 19 shall be used to determine the emission rate of NO_x according to § 60.46 (Subpart D).

(2) The continuous monitoring system in § 60.47a (c) and (d) shall be used to determine the concentrations of NO_x and CO_2 or O_2

(e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 5 or 5B, Method 17 may be used at facilities with or without wet FGD systems if the stack temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of Sections 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used after wet FGD systems. Method 17 shall not be used after wet FGD systems if the effluent is saturated or laden with water droplets.

16. Section 60.54 is revised to read as follows:

§ 60.54 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standard in § 60.52 as follows:

(1) The emission rate (c_{12}) of particulate matter, corrected to 12 percent CO_2, shall be computed for each run using the following equation:

$$c_{12} = c_s (12/\%CO_2)$$

where:

c_{12} = c_s = concentration of particulate matter, corrected to 12 percent CO_2, g/dscm (gr/dscf).

c_s = concentration of particulate matter, g/dscm (gr/dscf).

$\%CO_2$ = CO_2 concentration, percent dry basis.

(2) Method 5 shall be used to determine the particulate matter concentration (c_s). The sampling time and sample volume for each run shall be

at least 60 minutes and 0.85 dscm (30 dscf).

(3) The emission rate correction factor, integrated or grab sampling and analysis procedure of Method 3 shall be used to determine CO_2 concentration ($\%CO_2$). The CO_2 sample shall be obtained simultaneously with, and at the same traverse points as, the particulate run. If the particulate run has more than 12 traverse points, the CO_2 traverse points may be reduced to 12 if Method 1 is used to locate the 12 CO_2 traverse points. If individual CO_2 sample are taken at each traverse point, the CO_2 concentration ($\%CO_2$) used in the correction equation shall be the arithmetic mean of all the individual CO_2 sample concentrations at each traverse point. If sampling is conducted after a wet scrubber, an "adjusted" CO_2 concentration [$(\%CO_2)$adj], which accounts for the effects of CO_2 absorption and dilution air, may be used instead of the CO_2 concentration determined in this paragraph. The adjusted CO_2 concentration shall be determined by either of the procedures in paragraph (c) of this section.

(c) The owner or operator may use either of the following procedures to determine the adjusted CO_2 concentration.

(1) The volumetric flow rates at the inlet and outlet of the wet scrubber and the inlet CO_2 concentration may be used to determine the adjusted CO_2 concentration [$(\%CO_2)$adj] using the following equation:

$$(\%CO_2)\text{adj} = (\%CO_2)\text{di}\ (Q_{di}/Q_{do})$$

where:

$(\%CO_2)$adj = adjusted outlet CO_2 concentration, percent dry basis.

$(\%CO_2)$di = CO_2 concentration measured before the scrubber, percent dry basis.

Q_{di} = volumetric flow rate of effluent gas before the wet scrubber, dscm/min (dscf/min).

Q_{do} = volumetric flow rate of effluent gas after the wet scrubber, dscm/min (dscf/min).

(i) At the outlet, Method 5 is used to determine the volumetric flow rate (Q_{do}) of the effluent gas.

(ii) At the inlet, Method 2 is used to determine the volumetric flow rate (Q_{di}) of the effluent gas as follows: Two full velocity traverses are conducted, one immediately before and one immediately after each particulate run conducted at the outlet, and the results are averaged.

(iii) At the inlet, the emission rate correction factor, integrated sampling and analysis procedure of Method 3 is used to determine the CO_2 concentration [$(\%CO_2)_{di}$] as follows: At least nine sampling points are selected randomly from the velocity traverse points and are divided randomly into three sets, equal in number of points; the first set of three or more points is used for the first run, the second set for the second run, and the third set for the third run. The CO_2 sample is taken simultaneously with each particulate run being conducted at the outlet, by traversing the three sampling points (or more) and sampling at each point for equal increments of time.

(2) Excess air measurements may be used to determine the adjusted CO_2 concentration [$(\%CO_2)_{adj}$] using the following equation:

$$(\%CO_2)_{adj} = (\%CO_2)_{di}[(100+\%EA_i)/(100+\%EA_o)]$$

where:

$(\%CO_2)$adj = adjusted outlet CO_2 concentration, percent dry basis.

$(\%CO_2)$di = CO_2 concentration at the inlet of the wet scrubber, percent dry basis.

$\%EA_i$ = excess air at the inlet of the scrubber, percent.

$\%EA_o$ = excess air at the outlet of the scrubber, percent.

(i) A gas sample is collected as in paragraph (c)(1)(iii) of this section and the gas samples at both the inlet and outlet locations are analyzed for CO_2, O_2, and N_2.

(ii) Equation 3–1 of Method 3 is used to compute the percentages of excess air at the inlet and outlet of the wet scrubber.

17. Section 60.64 is revised to read as follows:

§ 60.54 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standard in § 60.62 as follows:

(1) the emission rate (E) of particulate matter shall be computed for each run using the following equation:

Where: $E = (c_s\ Q_{sd})/(P\ K)$

E = emission rate of particulate matter, kg/metric ton (lb/ton) of kiln feed.

c_s = concentration of particulate matter, g/dscm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P = total kiln feed (dry basis) rate, metric ton/hr (ton/hr).

K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30.0 dscf) for the kiln and at least 60 minutes and 1.15 dscm (40.6 dscf) for the clinker cooler.

(3) Suitable methods shall be used to determine the kiln feed rate (P), except fuels, for each run. Material balance over the production system shall be used to confirm the feed rate.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

18. Section 60.73(a) is revised to read as follows:

§ 60.73 Emission monitoring.

(a) The source owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides (NO_x). The pollutant gas mixtures under Performance Specification 2 and for calibration checks under § 60.13(d) of this part shall be nitrogen dioxide (NO_2). The span value shall be 500 ppm of NO_2. Method 7 shall be used for the performance evaluations under § 60.13(c). Acceptable alternative methods to Method 7 are given in § 60.74(c).

* * * * *

19. Section 60.73(b) is amended by removing the word "short" wherever it occurs in the first and third sentences.

20. Section 60.74 is revised to read as follows:

§ 60.74 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the NO_x standard in § 60.72 as follows:

(1) The emission rate (E) of NO_x shall be computed for each run using the following equation:

$$E = (C_s\ Q_{sd})/(P\ K)$$

where:

E = emission rate of NO_x as NO_2, kg/metric ton (lb/ton) of 100 percent nitric acid.

C_s = concentration of NO_x as NO_2, g/dscm (lb/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P = acid production rate, metric ton/hr (ton/hr) of 100 percent nitric acid.

K = conversion factor, 1000 g/kg (1.0 lb/lb).

(2) Method 7 shall be used to determine the NO_x concentration of each grab sample. Method 1 shall be

used to select the sampling site, and the sampling point shall be the centroid of the stack or duct or at a point no closer to the walls than 1 m (3.28 ft). Four grab samples shall be taken at approximately 15-minute intervals. The arithmetic mean of the four sample concentrations shall constitute the run value (C_s).

(3) Method 2 shall be used to determine the volumetric flow rate (Q_{sd}) of the effluent gas. The measurement site shall be the same as for the NO_x sample. A velocity traverse shall be made once per run within the hour that the NO_x samples are taken.

(4) The methods of § 60.73(c) shall be used to determine the production rate (P) of 100 percent nitric acid for each run. Material balance over the production system shall be used to confirm the production rate.

(c) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 7, Method 7A, 7B, 7C, or 7D may be used. If Method 7C or 7D is used, the sampling time shall be at least 1-hour.

(d) The owner or operator shall use the procedure in § 60.73(b) to determine the conversion factor for converting the monitoring data to the units of the standard.

§ 60.84 [Amended]

21. In § 60.84(a), the third sentence is amended by removing the word "Reference" before the words "Method 8"; and the fourth sentence is amended by adding the word "value" after the word "span".

22. In § 60.84(b), the first sentence and definition of CF in the nomenclature list are amended by removing the word "short" before the word "ton" in the two places it occurs.

23. Section 60.84(d) is amended by revising the equation and nomenclature list to read as follows:

(d) * * *

$$E_s = (C_s S)/[0.265 - (0.126\ \%O_2) - (A\ \%CO_2)]$$

where:

E_s = emission rate of SO_2, kg/metric ton (lb/ton) of 100 percent of H_2SO_4 produced.
C_s = concentration of SO_2, kg/dscm (lb/dscf).
S = acid production rate factor, 368 dscm/metric ton (11,800 dscf/ton) of 100 percent H_2SO_4 produced.
$\%O_2$ = oxygen concentration, percent dry basis.
A = auxiliary fuel factor,
= 0.00 for no fuel.
= 0.0226 for methane.
= 0.0217 for natural gas.
= 0.0196 for propane.
= 0.0172 for No. 2 oil.
= 0.0161 for No. 6 oil.
= 0.0148 for coal.
= 0.0126 for coke.
$\%CO_2$ = carbon dioxide concentration, percent dry basis.

* * * * *

24. Section 60.85 is revised to read as follows:

§ 60.85 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the SO_2, acid mist, and visible emission standards in §§ 60.82 and 60.83 as follows:

(1) The emission rate (E) of acid mist or SO_2 shall be computed for each run using the following equation:

$$E = (C\ Q_{sd})/(P\ K)$$

where:

E = emission rate of acid mist or SO_2, kg/metric ton (lb/ton) of 100 percent H_2SO_4 produced.
C = concentration of acid mist or SO_2, g/dscm (lb/dscf).
Q_{sd} = volumetric flow rate of the effluent gas, dscm/hr (dscf/hr).
P = production rate of 100 percent H_2SO_4, metric ton/hr (ton/hr).
K = conversion factor, 1000 g/kg (1.0 lb/lb).

(2) Method 8 shall be used to determine the acid mist and SO_2 concentrations (C's) and the volumetric flow rate (Q_{sd}) of the effluent gas. The moisture content may be considered to be zero. The sampling time and sample volume for each run shall be at least 60 minutes and 1.15 dscm (40.6 dscf).

(3) Suitable methods shall be used to determine the production rate (P) of 100 percent H_2SO_4 for each run. Material balance over the production system shall be used to confirm the production rate.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) If a source processes elemental sulfur or an ore that contains elemental sulfur and uses air to supply oxygen, the following procedure may be used instead of determining the volumetric flow rate and production rate:

(i) The integrated technique of Method 3 is used to determine the O_2 concentration and, if required, CO_2 concentration.

(ii) The SO_2 or acid mist emission rate is calculated as described in § 60.84(d), substituting the acid mist concentration for C_s as appropriate.

25. Section 60.93 is revised to read as follows:

§ 60.93 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.92 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

26. Section 60.123 is revised to read as follows:

§ 60.123 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.122 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration during representative periods of furnace operation, including charging and tapping. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

27. Section 60.133 is revised to read as follows:

§ 60.133 Test methods and procedures.

(a) In conducting performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the

particulate matter standards in § 60.132 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration during representative periods of charging and refining, but not during pouring of the heat. The sampling time and sample volume for each run shall be at least 120 minutes and 1.80 dscm (63.6 dscf).

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

§ 60.143 [Amended]

28. In § 60.143(b)(5), the reference "§ 60.13(b)(3)" is revised to read "§ 60.13(b)".

29. In § 60.143(c), the references "(b)(1)(A) or (b)(2)(A)" are revised to read "(b)(1)(i) or (b)(2)(i)".

30. Section 60.144 is revised to read as follows:

§ 60.144 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.142 as follows:

(1) The time-measuring instrument of § 60.143 shall be used to document the time and duration of each steel production cycle and each diversion period during each run.

(2) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 1.50 dscm (53 dscf). Sampling shall be discontinued during periods of diversions.

(i) For affected facilities that commenced construction, modification, or reconstruction on or before January 20, 1983, the sampling for each run shall continue for an integral number of steel production cycles. A cycle shall start at the beginning of either the scrap preheat or the oxygen blow and shall terminate immediately before tapping.

(ii) For affected facilities that commenced construction, modification, or reconstruction after January 20, 1983, the sampling for each run shall continue for an integral number of primary oxygen blows.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity. Observations taken during a diversion period shall not be used in determining compliance with the opacity standard. Opacity observations taken at 15-second intervals immediately before and after a diversion of exhaust gases from the stack may be considered to be consecutive for the purpose of computing an average opacity for a 6-minute period.

(c) To comply with § 60.143(c), the owner or operator shall use the monitoring devices of § 60.143(b) (1) and (2) during the particulate runs to determine the 3-hour averages of the required measurements.

31. Section 60.144a is amended by redesignating paragraph (d)(1) and (2) as (c)(1) and (2) and by revising paragraphs (a), (b), (c) introductory text and (d) to read as follows:

§ 60.144a Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.142a as follows:

(1) Start and end times of each steel production cycle during each run shall be recorded [see § 60.145a(c) and (d) for the definitions of start and end times of a cycle].

(2) Method 5 shall be used to determine the particulate matter concentration. Sampling shall be conducted only during the steel production cycle and for a sufficient number of steel production cycles to obtain a total sample volume of at least 5.67 dscm (200 dscf) for each run.

(3) Method 9 and the procedures of § 60.11 shall be used to determine opacity, except Sections 2.4 and 2.5 of Method 9 shall replaced with the following instructions for recording observations and reducing data:

(i) *Section 2.4.* Opacity observations shall be recorded to the nearest 5 percent at 15-second intervals. During the initial performance test conducted pursuant to § 60.8, observations shall be made and recorded in this manner for a minimum of three steel production cycles. During any subsequent compliance test, observations may be made for any number of steel production cycles, although, where conditions permit, observations will generally be made for a minimum of three steel production cycles.

(ii) *Section 2.5.* Opacity shall be determined as an average of 12 consecutive observations recorded at 15-second intervals. For each steel production cycle, divide the observations recorded in to sets of 12 consecutive observations. Sets need not be consecutive in time, and in no case shall two sets overlap. For each set of 12 observations, calculate the average by summing the opacity of 12 consecutive observations and dividing this sum by 12.

(c) In complying with the requirements of § 60.143a(c), the owner or operator shall conduct an initial test as follows:

* * * * *

(d) To comply with § 60.143a(d) or (e), the owner or operator shall use the monitoring device of § 60.143a(a) to determine the exhaust ventilation rates or levels during the particulate matter runs and to determine a 3-hour average.

32. Section 60.154 is revised to read as follows:

§ 60.154 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter emission standards in § 60.152 as follows:

(1) The emission rate (E) of particulate matter for each run shall be computed using the following equation:

$$E = K (c_s Q_{sd})/S$$

Where:

E = emission rate of particulate matter, g/kg (lb/ton) of dry sludge input.

C_s = concentration of particulate matter, g/dscm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

S = charging rate of dry sludge during the run, kg/hr (lb/hr).

K = conversion factor, 1.0 g/g [4.409 lb^2/(g-ton)].

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(3) The dry sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = K_m S_m R_{dm}/\delta$$

$$S = K_v S_v R_{dv}/\delta$$

Where:

S = charging rate of dry sludge, kg/hr (lb/hr).

S_m = total mass of sludge charged, kg (lb).

R_{dm} = average mass of dry sludge per unit mass of sludge charged, mg/mg (lb/lb).

δ = duration of run, min.

K_m = conversion factor, 60 min/hr.
S_v = total volume of sludge charged, m^3 (gal).
R_{dv} = average mass of dry sludge per unit volume of sludge charged, mg/liter (lb/ft^3).
K_v = conversion factor, 60×10^{-3} (liter-kg-min)/(m^3-mg-hr) [8.021 (ft^3-min)/(gal-hr)].

(4) The flow measuring device of § 60.153(a) (1) shall be used to determine the total mass (S_m) or volume (S_v) of sludge charged to the incinerator during each run. If the flow measuring device is on a time rate basis, readings shall be taken and recorded at 5-minute intervals during the run and the total charge of sludge shall be computed using the following equations, as applicable:

$$S_m = \sum_{i=1}^{n} Q_{mi}\ \theta_i$$

$$S_v = \sum_{i=1}^{n} Q_{vi}\ \theta_i$$

Where:
Q_{mi} = average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", kg/min (lb/min).
Q_{vi} = average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", m^3/min (gal/min).
δ_i = duration of interval "i", min.

(5) Samples of the sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "209 F. Method for Solid and Semisolid Samples" (incorporated by reference—see § 60.17) shall be used to determine dry sludge content of each sample (total solids residue), except that:

(i) Evaporating dishes shall be ignited to at least 103°C rather than the 550°C specified in step 3(a)(1).

(ii) Determination of volatile residue, step 3(b) may be deleted.

(iii) The quantity of dry sludge per unit sludge charged shall be determined in terms of mg/liter (lb/ft^3) or mg/mg (lb/lb).

(iv) The average dry sludge content shall be the arithmetic average of all the samples taken during the run.

(6) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

§§ 60.165, 60.175 and 60.185 [Amended]

33. Sections 60.165(b)(2)(i), 60.175(a)(2)(i), and 60.185(a)(2)(i) are amended by removing the second and third sentences.

34. In §§ 60.165(b)(2)(ii), 60.175(a)(2)(ii), and 60.185(a)(2)(ii), the words "Field Test for Accuracy (Relative)" are revised to read "Relative Accuracy Test Procedure", and the word "Reference" just before "Method 6" is removed.

35. Section 60.166 is revised to read as follows:

§ 60.166 Test methods and procedures.

(a) In conducting performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter, sulfur dioxide (SO_2) and visible emission standards in §§ 60.162, 60.163, and 60.164 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) The continuous monitoring system of § 60.165(b)(2) shall be used to determine the SO_2 concentrations on a dry basis. The sampling time for each run shall be 6 hours, and the average SO_2 concentration shall be computed for the 6-hour period as in § 60.165(c). The monitoring system drift during the run may not exceed 2 percent of the span value.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

36. Section 60.176 is revised to read as follows:

§ 60.176 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter, sulfur dioxide (SO_2), and visible emission standards in §§ 60.172, 60.173, and 60.174 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) The continuous monitoring system of § 60.175(a)(2) shall be used to determine the SO_2 concentrations on a dry basis. The sampling time for each run shall be 2 hours, and the average SO_2 concentration for the 2-hour period shall be computed as in § 60.175(b). The monitoring system drift during the run may not exceed 2 percent of the span value.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

37. Section 60.186 is revised to read as follows:

§ 60.186 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter, sulfur dioxide (SO_2), and visible emission standards in §§ 60.182, 60.183, and 60.184 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) The continuous monitoring system of § 60.185(a)(2) shall be used to determine the SO_2 concentrations on a dry basis. The sampling time for each run shall be 2 hours, and the average SO_2 concentration for the 2-hour period shall be computed as in § 60.185(b). The monitoring system drift during the run may not exceed 2 percent of the span value.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

38. Section 60.195 is amended by redesignating § 60.195(a) as § 60.194(c) and § 60.195(b) as § 60.194(d).

39 Section 60.195 is revised to read as follows:

§ 60.195 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods

and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides and visible emission standards in §§ 60.192 and 60.193 as follows:

(1) The emission rate (E_p) of total fluorides from potroom groups shall be computed for each run using the following equation:

$$E_p = [(C_s Q_{sd})_1 + (C_s + Q_{sd})_2]/(P K)$$

where:

E_p = emission rate of total fluorides from a potroom group, kg/Mg (lb/ton).
C_s = concentration of total fluorides, mg/dscm (mg/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = aluminum production rate, Mg/hr (ton/hr).
K = conversion factor, 10^6 mg/kg (453,600 mg/lb).
1 = subscript for primary control system effluent gas.
2 = subscript for secondary control system or roof monitor effluent gas.

(2) The emission rate (E_b) of total fluorides from anode bake plants shall be computed for each run using the following equation:

$$E_b = (C_s Q_{sd})/(P_e K)$$

where:

E_b = emission rate of total fluorides, kg/Mg (lb/ton) of aluminum equivalent.
C_s = concentration of total fluorides, mg/dscm (mg/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P_e = aluminum equivalent for anode production rate, Mg/hr (ton/hr).
K = conversion factor, 10^6 mg/kg (453,600 mg/lb).

(3) Methods 13A or 13B shall be used for ducts or stacks, and Method 14 for roof monitors not employing stacks or pollutant collection systems, to determine the total fluorides concentration (C_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 8 hours and 6.80 dscm (240 dscf) for potroom groups and at least 4 hours and 3.40 dscm (120 dscf) for anode bake plants.

(4) The monitoring devices of § 60.194(a) shall be used to determine the daily weight of aluminum and anode produced.

(i) The aluminum production rate (P) shall be determined by dividing 720 hours into the weight of aluminum tapped from the affected facility during a period of 30 days before and including the final run of a performance test.

(ii) The aluminum equivalent production rate (P_e) for anodes shall be determined as 2 times the average weight of anode produced during a representative oven cycle divided by the cycle time. An owner or operator may establish a multiplication factor other than 2 by submitting production records of the amount of aluminum produced and the concurrent weight of anodes consumed by the potrooms.

(5) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

§ 60.203 [Amended]

40. In § 60.203(b), the reference "§ 60.204(d)(2) is revised to read "§ 60.204(b)(3)".

41. Section 60.204 is revised to read as follows:

§ 60.204 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides standard in § 60.202 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi}\right)/(P K)$$

where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.
C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).
Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).
N = number of emission points associated with the affected facility.
P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).
K = conversion factor, 1000 mg/kg (453,600 mg/lb).

(2) Method 13A or 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$$P = M_p R_p$$

where:

M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).
R_p = P_2O_5 content, decimal fraction.

(i) The accountability system of § 60.203(a) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the feed.

§ 60.213 [Amended]

42. In § 60.213(b), reference "§ 60.214(d)(2)" is revised to read "§ 60.214(b)(3)".

43. Section 60.214 is revised to read as follows:

§ 60.214 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides standard in § 60.212 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi}\right)/(P K)$$

where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.
C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).
Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).
N = number of emission points associated with the affected facility.
P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).
K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$$P = M_p R_p$$

where:

M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).
R_p = P_{2O5} content, decimal fraction.

(i) The accountability system of § 60.213(a) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the feed.

§ 60.223 [Amended]

44. In § 60.223(b), reference "§ 60.224(d)(2)" is revised to read "§ 60.224(b)(3)".

45. Section 60.224 is revised to read as follows:

§ 60.224 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides standard in § 60.222 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si}\, Q_{sdi}\right)/(P\ K)$$

where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).

N = number of emission points associated with the affected facility.

P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).

K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A and 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$$P = M_p\, R_p$$

where:

M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).

R_p = P_2O_5 content, decimal fraction.

(i) The accountability system of § 60.223(a) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_{2O5} content (R_p) of the feed.

§ 60.233 [Amended]

46. In § 60.233(b), (the reference "§ 60.234(d)(2)" is revised to read "§ 60.234(b)(3)".

47. Section 60.234 is revised to read as follows:

§ 60.234 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the total fluorides standards in § 60.232 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si}\, Q_{sdi}\right)/(P\ K)$$

where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).

N = number of emission points in the affected facility.

P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).

K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$$P = M_p\, R_p$$

where:

M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).

R_p = P_2O_5 content, decimal fraction.

(i) The accountability system of § 60.233(a) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the feed.

§ 60.243 [Amended]

48. In § 60.243(b), the reference "60.244(f)(2)" is revised to read "60.244(c)(3)".

49. Section 60.244 is revised to read as follows:

§ 60.244 Test methods and procedures.

(a) The owner or operator shall conduct performance tests required in § 60.8 only when the following quantities of product are being cured or stored in the facility.

(1) Total granular triple superphosphate is at least 10 percent of the building capacity and

(2) Fresh granular triple superphosphate is at least 20 percent of the total amount of triple superphosphate or,

(3) If the provision in paragraph (a)(2) of this section exceeds production capabilities for fresh granular triple superphosphate, fresh granular triple superphosphate is equal to at least 5 days maximum production.

(b) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(c) The owner or operator shall determine compliance with the total fluorides standard in § 60.242 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si}\, Q_{sdi}\right)/(P\ K)$$

where:

E = emission rate of total fluorides, g/hr/metric ton (lb/hr/ton) of equivalent P_2O_5 stored.

C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).

N=number of emission points in the affected facility.
P=equivalent P_2O_5 stored, metric tons (tons).
K=conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$$P = M_p R_p$$

where:

M_p=amount of product in storage, metric ton (ton).
R_p=P_2O_5 content of product in storage, weight fraction.

(i) The accountability system of § 60.243(a) shall be used to determine the amount of product (M_p) in storage.

(ii) The Association of Offical Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17) shall be used to determine the P_2O_5 content (R_p) of the product in storage.

§ 60.253 [Amended]

50. In § 60.253(b), the reference "§ 60.13(b)(3)" is revised to read "§ 60.13(b)".

51. Section 60.254 is revised to read as follows:

§ 60.254 Test methods any procedure.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.252 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). Sampling shall begin no less than 30 minutes after startup and shall terminate before shutdown procedures begin.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

52. Section 60.266 is revised to read as follows:

§ 60.266 Test methods and procedures.

(a) During any performance test required in § 60.8, the owner or operator shall not allow gaseous diluents to be added to the effluent gas stream after the fabric in an open pressurized fabric filter collector unless the total gas volume flow from the collector is accurately determined and considered in the determination of emissions.

(b) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(c) The owner or operator shall determine compliance with the particulate matter standards in § 60.262 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E = \left[\sum_{i=1}^{n} (c_{si} Q_{sdi})\right]/(P K)$$

where:

E=emission rate of particulate matter, kg/MW-hr (1b/MW-hr).
n=total number of exhaust streams at which emissions is quantified.
c_{si}=concentration of particulate matter from exhaust stream "i", g/dscm (g/dscf).

Q_{sdi}=volumetric flow rate of effluent gas from exhaust stream "i", dscm/hr (dscf/hr).
P=average furnace power input, MW.
K=conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used to determine the particulate matter concentration (c_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas, except that the heating systems specified in Sections 2.1.2 and 2.1.6 are not to be used when the carbon monoxide content of the gas stream exceeds 10 percent by volume, dry basis. If a flare is used to comply with § 60.263, the sampling site shall be upstream of the flare. The sampling time shall include an integral number of furnace cycles.

(i) When sampling emissions from open electric submerged arc furnaces with wet scrubber control devices, sealed electric submerged arc furnaces, or semienclosed electric arc furnaces, the sampling time and sample volume for each run shall be at least 60 minutes and 1.80 dscm (63.6 dscf).

(ii) When sampling emissions from other types of installations, the sampling time and sample volume for each run shall be at least 200 minutes and 5.70 dscm (200 dscf).

(3) The measurement device of § 60.265(b) shall be used to determine the average furnace power input (P) during each run.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(5) The emission rate correction factor, integrated sampling procedure of Method 3 shall be used to determine the CO concentration. The sample shall be taken simultaneously with each particulate matter sample.

(d) During the particulate matter run, the maximum open hood area (in hoods with segmented or otherwise moveable sides) under which the process is expected to be operated and remain in compliance with all standards shall be recorded. Any future operation of the hooding system with open areas in excess of the maximum is not permitted.

(e) To comply with § 60.265(d) or (f), the owner or operator shall use the monitoring devices in § 60.265(c) or (e) to make the required measurements.

53. Section 60.273(c) is revised to read as follows:

§ 60.273 Emission monitoring.

* * * * *

(c) A continuous monitoring system is not required on any modular, multiple-stack, negative-pressure or positive-pressure fabric filter if observations of the opacity of the visible emissions from the control device are performed by a certified visible emission observer. Visible emission observations shall be conducted at least once per day when the furnace is operating in the melting and refining period. These observations shall be taken in accordance with Method 9, and, for at least three 6-minute periods, the opacity shall be recorded for any point(s) where visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emissions, only one set of three 6-minute observations will be required. In this case, Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minute average that is in excess of the emission limit specified in § 60.272(a) of this subpart.

54. Section 60.275 is amended by redesignating paragraph (c) as § 60.276 (c), by revising paragraphs (a), (b), (d), (e) and (f) and by adding new paragraphs (c) to read as follows:

§ 60.275 Test methods and procedures.

(a) During performance tests required in § 60.8, the owner or operator shall not add gaseous diluent to the effluent gas

after the fabric in any pressurized fabric filter collector, unless the amount of dilution is separately determined and considered in the determination of emissions.

(b) When emissions from any EAF(s) are combined with emissions from facilities not subject to the provisions of this subpart but controlled by a common capture system and control device, the owner or operator shall use either or both of the following procedures during a performance test [see also § 60.276(b)]:

(1) Determine compliance using the combined emissions.

(2) Use a method that is acceptable to the Administrator and that compensates for the emissions from the facilities not subject to the provisions of this subpart.

(c) When emissions from any EAF(s) are combined with emissions from facilities not subject to the provisions of this subpart, the owner or operator shall use either or both of the following procedures to demonstrate compliance with § 60.272(a)(3):

(1) Determine compliance using the combined emissions.

(2) Shut down operation of facilities not subject to the provisions of this subpart during the performance test.

(d) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(e) The owner or operator shall determine compliance with the particulate matter standards in § 60.272 as follows:

(1) Method 5 shall be used for negative-pressure fabric filters and other types of control devices and Method 5D shall be used for positive-pressure fabric filters to determine the particulate matter concentration and, if applicable, the volumetric flow rate of the effluent gas. The sampling time and sample volume for each run shall be at least 4 hours and 4.5 dscm (160 dscf) and, when a single EAF is sampled, the sampling time shall include an integral number of heats.

(2) When more than one control device serves the EAF(s) being tested, the concentration of particulate matter shall be determined using the following equation:

$$c_{st} = \left[\sum_{i=1}^{n} (c_{si}\, Q_{sdi})\right] / \sum_{i=1}^{n} Q_{sdi}$$

where:

c_{st} = average concentration of particulate matter, mg/dscm (gr/dscf).

c_{si} = concentration of particulate matter from control device "i", mg/dscm (gr/dscf).

n = total number of control devices tested.

Q_{sdi} = volumetric flow rate of stack gas from control device "i", dscm/hr (dscf/hr).

(3) Method 9 and the procedures of § 60.11 shall be used to determine opacity.

(4) To demonstrate compliance with § 60.272(a)(1), (2), and (3), the test runs shall be conducted concurrently unless inclement weather interferes.

(f) To comply with § 60.274(c), (f), (g), and (i), the owner or operator shall obtain the information in these paragraphs during the particulate matter runs.

* * * * *

§ 60.276 [Amended]

55. In § 60.276(b), the reference "§ 60.275(g)(2) or (g)(3)" is revised to read "§ 60.275(b)(2) or a combination of (b)(1) and (b)(2)".

56. Section 60.273a(c) is revised to read as follows:

§ 60.273a Emission monitoring.

(c) A continuous monitoring system for the measurement of opacity is not required on modular, multiple-stack, negative-pressure or positive-pressure fabric filters if observations of the opacity of the visible emissions from the control device are performed by a certified visible emission observer. Visible emission observations are conducted at least once per day when the furnace is operating in the melting and refining period. These observations shall be taken in accordance with Method 9, and, for at least three 6-minute periods, the opacity shall be recorded for any point(s) where visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emissions, only one set of three 6-minute observations will be required. In this case, Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minutes average that is in excess of the emission limit specified in § 60.272a(a) of this subpart.

57. Section 60.275a is amended by redesignating paragraph (d) as § 60.276a(f), by revising paragraphs (a), (b), (c), (e), and (f) and by adding new paragraph (d) to read as follows:

§ 60.275a Test methods and procedures.

(a) During performance tests required in § 60.8, the owner or operator shall not add gaseous diluents to the effluent gas stream after the fabric in any pressurized fabric filter collector, unless the amount of dilution is separately determined and considered in the determination of emissions.

(b) When emissions from any EAF(s) or AOD vessel(s) are combined with emissions from facilities not subject to the provisions of this subpart but controlled by a common capture system and control device, the owner or operator shall use either or both of the following procedures during a performance test [see also § 60.276a(e)]:

(1) Determine compliance using the combined emissions.

(2) Use a method that is acceptable to the Administrator and that compensates for the emissions from the facilities not subject to the provisions of this subpart.

(c) When emission from any EAF(s) or AOD vessel(s) are combined with emissions from facilities not subject to the provisions of this subpart, the owner or operator shall demonstrate compliance with § 60.272a(a)(3) based on emissions from only the affected facility(ies).

(d) In conducting the performance test required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(e) The owner or operator shall determine compliance with the particulate matter standards in § 60.272a as follows:

(1) Method 5 shall be used for negative-pressure fabric filters and other types of control devices and Method 5D shall be used for positive-pressure fabric filters to determine the particulate matter concentration and volumetric flow rate of the effluent gas. The sampling time and sample volume for each run shall be at least 4 hours and 4.50 dscm (160 dscf) and, when a single EAF or AOD vessel is sampled, the sampling time shall include an integral number of heats.

(2) When more than one control device serves the EAF(s) being tested, the concentration of particulate matter shall be determined using the following equation:

$$c_{st} = \left[\sum_{i=1}^{n} (c_{si}\, Q_{sdi})\right] / \sum_{i=1}^{n} Q_{sdi}$$

where:
c_{st} = average concentration of particulate matter, mg/dscm (fr/dscf).
c_{si} = concentration of particulate matter from control device "i", mg/dscm (gr/dscf).
n = total number of control devices tested.
Q_{sdi} = volumetric flow rate of stack gas from control device "i", dscm/hr (dscf/hr).

(3) Method 9 and the procedures of § 60.11 shall be used to determine opacity.

(4) To demonstrate compliance with § 60.272a(a)(1), (2), and (3), the test runs shall be conducted concurrently, unless inclement weather interferes.

(f) To comply with § 60.274a(c), (f), (g), and (h), the owner or operator shall obtain the information required in these paragraphs during the particulate matter runs.

§ 60.276a [Amended]

58. In 60.276a(e), the reference "§ 60.275a(h)(2) or (h)(3)" is revised to read "§ 60.275(b)(2) or a combination of (b)(1) and (b)(2)".

59. Section 60.285 is revised to read as follows:

§ 60.285 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (f) of this section.

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.282(a) (1) and (3) as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf). Water shall be used as the cleanup solvent instead of acetone in the sample recovery procedure. The particulate concentration shall be corrected to the appropriate oxygen concentration according to § 60.284(c)(3).

(2) The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration. The gas sample shall be taken at the same time and at the same traverse points as the particulate sample.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator shall determine compliance with the particulate matter standard in § 60.282(a)(2) as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$E = c_s Q_{sd}/BLS$

where:
E = emission rate of particulate matter, g/kg (lb/ton) of BLS.
c_s = concentration of particulate matter, g/dscm (lb/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
BLS = black liquor solids (dry weight) feed rate, kg/hr (ton/hr).

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume shall be at least 60 minutes and 0.90 dscm (31.8 dscf). Water shall be used instead of acetone in the sample recovery.

(3) Process data shall be used to determine the black liquor solids (BLS) feed rate on a dry weight basis.

(d) The owner or operator shall determine compliance with the TRS standards in § 60.283, except § 60.283(a)(1)(vi) and (4), as follows:

(1) Method 16 shall be used to determine the TRS concentration. The TRS concentration shall be corrected to the appropriate oxygen concentration using the procedure in § 60.284(c)(3). The sampling time shall be at least 3 hours, but no longer than 6 hours.

(2) The emission rate collection factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration. The sample shall be taken over the same time period as the TRS samples.

(3) When determining whether a furnace is a straight kraft recovery furnace or a cross recovery furnace, TAPPI Method T.624 (incorporated by reference—see § 60.17) shall be used to determine sodium sulfide, sodium hydroxide, and sodium carbonate. These determinations shall be made 3 times daily from the green liquor, and the daily average values shall be converted to sodium oxide (Na_2O) and substituted into the following equation to determine the green liquor sulfidity:

$$GLS = 100\ C_{Na_2S}/(C_{Na_2S} + C_{NaOH} + C_{Na_2CO_3})$$

where:
GLS = green liquor sulfidity, percent.
C_{Na_2S} = concentration of Na_2S as Na_2O, mg/liter (gr/gal).
C_{NaOH} = concentration of NaOH as Na_2O, mg/liter (gr/gal).
$C_{Na_2CO_3}$ = concentration of Na_2CO_3 as Na_2O, mg/liter (gr/gal).

(e) The owner or operator shall determine compliance with the TRS standards in § 60.283(a)(1)(vi) and (4) as follows:

(1) The emission rate (E) of TRS shall be computed for each run using the following equation:

$E = C_{TRS}\ F\ Q_{sd}/P$

where:
E = emission rate of TRS, g/kg (lb/ton) of BLS or ADP.
C_{TRS} = average combined concentration of TRS, ppm.
F = conversion factor, 0.001417 g H_2S/m^3 ppm (0.0844×10^{-6} lb H_2S/ft^3 ppm).
Q_{sd} = volumetric flow rate of stack gas, dscm/hr (dscf/hr).
P = black liquor solids feed or pulp production rate, kg/hr (ton/hr).

(2) Method 16 shall be used to determine the TRS concentration (C_{TRS}).

(3) Method 2 shall be used to determine the volumetric flow rate (Q_{sd}) of the effluent gas.

(4) Process data shall be used to determine the black liquor feed rate or the pulp production rate (P).

(f) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 5, Method 17 may be used if a constant value of 0.009 g/dscm (0.004 gr/dscf) is added to the results of Method 17 and the stack temperature is no greater than 205 °C (400 °F).

(2) For Method 16, Method 16A or 16B may be used if the sampling time is 60 minutes.

60. In § 60.292(a)(2), the definition of "Y" is amended by revising the words "Decimal percent" to read "Decimal fraction" and revising the reference "§ 60.296(f)" to read "§ 60.296(b)".

61. § 60.296 is revised to read as follows: § 60.296 Test methods and procedures.

(a) If a glass melting furnace with modified processes is changed to one without modified processes or if a glass melting furnace without modified processes is changed to one with modified processes, the owner or operator shall notify the Administrator at least 60 days before the change is scheduled to occur.

(b) When gaseous and liquid fuels are fired simultaneously in a glass melting furnace, the owner or operator shall

determine the applicable standard under § 60.292(a)(2) as follows:

(1) The ratio (Y) of liquid fuel heating value to total (gaseous and liquid) fuel heating value fired in the glass melting furnaces shall be computed for each run using the following equation:

$$Y=(H_l L)/(H_l L + H_g G)$$

where:

Y = decimal fraction of liquid fuel heating value to total fuel heating value.
H_l = gross calorific value of liquid fuel, J/kg.
H_g = gross calorific value of gaseous fuel, J/kg.
L = liquid flow rate, kg/hr.
G = gaseous flow rate, kg/hr.

(2) Suitable methods shall be used to determine the rates (L and G) of fuels burned during each test period and a material balance over the glass melting furnace shall be used to confirm the rates.

(3) American Society of Testing and Materials (ASTM) Method D 240–76 (liquid fuels) and D 1826–77 (gaseous fuels) (incorporated by reference—see § 60.17), as applicable, shall be used to determine the gross calorific values.

(c) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(d) The owner or operator shall determine compliance with the particulate matter standards in §§ 60.292 and 60.293 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E=(c_s Q_{sd} - A)/P$$

where:

E = emission rate of particulate matter, g/kg.
c_s = concentration of particulate matter, g/dscm.
Q_{sd} = volumetric flow rate, dscm/hr.
A = zero production rate correction
= 227 g/hr for container glass, pressed and blown (soda-lime and lead) glass, and pressed and blown (other than borosilicate, soda-lime, and lead) glass.
= 454 g/hr for pressed and blown (borosilicate) glass, wool fiberglass, and flat glass.
P = glass production rate, kg/hr.

(2) Method 5 shall be used to determine the particulate matter concentration (C_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf). The probe and filter holder heating system may be set to provide a gas temperature no greater than 177± 14 °C (350± 25 °F), except under the conditions specified in § 60.293(e).

(3) Direct measurement or material balance using good engineering practice shall be used to determine the amount of glass pulled during the performance test. The rate of glass produced is defined as the weight of glass pulled from the affected facility during the performance test divided by the number of hours taken to perform the performance test.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

62. Section 60.303 is revised to read as follows:

§ 60.303 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.302 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration and the volumetric flow rate of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 1.70 dscm (60 dscf). The probe and filter holder shall be operated without heaters.

(2) Method 2 shall be used to determine the ventilation volumetric flow rate.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method, 5, Method 17 may be used.

63. Section 60.335 is revised to read as follows:

§ 60.335 Test methods and procedures.

(a) To compute the nitrogen oxides emissions, the owner or operator shall use analytical methods and procedures that are accurate to within 5 percent and are approved by the Administrator to determine the nitrogen content of the fuel being fired.

(b) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided for in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (f) of this section.

(c) The owner or operator shall determine compliance with the nitrogen oxides and sulfur dioxide standards in §§ 60.332 and 60.333(a) and follows:

(1) The nitrogen oxides emission rate (NO_x) shall be computed for each run using the following equation:

$$NO_x = (NO_{xo})\,(P_r/P_o)^{0.5}\, e^{19(H_o - 0.00633)}\,(288°K/T_a)^{1.53}$$

where:

NO_x = emission rate of NO_x at 15 percent O_2 and ISO standard ambient conditions, volume percent.
NO_{xo} = observed NO_x concentration, ppm by volume.
P_r = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure, mm Hg.
P_o = observed combustor inlet absolute pressure at test, mm Hg.
H_o = observed humidity of ambient air.
e = transcendental constant, 2.718.
T_a = ambient temperature, °K.

(2) The monitoring device of § 60.334(a) shall be used to determine the fuel consumption and the water-to-fuel ratio necessary to comply with § 60.332 at 30, 50, 75, and 100 percent of peak load or at four points in the normal operating range of the gas turbine, including the minimum point in the range and peak load. All loads shall be corrected to ISO conditions using the appropriate equations supplied by the manufacturer.

(3) Method 20 shall be used to determine the nitrogen oxides, sulfur dioxide, and oxygen concentrations. The span values shall be 300 ppm of nitrogen oxide and 21 percent oxygen. The NO_x emissions shall be determined at each of the load conditions specified in paragraph (c)(2) of this section.

(d) The owner or operator shall determine compliance with the sulfur content standard in § 60.333(b) as follows: ASTM D 2880–71 shall be used to determine the sulfur content of liquid fuels and ASTM D 1072–80, D 3031–81, D 4084–82, or D 3246–81 shall be used for the sulfur content or gaseous fuels (incorporated by reference—see § 60.17). The applicable ranges of some ASTM

methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples before analysis (with verification of the dilution ratio) may be used, subject to the approval of the Administrator.

(e) To meet the requirements of § 60.334(b), the owner or operator shall use the methods specified in paragraphs (a) and (d) of this section to determine the nitrogen and sulfur contents of the fuel being burned. The analysis may be performed by the owner or operator, a service contractor retained by the owner or operator, the fuel vendor, or any other qualified agency.

(f) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section.

(1) Instead of using the equation in paragraph (b)(1) of this section, manufacturers may develop ambient condition correction factors to adjust the nitrogen oxides emission level measured by the performance test as provided for in § 60.8 to ISO standard day conditions. These factors are developed for each gas turbine model they manufacture in terms of combustion inlet pressure, ambient air pressure, ambient air humidity, and ambient air temperature. They shall be substained with data and must be approved for use by the Administrator before the initial performance test required by § 60.8. Notices of approval of custom ambient condition correction factors will be published in the **Federal Register.**

§ 60.343 [Amended]

64. In § 60.343(e), the last sentence is revised to read as follows: "If visible emission observations are made according to paragraph (b) of this section, reports of excess emissions shall be submitted semiannually."

65. Section 60.344 is revised to read as follows:

§ 60.344 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.342(a) as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$E = (c_s Q_{sd})/(PK)$

Where:

E = emission rate of particular matter, kg/Mg (lb/ton) of stone feed.

c_s = concentration of particulate matter, g/dscm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P = stone feed rate, Mg/hr (ton/hr).

K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used at negative-pressure fabric filters and other types of control devices and Method 5D shall be used at positive-pressure fabric filters to determine the particulate matter concentration (c_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(3) The monitoring device of § 60.343(d) shall be used to determine the stone feed rate (P) for each run.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) During the particulate matter run, the owner or operator shall use the monitoring devices in § 60.343(c)(1) and (2) to determine the average pressure loss of the gas stream through the scrubber and the average scrubbing liquid supply pressure.

66. Section 60.374 is revised to read as follows:

§ 60.374 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the lead standards in § 60.372, except § 60.372(a)(4), as follows:

(1) Method 12 shall be used to determine the lead concentration and, if applicable, the volumetric flow rate (Q_{sda}) of the effluent gas. The sampling time and sample volume of each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) When different operations in a three-process operation facility are ducted to separate control devices, the lead emission concentration (C) from the facility shall be determined as follows:

$$C = \left[\sum_{a=1}^{N} (C_a Q_{sda})\right] / \sum_{a=1}^{N} Q_{sda}$$

where:

C = concentration of lead emissions for the entire facility, mg/dscm (gr/dscf).

C_a = concentration of lead emissions from facility "a", mg/dscm (gr dscf).

Q_{sda} = volumetric flow rate of effluent gas from facility "a", dscm/hr (dscf/hr).

N = total number of control devices to which separate operations in the facility are ducted.

(3) Method 9 and the procedures in § 60.11 shall be used to determine opacity. The opacity numbers shall be rounded off to the nearest whole percentage.

(c) The owner or operator shall determine compliance with the lead standard in § 60.372(a)(4) as follows:

(1) The emission rate (E) from lead oxide manufacturing facility shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{M} C_{pbi} Q_{sdi}\right)/(P K)$$

where:

E = emission rate of lead, mg/kg (lb/ton) of lead charged.

C_{pbi} = concentration of lead from emission point "i," mg/dscm.

Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).

M = number of emission points in the affected facility.

P = lead feed rate to the facility, kg/hr (ton/hr).

K = conversion factor, 1.0 mg/mg (453,600 mg/lb).

(2) Method 12 shall be used to determine the lead concentration (C_{pb}) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The average lead feed rate (P) shall be determined for each run using the following equation:

$P = N W/\Theta$

where:

N = number of lead pigs (ingots) charged.

W = average mass of a pig, kg (ton).

Θ = duration of run, hr.

§ 60.385 [Amended]

67. In § 60.385(c), the words "those measurements recorded" are revised to read "the average obtained".

68. Section 60.386 is revised to read as follows:

§ 60.386 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as refereence methods and procedures the test methods in Appendix A of this part or

other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards § 60.382 as follows:

(1) Method 5 or 17 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 120 minutes and 1.70 dscm (60 dscf). The sampling probe and filter holder of Method 5 may be operated without heaters if the gas stream being sampled is at ambient temperature. For gas streams above ambient temperature, the Method 5 sampling train shall be operated with a probe and filter temperature slightly above the effluent temperature [up to a maximum filter temperature of 121°C (250°F)] in order to prevent water condensation on the filter.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity from stack emissions and process fugitive emissions. The observer shall read opacity only when emissions are clearly identified as emanating solely from the affected facility being observed.

(c) To comply with § 60.385(c), the owner or operator shall use the monitoring devices in § 60.384(a) and (b) to determine the pressure loss of the gas stream through the scrubber and scrubbing liquid flow rate at any time during each particulate matter run, and the average of the three determinations shall be computed.

69. Section 60.404 is revised to read as follows:

§ 60.404 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided for in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.402 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E=(c_s Q_{sd})/(P K)$$

where:

E = emission rate of particulate matter, kg/Mg (lb/ton) of phosphate rock feed.
C_s = concentration of particulate matter, g/dscm (g/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = phosphate rock feed rate, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The device of § 60.403(d) shall be used to determine the phosphate rock feed rate (P) for each run.

(4) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) To comply with § 60.403(f), if applicable, the owner operator shall use the monitoring devices in § 60.403(c) (1) and (2) to determine the average pressure loss of the gas stream through the scrubber and the average scrubbing supply pressure during the particulate matter runs.

70. Section 60.424 is revised to read as follows:

§ 60.424 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in the this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particualate matter standards in § 60.422 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E=(c_s Q_{sd})/(P K)$$

where:

E = emission rate of particulate matter, kg/Mg (lb/ton) of ammonium sulfate produced.
c_s = concentration of particulate matter, g/dscm (g/dscf).
Q_{sd} = volumetric flow rare of effluent gas, (dscm/hr) (dscf/hr).
P = production rate of ammonium sulfate, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 1.50 dscm (53 dscf).

(3) Direct measurement using product weigh scales or computed from material balance shall be used to determine the rate (P) of the ammonium sulfate production. If production rate is determined by material balance, the following equations shall be used:

(i) For synthetic and coke oven by-product ammonium sulfate plants:

$$P=A B C K'$$

where:

A = sulfuric acid flow rate to the reactor/crystallizer averaged over the time period taken to conduct the run, liter/min.
B = acid density (a function of acid strength and temperature), g/cc.
C = acid strength, decimal fraction.
K' = conversion factor, 0.0808 (Mg-min-cc)/(g-hr-liter) [0.0891 (ton-min-cc)/(g-hr-liter)].

(ii) For caprolactam by-product ammonium sulfate plants:

$$P=D E F K''$$

where:

D = total combined feed stream flow rate to the ammonium crystallizer before the point where any recycle streams enter the stream averaged over the time period taken to conduct the test run, liter/min.
E = density of the process stream solution, g/liter.
F = percent mass of ammonium sulfate in the process solution, decimal fraction.
K'' = conversion factor, 6.0×10^{-5} (Mg-min)/(g-hr) [6.614×10^{-5} (ton-min)/(g-hr)].

(4) Method 9 and the procedures in § 60.11 shall be used to determine the opacity.

71. Section 60.474 is revised to read as follows:

§ 60.474 Test methods and procedures.

(a) For saturators, the owner or operator shall conduct performance tests required in § 60.8 as follows:

(1) If the final product is shingle or mineral-surfaced roll roofing, the tests shall be conducted while 106.6-kg (235-lb) shingle is being produced.

(2) If the final product is saturated felt or smooth-surfaced roll roofing, the tests shall be conducted while 6.8-kg (15-lb) felt is being produced.

(3) If the final product is fiberglass shingle, the test shall be conducted while a nominal 100-kg (220-lb) shingle is being produced.

(b) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Apendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(c) The owner or operator shall determine compliance with the particulate matter standards in § 60.472 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E=(c_s Q_{sd})/(P K)$$

where:

E = emission rate of particulate matter, kg/Mg.
c_s = concentration of particulate matter, g/dscm (g/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = asphalt roofing production rate or asphalt charging rate, Mg/hr (ton/hr).

K=conversion factor, 1000 g/kg [907.2 (g-Mg)/(kg-ton)].

(2) Method 5A shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. For a saturator, the sampling time and sample volume for each run shall be at least 120 minutes and 3.00 dscm (106 dscf), and for the blowing still, at least 90 minutes or the duration of the coating blow or non-coating blow, whichever is greater, and 2.25 dscm (79.4 dscf).

(3) For the saturator, the asphalt roofing production rate (P) for each run shall be determined as follows: The amount of asphalt roofing produced on the shingle or saturated felt process lines shall be obtained by direct measurement. The asphalt roofing production rate is the amount produced divided by the time taken for the run.

(4) For the blowing still, the asphalt charging rate (P) shall be computed for each run using the following equation:

$$P=(V\,d)/(K'\,\theta)$$

where:

P=asphalt charging rate to blowing still, Mg/hr (ton/hr).
V=volume of asphalt charged, m^3 (ft^3).
d=density of asphalt, kg/m^3 (lb/ft^3).
K'=conversion factor, 1000 kg/Mg (2000 lb/ton).
θ=duration of test run, hr.

(i) The volume (V) of asphalt charged shall be measured by any means accurate to within 10 percent.

(ii) The density (d) of the asphalt shall be computed using the following equation:

$$d=K^*\,(1056.1-0.6176\,^\circ C)$$

where:

°C=temperature at the start of the blow, °C.
$K^*=1.0\ [0.06243\ (lb\text{-}m^3)/(ft^3\text{-}kg)]$.

(5) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(d) The Administrator will determine compliance with the standards in § 60.472(a)(3) by using Method 22, modified so that readings are recorded every 15 seconds for a period of consecutive observations during representative conditions [in accordance with § 60.8(c)] totaling 60 minutes. A performance test shall consist of one run.

(e) The owner or operator shall use the monitoring device in § 60.473 (a) or (b) to monitor and record continuously the temperature during the particulate matter run and shall report the results to the Administrator with the performance test results.

(f) If at a later date the owner or operator believes the emission limits in § 60.472 (a) and (b) are being met even though the temperature measured in accordance with § 60.473 (a) and (b) is exceeding that measured during the performance test, he may submit a written request to the Administrator to repeat the performance test and procedure outlined in paragraph (c) of this section.

(g) If fuel oil is to be used to fire an afterburner used to control emissions from a blowing still, the owner or operator may petition the Administrator in accordance with § 60.11(e) of the General Provisions to establish an opacity standard for the blowing still that will be the opacity standard when fuel oil is used to fire the afterburner. To obtain this opacity standard, the owner or operator must request the Administrator to determine opacity during an initial, or subsequent, performance test when fuel oil is used to fire the afterburner. Upon receipt of the results of the performance test, the Administrator will make a finding concerning compliance with the mass standard for the blowing still. If the Administrator finds that the facility was in compliance with the mass standard during the performance test but failed to meet the zero opacity standard, the Administrator will establish and promulgate in the **Federal Register** an opacity standard for the blowing still that will be the opacity standard when fuel oil is used to fire the afterburner. When the afterburner is fired with natural gas, the zero percent opacity remains the applicable opacity standard.

72. Section 60.485 is revised to read as follows:

§ 60.485 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the standards in §§ 60.482, 60.483, and 60.484 as follows:

(1) Method 21 shall be used to determine the presence of leaking sources. The instrument shall be calibrated before use each day of its use by the procedures specified in Method 21. The following calibration gases shall be used:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of about, but less than, 10,000 ppm methane or n-hexane.

(c) The owner or operator shall determine compliance with the no detectable emission standards in §§ 60.482-2(e), 60.482-3(i), 60.482-4, 60.482-7(f), and 60.482-10(e) as follows:

(1) The requirements of paragraph (b) shall apply.

(2) Method 21 shall be used to determine the background level. All potential leak interfaces shall be traversed as close to the interface as possible. The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) The owner or operator shall test each piece of equipment unless he demonstrates that a process unit is not in VOC service, i.e., that the VOC content would never be reasonably expected to exceed 10 percent by weight. For purposes of this demonstration, the following methods and procedures shall be used:

(1) procedures that conform to the general methods in ASTM E-260, E-168, E-169 (incorporated by reference—see § 60.17) shall be used to determine the percent VOC content in the process fluid that is contained in or contacts a piece of equipment.

(2) Organic compounds that are considered by the Administrator to have negligible photochemical reactivity may be excluded from the total quantity of organic compounds in determining the VOC content of the process fluid.

(3) Engineering judgment may be used to estimate the VOC content, if a piece of equipment had not been shown previously to be in service. If the Administrator disagrees with the judgment, paragraphs (d) (1) and (2) of this section shall be used to resolve the disagreement.

(e) The owner or operator shall demonstrate that an equipment is in light liquid service by showing that all the following conditions apply:

(1) The vapor pressure of one or more of the components is greater than 0.3 kPa at 20°C. Standard reference texts or ASTM D-2879 (incorporated by reference—see § 60.17) shall be used to determine the vapor pressures.

(2) The total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20°C is equal to or greater than 20 percent by weight.

(3) The fluid is a liquid at operating conditions.

(f) Samples used in conjunction with paragraphs (d), (e), and (g) shall be representative of the process fluid that is contained in or contacts the equipment or the gas being combusted in the flare.

(g) The owner or operator shall determine compliance with the standards of flares as follows:

(1) Method 22 shall be used to determine visible emissions.

(2) A thermocouple or any other equivalent device shall be used to monitor the presence of a pilot flame in the flare.

(3) The maximum permitted velocity (V_{max}) for air-assisted flares shall be computed using the following equation:

$$V_{max} = 8.706 + 0.7084\ H_T$$

where:

V_{max} = maximum permitted velocity, m/sec.
H_T = net heating value of the gas being combusted, MJ/scm.

(4) The net heating value (H_T) of the gas being combusted in a flare shall be computed as folllows:

$$H_T = K \sum_{i=1}^{n} C_i\ H_i$$

where:

K = conversion constant, 1.740×10^{7} [(g-mole)(MJ)]/[(ppm)(scm)(kcal)].
C_i = concentration of sample component "i", ppm.
H_i = net heat of combustion of sample component "i" at 25°C and 760 mm Hg, kcal/g-mole.

(5) Method 18 and ASTM D 2504–67 (incorporated by reference—see § 60.17) shall be used to determine the concentration of sample component "i."

(6) ASTM D 2382–76 (incorporated by reference—see § 60.17) shall be used to determine the net heat of combustion of component "i" if published values are not available or cannot be calculated.

(7) Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the actual exit velocity of a flare. If needed, the unobstructed (free) cross-sectional area of the flare tip shall be used.

§ 60.502 [Amended]

73. In § 60.502(h), the reference "§ 60.503(b)" is revised to read "§ 60.503(d)".

74. Section 60.503 is revised to read as follows:

§ 60.503 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). The three-run requirement of § 60.8(f) does not apply to this subpart.

(b) Immediately before the performance test required to determine compliance with § 60.502 (b), (c), and (h), the owner or operator shall use Method 21 to monitor for leakage of vapor all potential sources in the terminal's vapor collection system equipment while a gasoline tank truck is being loaded. The owner or operator shall repair all leaks with readings of 10,000 ppm (as methane) or greater before conducting the performance test.

(c) The owner or operator shall determine compliance with the standards in § 60.502 (b) and (c) as follows:

(1) The performance test shall be 6 hours long during which at least 300,000 liters of gasoline is loaded. It this is not possible, the test may be continued the same day until 300,000 liters of gasoline is loaded or the test may be resumed the next day with another complete 6-hour period. In the latter case, the 300,000-liter criterion need not be met. However, as much as possible, testing should be conducted during the 6-hour period in which the highest throughput normally occurs.

(2) If the vapor processing system is intermittent in operation, the performance test shall begin at a reference vapor holder level and shall end at the same reference point. The test shall include at least two startups and shutdowns of the vapor processor. If this does not occur under automatically controlled operations, the system shall be manually controlled.

(3) The emission rate (E) of total organic compounds shall be computed using the following equation:

$$E = K \sum_{i=1}^{n} (V_{esi}\ C_{ei})/(L\ 10^{6})$$

where:

E = emission rate of total organic compounds, mg/liter of gasoline loaded.
V_{esi} = volume of air-vapor mixture exhausted at each interval "i", scm.
C_{ei} = concentration of total organic compounds at each interval "i", ppm.
L = total volume of gasoline loaded, liters.
n = number of testing intervals.
i = emission testing interval of 5 minutes.
K = density of calibration gas, 1.83×10^{6} for propane and 2.41×10^{6} for butane, mg/scm.

(4) The performance test shall be conducted in intervals of 5 minutes. For each interval "i", readings from each measurement instrument shall be recorded, and the volume exhausted (V_{esi}) and the corresponding average total organic compounds concentration (C_{ei}) shall be determined. The sampling system response time shall be considered in determining the average total organic compounds concentration corresponding to the volume exhausted.

(5) The following methods shall be used to determine the volume (V_{esi}) air-vapor mixture exhausted at each interval:

(i) Method 2B shall be used for combustion vapor processing systems.

(ii) Method 2A shall be used for all other vapor processing systems.

(6) Method 25A or 25B shall be used for determining the total organic compounds concentration (C_{ei}) at each interval. The calibration gas shall be either propane or butane. The owner or operator may exclude the methane and ethane content in the exhaust vent by any method (e.g., Method 18) approved by the Administrator.

(7) To determine the volume (L) of gasoline dispensed during the performance test period at all loading racks whose vapor emissions are controlled by the processing system being tested, terminal records or readings from gasoline dispensing meters at each loading rack shall be used.

(d) The owner or operator shall determine compliance with the standard in § 60.502(h) as follows:

(1) A pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring up to 500 mm of water gauge pressure with ±2.5 mm of water precision, shall be calibrated and installed on the terminal's vapor collection system at a pressure tap located as close as possible to the connection with the gasoline tank truck.

* * * * *

(2) During the performance tests, the pressure shall be recorded every 5 minutes while a gasoline tank truck is being loaded; the highest instantaneous pressure that occurs during each loading shall also be recorded. Every loading position must be tested at least once during the performance test.

75. Section 60.643(b) is revised as follows:

§ 60.643 Compliance provisions.

(b) The emission reduction efficiency (R) achieved by the sulfur reduction technology shall be determined using the procedures in § 60.644(c)(1).

76. Section 60.645 is removed and reserved and § 60.644 is revised to read as follows:

§ 60.644 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) During a performance test required by § 60.8, the owner or operator shall determine the minimum required reduction efficiencies (Z) of SO_2 emissions as required in § 60.642 (a) and (b) as follows:

(1) The average sulfur feed rate (X) shall be computed as follows:

$X = KQ_aY$

where:

X = average sulfur feed rate, long ton/day.
Q_a = average volumetric flow rate of acid gas from sweetening unit, dscf/day.
Y = average H_2S concentration in acid gas feed from sweetening unit, percent by volume.
K = (32 lb S/lb-mole)/[(100%) (385.36 dscf/lb-mole) (2240 lb/long ton)] = 3.707×10^{-7}

(2) The continuous readings from the process flow meter shall be used to determine the average volumetric flow rate (Q_a) in dscf/day of the acid gas from the sweetening unit for each run.

(3) The Tutwiler procedure in § 60.648 or a chromatographic procedure following ASTM E–260 (incorporated by reference—see § 60.17) shall be used to determine the H_2S concentration in the acid gas feed from the sweetening unit. At least one sample per hour (at equally spaced intervals) shall be taken during each 4-hour run. The arithmetic mean of all samples shall be the average H_2S concentration (Y) on a dry basis for the run. By multiplying the result from the Tutwiler procedure by 1.62×10^{-3}, the units gr/100 scf are converted to volume percent.

(4) Using the information from paragraphs (b) (1) and (3), Tables 1 and 2 shall be used to determine the required initial (Z_i) and continuous (Z_c) reduction efficiencies of SO_2 emissions.

(c) The owner or operator shall determine compliance with the SO_2 standards in § 60.642 (a) or (b) as follows:

(1) The emission reduction efficiency (R) achieved by the sulfur recovery technology shall be computed for each run using the following equation:

$R = (100\ S)/(S + E)$

(2) The level indicators or manual soundings shall be used to measure the liquid sulfur accumulation rate in the product storage tanks. Readings taken at the beginning and end of each run, the tank geometry, sulfur density at the storage temperature, and sample duration shall be used to determine the sulfur production rate (S) in kg/hr for each run.

(3) The emission rate (E) of sulfur shall be computed for each run as follows:

$E = C_e Q_{sd}/K$

where:

C_e = concentration of sulfur equivalent (SO_2 + TRS), g/dscm.
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr.
K = conversion factor, 1000 g/kg.

(4) The concentration (C_e) of sulfur equivalent shall be the sum of the SO_2 and TRS concentrations, after being converted to sulfur equivalents. For each run and each of the test methods specified in this paragraph (c) of this section, the sampling time shall be at least 4 hours. Method 1 shall be used to select the sampling site. The sampling point in the duct shall be at the centroid of the cross-section if the area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 in.) if the cross-sectional area is 5 m^2 or more, and the centroid is more than 1 m (39 in.) from the wall.

(i) Method 6 shall be used to determine the SO_2 concentration. Eight samples of 20 minutes each shall be taken at 30-minute intervals. The arithmetic average in mg/dscm shall be the concentration for the run. The concentration in mg/dscm shall be multiplied by 0.5 convert the results to sulfur equivalent.

(ii) Method 15 shall be used to determine the TRS concentration from reduction-type devices or where the oxygen content of the effluent gas is less than 1.0 percent by volume. The sampling rate shall be at least 3 liters/min (0.1 ft^3/min) to insure minimum residence time in the sample line. Sixteen samples shall be taken at 15-minute intervals. The arithmetic average of all the samples shall be the concentration for the run. The concentration in ppm TRS as H_2S shall be multiplied by 1.352×10^{-6} to convert the results to sulfur equivalent.

(iii) Method 16A shall be used to determine the TRS concentration from oxidation-type devices or where the oxygen content of the effluent gas is greater then 1.0 percent by volume. Eight samples of 20 minutes each shall be taken at 30-minute intervals. The arithmetic average shall be the concentration for the run. The concentration in ppm TRS at H_2S shall be multiplied by 1.352×10^{-6} to convert the results to sulfur equivalent.

(iv) Method 2 shall be used to determine the volumetric flow rate of the effluent gas. A velocity traverse shall be conducted at the beginning and end of each run. The arithmetic average of the two measurements shall be used to calculate the volumetric flow rate (Q_{sd}) for the run. For the determination of the effluent gas molecular weight, a single integrated sample over the 4-hour period may be taken and analyzed or grab samples at 1-hour intervals may be analyzed, and averaged. For the moisture content, two samples of at least 0.10 dscm (0.35 dscf) and 10 minutes shall be taken at the beginning of the 4-hour run and near the end of the time period. The arithmetic average of the two runs shall be the moisture content for the run.

(d) To comply with § 60.646(d), the owner or operator shall obtain the information required by using the monitoring devices in paragraph (b) or (c) of this section.

§ 60.645 [Reserved]

§ 60.646 [Amended]

77. In § 60.646(a)(2), the reference "§ 60.645(a)(8)" is revised to read "§ 60.644(b)(1)".

78. In § 60.646(a)(4), the reference "§ 60.644(a)(4)" is revised to read "§ 60.644(b)(3)".

79. In § 60.646(d), the reference "§ 60.643(b)" is revised to read "§ 60.644(c)(1)".

80. Section 60.675 is revised to read as follows:

§ 60.675 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (e) of this section.

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.272(a) as follows:

(1) Method 5 or Method 17 shall be used to determine the particulate matter concentration. The sampling time and sample volume shall be at least 120 minutes and 1.70 dscm (60 dscf). For Method 5, if the gas stream being sampled is at ambient temperature, the sampling probe and filter may be operated without heaters. If the gas stream is above ambient temperature, the sampling probe and filter may be operated at a temperature high enough, but no higher than 121 °C (250 °F), to prevent water condensation on the filter.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity.

(c) In determining compliance with the particulate matter standards in § 60.672 (b) and (c), the owner or operator shall use Method 9 and the procedures in § 60.11, with the following additions:

(1) The minimum distance between the observer and the emission source shall be 4.57 meters (15 feet).

(2) The observer shall, when possible, select a position that minimizes interference from other fugitive emission sources (e.g., road dust). The required observer position relative to the sun (Method 9, Section 2.1) must be followed.

(3) For affected facilities using wet dust suppression for particulate matter control, a visible mist is sometimes generated by the spray. The water mist must not be confused with particulate matter emissions and is not to be considered a visible emission. When a water mist of this nature is present, the observation of emissions is to be made at a point in the plume where the mist is no longer visible.

(d) In determining compliance with § 60.672(e), the owner or operator shall use Method 22 to determine fugitive emissions. The performance test shall be conducted while all affected facilities inside the building are operating. The performance test for each building shall be at least 75 minutes in duration, with each side of the building and the roof being observed for at least 15 minutes.

(e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For the method and procedure of paragraph (c) of this section, if emissions from two or more facilities continuously interfere so that the opacity of fugitive emissions from an individual affected facility cannot be read, either of the following procedures may be used:

(i) Use for the combined emission stream the highest fugitive opacity standard applicable to any of the individual affected facilities contributing to the emissions stream.

(ii) Separate the emissions so that the opacity of emissions from each affected facility can be read.

(f) To comply with § 60.676(d), the owner or operator shall record the measurements as required § 60.676(c) using the monitoring devices in § 60.674 (a) and (b) during each particulate matter run and shall determine the averages.

§ 60.676 [Amended]

81. In § 60.676(d), the words "those measurements recorded" are revised to read "the averaged determined".

82. Section 60.685 is revised to read as follows:

§ 60.685 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall conduct performance tests while the product with the highest loss on ignition (LOI) expected to be produced by the affected facility is being manufactured.

(c) The owner or operator shall determine compliance with the particulate matter standard in § 60.682 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E=(C_t Q_{sd})/(P_{avg} K)$$

where:

E = emission rate of particulate matter, kg/Mg (lb/ton).

C_t = concentration of particulate matter, g/dsm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P_{avg} = average glass pull rate, Mg/hr (ton/hr).

K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5E shall be used to determine the particulate matter concentration (C_t) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume shall be at least 120 minutes and 2.55 dscm (90 dscf).

(3) The average glass pull rate (P_{avg}) for the manufacturing line shall be the arithmetic average of three glass pull rate (P_i) determinations taken at intervals of at least 30 minutes during each run. The individual glass pull rates (P_i) shall be computed using the following equation:

$$P_i=K'L_s W_m M[(1.0-LOI/100)]$$

where:

P_i = glass pull rate at interval "i", Mg/hr (ton/hr).

L_s = line speed, m/min (ft/min).

W_m = trimmed mat width, m (ft).

M = mat gram weight, G/m^2.

LOI = loss on ignition, weight percent.

K' = conversion factor, $6 \times 10^{-}$(min-Mg)/(hr-g) [3×10^{-2} (min-ton)/(hr-lb)].

(i) ASTM Standard Test Methods D2584–68 (Reapproved 1979) (incorporated reference—see § 6017), shall be used to determine the LOI for each run.

(ii) Line speed (L_s), trimmed mat width (W_m), and mat gram weight (M) shall be determined for each run from the process information or from direct measurements.

(d) To comply with § 60.684(d), the owner or operator shall record measurements as required in § 60.684 (a) and (b) using the monitoring devices in § 60.683 (a) and (b) during the particulate matter runs.

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Part III

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice of Proposed Amendments and Additions to Sentencing Guidelines and Official Commentary; Request for Public Comment and Notice of Hearing

United States Sentencing Commission

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments and additions to sentencing guidelines and official commentary. Request for public comment. Notice of hearing.

SUMMARY: In addition to permanent adoption of the temporary amendments adopted effective January 15, 1988 (53 FR 1286), the Commission is considering adopting amendments and additions to the sentencing guidelines, policy statements and official commentary substantially in the form published below. The Commission may report these and other permanent revisions to the guidelines to Congress on or before May 1, 1988. The Commission invites public comment on these proposals and all other aspects of the guidelines.

DATES: Public comment should be received by the Commission no later than April 1, 1988, in order for the Commission to consider it in conjunction with the next set of regular amendments, which must be sent to Congress by May 1, 1988. The Commission plans to hold public hearings in Washington, DC, on March 22, 1988, on these and any other proposed amendments.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW., Suite 1400, Washington, DC 20004, Attention: Public Hearing Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662–8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Ordinarily, the Administrative Procedure Act rulemaking requirements (including publication in the **Federal Register**, public comment and public hearing procedures) are not applicable to judicial branch agencies. However, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provision of 5 U.S.C. 553 applicable to the routine promulgation of sentencing guidelines by the Sentencing Commission. No similar requirement exists with respect to policy statements or Commission commentary accompanying guidelines.

The initial sentencing guidelines and policy statement were submitted to Congress on April 13, 1987. Technical, clarifying and conforming amendments were submitted on May 1, 1987. As so amended, the sentencing guidelines and policy statements were published in the **Federal Register** on May 13, 1987 (52 FR 18046). In October 1987 the Commission revised the official commentary and amended one policy statement. (52 FR 44674). Effective January 15, 1988, the Commission adopted the October 1987 revisions and certain other temporary revisions to the guidelines pursuant to its emergency authority under section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, December 7, 1987). (53 FR 1286.)

In addition to permanent adoption of the temporary amendments adopted effective January 15, 1988, the Commission is considering revisions below. The Commission may report these and other permanent revisions to the guidelines to Congress on or before May 1, 1988. The Commission invites public comment on these proposals and all other aspects of the guidelines.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a), (p), (x)).

William W. Wilkins, Jr.,

Chairman.

I. Proposed Additional Offense Guideline (§ 2A2.4)

§ 2A2.4. Obstructing or Impeding Officers.

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the conduct involved striking, beating or wounding, increase by 3 levels.

(c) Cross Reference.

(1) If the defendant is convicted under 18 U.S.C. 111 and the conduct constituted aggravated assault, apply § 2A2.2 (Aggravated Assault).

Commentary

Statutory Provisions: 18 U.S.C. 111, 1501, 1502, 3056(d).

Application Notes:

1. Do not apply § 3A1.2 (Official Victim). The base offense level reflects the fact that the victim was a governmental officer performing official duties.

2. "Striking, beating, or wounding" is discussed in the Commentary to § 2A2.3 (Minor Assault).

3. The base offense level does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Functions).

Background: Violations of 18 U.S.C. 1501, 1502 and 3056(d) are misdemeanors; violation of 18 U.S.C. 111 is a felony. The guideline has been drafted to provide offense levels that are identical to those otherwise provided for assaults involving an official victim; when no assault is involved, the offense level is 6.

Proposed Conforming Amendments

In the Commentary to § 2A2.3 captioned "Statutory Provisions", delete "111,".

In Appendix A (Statutory Index), on the line beginning "18 U.S.C. 111" delete "2A2.3" and insert in lieu thereof "2A2.4", on the line beginning "18 U.S.C. 1501" delete "2A2.3" and insert in lieu thereof "2A2.4", and insert the following in the appropriate place:

"18 U.S.C. 1502 2A2.4,"

"18 U.S.C. 3056(d) 2A2.4.".

II. Proposed Additional Offense Guideline (§ 2A5.3)

§ 2A5.3. Committing Certain Crimes Aboard Aircraft.

(a) Base Offense Level: The offense level applicable to the underlying offense.

Commentary

Statutory Provision: 49 U.S.C. 1472(k)(1).

Application Notes:

1. "Underlying offense" refers to the offense listed in 49 U.S.C. 1472(k)(1) that the defendant is convicted of violating.

2. If the conduct endangered the safety of the aircraft or passengers, an upward departure may be warranted.

III. Proposed Additional Offense Guideline (§ 2A6.2)

§ 2A6.2. Imparting or Conveying False Information Regarding Attempt to Wreck or Destroy Aircraft or Aircraft Facility, Motor Vehicle or Motor Vehicle Facility, or Vessel.

(a) Base Offense Level: 12.

Commentary

Statutory Provision: 18 U.S.C. 35(b).

Application Note:

1. If the threat or false information resulted in serious bodily injury or substantial property damage (e.g., in an ensuing panic), an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: Although the typical case involves a false report of a bomb aboard an aircraft, this guideline also applies to false reports regarding attempts to destroy other means of public transportation.

The specific offense characteristics do not include making a threat for purposes of extortion because such offenses ordinarily may be prosecuted under 18 U.S.C. 875–877 or 1951, in which event § 2B3.2 (Extortion by Threat of Injury or Serious Damage) would apply.

Note: In addition to other comments, the Commission requests comment on whether specific offense characteristics adjusting for, e.g., lack of premeditation (cf. § 2A6.1(b)(1)), the apparent credibility of the threat, or degree of disruption, should be included.

IV. Proposed Amendments to Guideline § 2D1.5 (Continuing Criminal Enterprise)

The Commission has reviewed statistical data regarding past

convictions under 21 U.S.C. 848 (Continuing Criminal Enterprise (CCE)). This evaluation is ongoing. However, preliminary review indicates that pre-guideline sentences were substantially higher than those provided for in the corresponding guideline (§ 2D1.5) and probably took into account more offense characteristics than does the current guideline. Accordingly, the Commission is considering amending § 2D1.5. The proposal set forth below provides one means of revising the guideline by taking into account the amount of drugs involved in the enterprise. However, it may be appropriate to incorporate other specific offender characteristics as part of the CCE guideline, and/or to change the base offense level. The Commission solicits public comment regarding incorporation into the guideline of changes such as the following:

1. Should the guideline take into account whether, during the course of and in furtherance of the enterprise, the defendant caused injury to any person or used or sanctioned the use of violence? For example, the Commission might adopt a guideline that increases the base offense level by 1 or 2 levels in such a case.

2. Should the guideline take into account the size of the enterprise and the defendant's role in its operation? It may be appropriate to adjust the base offense level in relation to the number of persons as to whom the defendant occupied a position of organizer, supervisor, or other position of management. For example, the Commission could adopt a guideline that increased the offense level by two additional levels if the defendant organized, supervised, or managed more than 20 persons and one additional level for more than ten persons.

3. Should the base offense level be raised? For example, the base offense level could be raised to 35, 36 or 37 in lieu of or in addition to making other changes.

4. Should prior drug convictions be treated as if they are part of the criminal enterprise the defendant is convicted of operating? An alternative to the proposed amendment would require that prior convictions not be included in calculating the defendant's criminal history if the convictions are considered part of the enterprise itself.

§ 2D1.5. Continuing Criminal Enterprise

(a) Base Offense Level (Apply the greater):

(1) 32; or

(2) the offense level applicable to the underlying unlawful conduct, plus:

(A) 4 levels, if the defendant was an organizer or leader of the criminal enterprise; or

(B) 3 levels in any other case.

Commentary

Statutory Provision: 18 U.S.C. 848.

Application Notes:

1. Do not apply any adjustment from Chapter Three, Part B (Role in the Offense). This adjustment is incorporated in the base offense level. The terms "organizer" and "leader" are discussed in the Commentary to § 3B1.1 (Aggravating Role).

2. The offense level for the "underlying conduct" under subsection (a)(2) is to be determined by applying the most applicable offense guideline for such conduct (generally § 2D1.1), using the rules regarding relevant conduct as set forth in § 1B1.3.

3. Under 18 U.S.C. 848, certain conduct for which the defendant has previously been sentenced may be charged as part of the instant offense to establish a "continuing series of violations." Conduct for which the defendant was sentenced prior to the time of indictment under 21 U.S.C. 848 is to be considered as prior criminal history and not as part of the instant offense under subsection (a)(2) above.

4. Violations under this section are to be grouped with other drug offenses for the purposes of Chapter Three, Part D (Multiple Counts).

Background: Because a conviction under 21 U.S.C. 848 establishes that the defendant occupied a position of organizer, a supervisory position, or any other position of management in a criminal enterprise with five or more other persons, a 3-level or 4-level adjustment is provided when the base offense level is established under subsection (a)(2). This adjustment is equivalent to that provided under § 3B1.1 (a) or (b) (Aggravating Role).

Title 21 U.S.C. 848 provides a 20-year minimum mandatory penalty for second convictions and a mandatory life sentence for principle administrators of extremely large enterprises. If application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline. See § 5G1.1(b).

[FR Doc. 88-3445 Filed 2-18-88; 8:45 am]

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Friday
February 19, 1988

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 864

Hematology and Pathology Devices; Premarket Approval of the Automated Blood Cell Separator Intended for Routine Collection of Blood and Blood Components; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 85N-0241]

Hematology and Pathology Devices; Premarket Approval of the Automated Blood Cell Separator Intended for Routine Collection of Blood and Blood Components

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the automated blood cell separator intended for routine collection of blood and blood components, a medical device. The agency also is summarizing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and (2) the benefits to the public from use of the device. In addition, FDA also is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Written comments by April 19, 1988; requests for a change in classification by March 7, 1988.

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

FOR FURTHER INFORMATION CONTACT: Sukza Hwangbo, Center for Biologics Evaluation and Research (HFB-825), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-5433.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I, general controls; class II, performance standards; and class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For the sake of convenience, this preamble refers both to the devices that were on the market before May 28, 1976, and to the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515, to premarket approval. (As an alternative procedure for premarket approval, section 515(f) of the act provides for the development of a PDP, the last stage of which is for FDA to declare that a PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or a notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval or publish a notice terminating the proceeding. If the proceeding is terminated, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act requires that a PMA or a notice of completion of a PDP for the device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates,

commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and is subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that, "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94–853, 94th Cong., 2d Sess. 42 (1976).

II. Classification of the Automated Blood Cell Separator

In the **Federal Register** of September 12, 1980 (45 FR 60643), FDA issued a final rule (21 CFR 864.9245) classifying the automated blood cell separator intended for routine collection of blood and blood components into class III. The preamble to the proposal to classify the device (44 FR 53050; September 11, 1979) included the recommendation of the Hematology and Pathology Devices Panel (formerly the Clinical Chemistry and Hematology Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the automated blood cell separator intended for routine collection of blood and blood components. The preamble to the final rule classifying the device advised that the earliest date by which a PMA for the device (or a notice of completion of a PDP) could be required was April 29, 1983, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurred later.

On January 19, 1981, a manufacturer submitted to FDA a petition to reclassify from class III into class II its seal-less centrifufal automated blood cell separator, as a category of device separate from all the other automated blood cell separators that FDA, in the September 12, 1980, final rule, had classified into class III (Docket No. 81N–0228). In the **Federal Register** of September 22, 1981 (46 FR 46838), FDA published a notice to announce the Panel's recommendation on the seal-less centrifugal automated blood cell separator and provided a period of 30 days for interested persons to submit written comments to FDA. In the **Federal Register** of April 29, 1983 (48 FR 19474), FDA issued an order denying the petition, thereby retaining the seal-less centrifugal automated blood cell separator within the same generic category of preamendments devices classified in § 864.9245.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the automated blood cell separator intended for routine collection of blood and blood components identified in § 864.9245(a) has a high priority for initiating a proceeding to require premarket approval. Accordingly FDA is commencing a proceeding under section 515(b) of the act to require that the automated blood cell separator intended for routine collection of blood and blood components have an approved PMA or a PDP that has been declared completed.

III. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is now proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the automated blood cell separator intended for routine collection of blood and blood components within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the automated blood cell separator intended for routine collection of blood and blood components during FDA's review of the PMA or the notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days, of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will stipulate that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any automated blood cell separator intended for routine collection of blood and blood components: (1) That is not legally on the market on or before that date or (2) that is legally on the market on or before that date, but for which a PMA or a notice of completion of a PDP is not filed by that date or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the automated blood cell separator intended for routine collection of blood and blood components is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device for such intended uses will be required to cease. The device for such intended uses may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device intended for routine collection of blood and blood components may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

IV. Description of Devices Excluded From This Proposed Rule

The generic type of automated blood cell separator intended for routine collection of blood and blood components classified into class III in 21

CFR 864.9245 consists of two different kinds of cell separators with different operating principles: centrifugal and filtration. The same machines classified in § 864.9245 are also intended for therapeutic purposes, as described below.

The automated blood cell separator intended for therapeutic purposes that operates using a filtration principle is a "new" postamendments device, because the device using the filtration principle was not in commercial distribution for therapeutic purposes when the amendments were enacted. Thus, by action of the statute, the automated blood cell separator intended for therapeutic purposes that operates using a filtration principle is automatically classified into class III without FDA publishing a regulation classifying the device.

The automated blood cell separator intended for therapeutic purposes that operates using a centrifugal principle is a device that was in commercial distribution when the amendments were enacted. In the near future, FDA intends to publish in the **Federal Register** a proposed regulation classifying the device.

FDA has already referred the automated blood cell separator intended for therapeutic purposes that operates using a centrifugal principle to the Gastroenterology-Urology Devices Panel for a classification recommendation. During a meeting of that Panel on April 5, 1983, the Panel recommended that the device be classified into class II. A transcript of that Panel meeting is available for public review at FDA's Dockets Management Branch (address above) 9 a.m. to 4 p.m., Monday through Friday.

Thus, the two devices identified below are excluded from the devices subject to this proposed rule:

(1) *Centrifugal device:* An automated blood cell separator intended for therapeutic purposes that operates using a centrifugal principle is a device that automatically removes whole blood from a person (patient) and separates the blood into components (red blood cells, white blood cells, plasma, and platelets). One or more of the separated blood components may be discarded, or the separated blood components may be treated or processed and returned to the patient with the remainder of the patient's blood. The separation bowls of the centrifugal blood cell separators are reusable or disposable.

(2) *Filtration device:* An automated blood cell separator intended for therapeutic purposes that operates on a filtration principle is a device that automatically removes whole blood from a person (patient) and separates the blood components (red blood cells, white blood cells, plasma, and platelets). One or more of the separated blood components may be discarded, or the separated blood components may be treated or processed and returned to the patient with the remainder of the patient's blood.

V. FDA's Working Relationships Agreement

In the **Federal Register** of April 9, 1982 (47 FR 15412), FDA issued a notice announcing the availability of FDA's Working Relationships Agreement Among FDA's Bureaus of Medical Devices, Radiological Health, and Biologics. In that notice, FDA announced its division of the regulatory responsibilities for medical devices under the amendments among FDA's organizational units. Since that notice was published in 1982, FDA's Bureau of Medical Devices and Bureau of Radiological Health have been merged to form the Center for Devices and Radiological Health (CDRH), and FDA's Bureau of Biologics has been established as the Center for Biologics Evaluation and Research (CBER). Nevertheless, the principles in the April 9, 1982, notice are still applicable regarding FDA's division of regulatory responsibilities for devices under the amendments.

CBER is the lead center in FDA for regulating certain medical devices used in the processing and administration of biological products, such as blood and blood products obtained from donors and intended for transfusion or administration to patients. CDRH is the lead center for regulating devices such as those used in processing blood and blood components obtained and returned to the same patient for therapeutic purposes. Consistent with FDA's working relationships agreement, FDA advises that manufacturers of automated blood cell separators intended for routine collection of blood and blood components should submit any premarket approval applications (PMA's) or notices of completion of product development protocol (PDP) for such devices to the Director, Center for Biologics Evaluation and Research (HFB–825), 8800 Rockville Pike, Bethesda, MD 20892. FDA also advises that, under the working relationships agreement, CDRH is responsible for regulating the automated blood cell separator intended for therapeutic purposes, including preparing proposed and final classification regulations for the device if it is intended for therapeutic purposes. CDRH's responsibility includes receipt, review, and action on any PMA submitted by a sponsor of an automated blood cell separator intended for therapeutic purposes.

VI. Description of Device Subject to This Proposed Rule

An automated blood cell separator intended for routine collection of blood and blood components is a device that automatically removes whole blood from a person (donor), separates the blood into components (red blood cells, white blood cells, plasma, and platelets), retains one or more of the components, and returns the remainder of the blood to the donor. The components obtained are used to prepare blood products primarily for administration to persons other than the donor. The device operates on either a centrifugal separation principle or a filtration principle. The separation bowls of centrifugal blood cell separators are reusable or disposable. As discussed in section IV. of this preamble, the automated blood cell separator intended for therapeutic purposes is excluded.

VII. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the automated blood cell separator intended for routine collection of blood and blood components to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

A. Degree of Risk

1. *Damage of cellular components and activation of the complement system.* A major risk to health of donors is that the process of removing blood, handling the blood outside the body, and returning the blood to the donor's circulatory system could injure the cellular components of the blood and activate the body's complement system (a series of enzymatic proteins capable, when activated, of destroying intact cells). Another potential donor reaction includes fever, due to a breakdown of granulocytes (leukocytes containing granules) during the pump cycle of the automated blood cell separator (Refs. 1 and 6).

2. *Additional risks to donors.* If the automated blood cell separator fails to perform satisfactorily, the donor may have one or more of the following adverse reactions: (a) Shock resulting from blood loss; (b) toxic reaction to high levels of anticoagulants, such as citrate or heparin, that the automated

blood cell separator may add to the blood before the blood is returned to the donor; (c) stress reaction due to the removal or loss of blood; (d) thrombosis due to activation of clotting factors in the blood by surfaces within the automated blood cell separator; or (e) sepsis and fever due to bacterial contamination of the blood returned to the donor (Refs. 1, 6, and 7).

3. *Risks to donors, patients, and operators of the device.* An unexpected or an undetected leak in the blood handling system of the device presents risks of infections, such as hepatitis, to donors, patients, and operators of the device. The device presents a risk of electrical shock or injury to operators and donors if the device has an electrical malfunction. If the automated blood cell separator fails to perform satisfactorily, the blood or blood components collected from a donor may not be suitable for use because of cellular damage to blood or blood components during collection or processing. One form of cellular damage is red blood cell hemolysis (destruction of the cell membrane accompanied by the release of hemoglobin) (Refs. 3, 6, and 7).

B. Benefits of the Device

The automated blood cell separator removes whole blood from a donor, separates the blood into components (red blood cells, white blood cells, plasma, and platelets) retains one or more of the components, and returns the remainder of the blood to the donor. The blood and blood components that are separated and collected are subsequently transfused into persons other than the donor for therapeutic uses. Platelets and leukocytes are transfused as a life-saving procedure for treatment of certain malignant diseases, primarily leukemia. The essential benefit of the automated blood cell separator intended for routine collection of blood and blood components is that large quantities of certain blood components can be removed from a donor with relative safety and be prepared for transfusion into other persons. The capability of collecting large quantities of certain components from donors is particularly valuable when a patient requires blood components from donors of a particular immunologic type (Refs. 1, 3, and 5 through 7).

C. Discussion of Risks and Benefits

The automated blood cell separator intended for routine collection of blood and blood components continues to present risks such as clotting of blood in the bowl and leaks of blood in the system. Manufacturers include alarm systems in the newer models of devices to help overcome these problems.

The device may present increased risks when alarm systems are included, however, because the operator may rely on the alarm system and the alarm system may malfunction. FDA may have underestimated the frequency of adverse experiences with the device because of reluctance on the part of investigators and users to publish a description of their adverse experiences. Because automated blood cell separators are now used more frequently for leukapheresis, some users are concerned about the potential risks to donors. The greatest benefit from use of the device is the relatively large quantity of certain blood components that can be separated, collected, and administered as life-saving treatment of persons other than the donor.

FDA classified the automated blood cell separator intended for routine collection of blood and blood components into class III because insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has weighed the probable benefits to the public from the use of the device and believes that the studies discussed throughout this document present evidence of significant risks associated with the use of the device. FDA tentatively concludes, therefore, that the automated blood cell separator intended for routine collection of blood and blood components should undergo premarket approval to determine: (1) Whether probable benefits to health from use of the device for its intended use outweigh the risk of illness or injury from such use and (2) to establish conditions of use that will minimize risks to patients.

Any PMA for the device is to contain the information required by section 515(c)(1) of the act. Such a PMA should also contain a detailed discussion with supporting preclinical and clinical studies with respect to the risks identified above and the effectiveness of the device for which premarket approval is sought.

In addition, the PMA should contain all data and information on: (1) The risks known to the applicant that have not been identified in this document, (2) the effectiveness of the specific automated blood cell separator that is the subject of the application, and (3) summaries of all existing preclinical and clinical data from investigations on the safety and effectiveness of the device for which premarket approval is sought.

Applicants should submit to the Center for Biologics Evaluation and Research (HFB–825), any PMA for the device intended for routine collection of blood and blood components in accordance with FDA's "Guideline for the Arrangement and Content of a PMA Application." (The guideline is available upon request from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

VIII. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in the preambles to FDA's proposed rules to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the automated blood cell separator intended for routine collection of blood and blood components is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by March 7, 1988.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the automated blood cell separator intended for routine collection of blood and blood components is submitted, the agency will by April 19, 1988, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 of the regulations.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Moriau, M., M. De Bruyere, and C. Bellenot, "Granulocyte Collections From Normal Donors Using the Continuous Flow Centrifuge," *in* "Leukocytes: Separation, Collection, and Transfusion," Edited by J.M. Goldman and R.M. Lowenthal, Academic Press, London, pp. 88–96, 1975.

2. Cartledge, K.W., "Problems in the Sterilization of Cell Separator Bowls," *in* "Leukocytes: Separation, Collection, and Transfusion," Edited by J.M. Goldman and R.M. Lowenthal, Academic Press, London, pp. 43–45, 1975.

3. Oon, C.J., and J.R. Hobbs, "Medical Problems in Donors on Treatment Using the Continuous Flow Blood Separator," *in* "Leukocytes: Separation, Collection, and Transfusion," Edited by J.M. Goldman and R.M. Lowenthal, Academic Press, London, pp. 576–577, 1975.

4. Code of Federal Regulations, 21 CFR Part 606—Current Good Manufacturing Practices for Blood and Blood Components, Subpart D—Equipment, § 606.65.

5. Hester, J.P., et al., "Principles of Blood Separation and Component Extraction in a Disposable Continuous-Flow Single Stage Channel," *Blood*, 54(1):254–268, 1979.

6. Westphal, R.G., "Health Risks to Cytapheresis Donors," *Clinics in Hematology*, 13(1):289–301, 1984.

7. Silvergleid, A.J., "Applications and Limitations of Hemapheresis," *Annual Review of Medicine*, 34, pp. 69–89, 1983.

X. Environmental Impact

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

XI. Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and has found that the proposal would not be a major rule as specified in the Order. The agency believes that only four firms will be affected by this proposed rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

XII. Submission of Comments

Interested persons may, on or before April 19, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before March 7, 1988, submit to the Dockets Management Branch a written request to change the classification of the automated blood cell separator intended for routine collection of blood and blood components. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 864

Hematology and pathology devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 864 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for Part 864 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. In Part 864, by revising § 864.9245 to read as follows:

§ 864.9245 Automated blood cell separator.

(a) [Reserved]

(b) *Automated blood cell separator intended for routine collection of blood and blood components*—(1) *Identification.* An automated blood cell separator intended for routine collection of blood and blood components is a device that automatically removes whole blood from a person (donor), separates the blood into components (red blood cells, white blood cells, plasma, and platelets), retains one or more of the components, and returns the remainder of the blood to the donor. The components obtained are used to prepare blood products primarily for administration to persons other than the donor. The device operates on either a centrifugal separation principle or a filtration principle. The separation bowls of centrifugal blood cell separators may be reusable or disposable. The automated blood cell separator intended for therapeutic purposes is excluded.

(2) *Classification.* Class III.

(3) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP for a device identified in paragraph (b) of this section is required to be filed with the Director, Center for Biologics Evaluation and Research (HFB–825), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, on or before (a date to be 90 days after date of promulgation of a final rule) for any automated blood cell separator intended for routine collection of blood and blood components that was in commercial distribution before May 28, 1976, or that has on or before (date to be 90 days after date of promulgation of a final rule) been found to be substantially equivalent to an automated blood cell separator intended for routine collection of blood and blood components that was in commercial distribution before May 28, 1976. Any other automated blood cell separator intended for the routine collection of blood and blood components shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: January 26, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–3525 Filed 2–18–88; 8:45 am]

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federal register

Friday
February 19, 1988

Part V

Department of Defense

48 CFR Parts 204, 205, 206, 219, 226, 235 and 252

Federal Acquisition Regulation Supplement; Implementation of Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions; Interim Rule With Request for Comments

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 205, 206, 219, 226, 235, and 252

Federal Acquisition Regulation Supplement; Implementation of Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comment.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council invites public comment concerning an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180. These statutes (a) permit DoD to enter into contracts using less than full and open competitive procedures, when practical and necessary to facilitate achievement of a goal of awarding 5 percent of contract dollars to Small Disadvantaged Business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs) during fiscal years 1987-89, provided the contract price does not exceed fair market cost by more than 10 percent, and (b) require DoD to issue regulations to contracting personnel which address such areas as:

(1) Ensuring that current levels of awards under Sections 8(a) and 15(a) of the Small Business Act are maintained;

(2) Increasing subcontract awards to SDBs, HBCUs, and MIs;

(3) Designating set-asides for SDBs, HBCUs and MIs as such, before issuance of the solicitation to the maximum extent practicable; and

(4) Requiring SDBs, HBCUs and MIs to maintain their status, as such, at time of contract award. The interim rule implements the statutes by requiring, in certain circumstances, that contracting officers set aside acquisitions for exclusive competition among SDBs, or among HBCUs and MIs, whenever the contracting officer determines that offers can be anticipated from two or more responsible offerors and that the contract award price will not exceed the fair market price by more than 10 percent. The rule also provides, with exceptions, for a 10 percent evaluation preference for SDBs in competitive acquisitions. In partial small business set-asides, the rule provides SDBs preferential consideration regarding the order in which the Government will conduct negotiations of the set-aside portion.

DATE: *Effective Date:* March 21, 1988.

This rule supersedes and rescinds a previous interim rule published May 4, 1987 at 52 FR 16263.

Comment Date: Comments concerning the interim rule must be received on or before March 21, 1988, to ensure their consideration in formulating a final rule. To facilitate the submission of comments, DFARS Part 219 has been reprinted (with revisions) in its entirety. Please cite DAR Case 87-33 in all correspondence related to this subject.

Over 576 public comments were received in response to the interim rule published May 4, 1987 (52 FR 16263) under DAR Case 87-33. These comments were reviewed in detail and given full consideration by the DAR Council in development of the present interim rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS,c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1207 of Pub. L. 99-661 established an objective that five percent of total combined DoD obligations (i.e., procurement; research, development, test and evaluation; construction; and operation and maintenance) for contracts and subcontracts awarded during FY 1987 through FY 1989 be entered into with SDB concerns, HBCUs, and MIs. To facilitate attainment of the goal, Congress permitted DoD, in Section 1207, to use less than full and open competitive procedures in awarding contracts, provided contract prices do not exceed the fair market price by more than 10 percent. As partial implementation of section 1207, DoD issued an interim rule on May 4, 1987 (52 FR 16263). The scope of that rule addressed achievement of the goal only as it pertains to SDB concerns; other aspects of Section 1207 were to be addressed in subsequent issuances.

While the DAR Council was reviewing the voluminous and substantive public comments, section 806 of Pub. L. 100-180 was enacted. Section 806 required DoD to make substantial progress towards meeting the mandated goal but at the same time established procedures and guidelines which necessitated significant revisions to the May 4, 1987 interim rule.

The DAR Council, having completed its analysis of public comments and section 806, is issuing one comprehensive interim rule which addresses DoD's actions to increase awards to SDBs and awards to HBCUs and MIs. Due to the substantive nature of these changes, additional public comment is deemed necessary.

This interim rule:

- Continues guidance concerning *Commerce Business Daily (CBD)* notices for total SDB set-asides as well as "sources sought" announcements to ensure that competition is enhanced while also ensuring that non-SDB concerns do not unnecessarily incur bid or proposal costs. However, should prices exceed the fair market price by more than 10 percent, guidance is provided to the contracting officer concerning withdrawal of the set-aside.
- Establishes guidance concerning CBD notices for total HBCU/MI set-asides as well as "sources sought" announcements which are similar to the notices developed for total SDB set-asides. In addition, guidance is provided to contracting officers which requires all notices of availability of a Broad Agency Announcement (BAA) published in the CBD to indicate whether any portion of the BAA will be set-aside for HBCU and MI participation.
- Continues, not only the total SDB set-aside procedure delineated in the prior interim rule, but also creates a similar total set-aside arrangement for awards to HBCUs and MIs.
- Revises the guidance in the earlier interim rule regarding the "rule of two" for total SDB set-asides. Previously, whenever a contracting officer determined that competition could be expected to result between two or more SDB concerns, and that there was a reasonable expectation that the award price would not exceed the fair market price by more than 10 percent, the contracting officer was directed to reserve the acquisition for exclusive competition between such SDB firms. The revised coverage, consistent with section 806(b)(7) of Pub. L. 100-180, recognizes the following exceptions to the "rule of two" to ensure maintenance of current levels in the number or dollar value of contracts awarded under the small business set-aside program: (1) Previous acquisitions of the product or service on the basis of a small business set-aside; (2) acquisitions for construction, including maintenance and repairs between $5,000 and $2,000,000; (3) acquisitions for architectural and engineering services and construction

design for military construction projects; (4) acquisitions selected for the 8(a) Program; and (5) small purchases under FAR Part 13.

• Establishes within a partial small business set-aside preferential consideration for SDB concerns. Under this rule, contractors for the set-aside portion will be selected from among the small business concerns that submitted offers on the non-set-aside portion of the acquisition. However, negotiations for the set-aside portion will begin first with SDB concerns that are also labor surplus area concerns.

• Identifies a partial small business set-aside with preferential consideration for SDB concerns as the fifth acquisition method in the set-aside order or precedence appearing at DFARS 219.504.

• Establishes a 10 percent evaluation preference for SDB concerns in certain competitive acquisitions. This preference is created as a method of enhancing contract awards to SDBs in all industry categories in which those firms have not traditionally dominated. However, the evaluation preference will not apply when making small purchases, total SDB set-asides, combined or partial set-asides for LSA concerns, partial small business set-asides, purchases subject to the Trade Agreement Act, or purchases where application of the evaluation preference would be inconsistent with any international agreement, Memorandum of Understanding, etc. with a foreign government.

• Revises the guidance in the previous interim rule to recognize clearly that an SDB must qualify as both socially and economically disadvantaged at the time of submission of its offer and time of award. The coverage also instructs the contracting officer to accept an offeror's certification of its status absent information to the contrary.

• Identifies, as a means of eliminating frivolous protests, those parties who may challenge the social or economic disadvantaged status of a firm.

• Provides for payment of an incentive award when the contractor exceeds its SDB/HBCU/MI goal and awards more than five percent of the contract price to SDB concerns.

• Recognizes the continued joint responsibility of the DoD and SBA to reserve follow-up or new requirements for the 8(a) Program and effectively exclude such acquisitions from consideration as an SDB set-aside. Any reservation for the 8(a) Program must be made prior to announcement of the acquisition in the CBD as a known or potential SDB set-aside.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* An Initial Regulatory Flexibility Analysis has therefore been deemed necessary and will be provided to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties desiring to obtain a copy of the Analysis may contact the individual listed above. Comments received from the public concerning the Analysis will be considered in drafting a final rule and in performing a Final Regulatory Flexibility Analysis.

Comments from small entities will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

The interim rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and OMB approval of the interim rule is not required pursuant to 5 CFR Part 1320.

D. Determination To Issue an Interim Regulation

In order to achieve the goal established by Congress, as it relates to HBCUs and MIs, DoD has determined pursuant to Pub. L. 98–577 that compelling reasons exist to publish interim DFARS revisions without prior opportunity for public comment, inasmuch as present procurement procedures do not ensure that DoD will make substantial progress towards meeting the Congressionally mandated goals for awards to HBCUs and MIs during FYs 1988–89.

Coverage contained in this rule relating to SDBs has been previously subjected to the public comment process required by Pub. L. 98–577 (see 52 FR 16263; 52 FR 16289; 52 FR 24485), and comments received have been considered in drafting the present coverage.

List of Subjects in 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252, continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.671–5 is amended by adding at the end of the introductory text and before "Code A" in paragraph (d)(9) the following: "If Item B13 is coded 8, for post CICA contracting actions, enter only Code B or F as appropriate. If the action is a total small disadvantaged business set-aside (see 206.203–70), a total set-aside for Historically Black Colleges and Universities (HBCUs) or Minority Institutions (MIs) (see 206.270), or a portion of a Board Agency Announcement (BAA) which was set-aside for HBCUs or MIs (see 206.270), enter Code K."; by changing the period to a semicolon at the end of "Code K" following the introductory text and adding the words "206.203–70; or 206.270."; by adding new paragraph (v) to paragraph (e)(1); by renumbering in paragraph (e)(1) the existing paragraph (v) to read paragraph (vi); by adding in paragraph (iii) of paragraph (e)(3) following the words "Code 4" a comma and the words "5, or 6"; by substituting at the end of paragraph (iv) of paragraph (3) the parenthetical phrase "(see 219–502–72)" in lieu of the words "pursuant to 219.502–72"; by adding paragraphs (v) through (viii) to paragraph (e)(3); by revising the introductory text of paragraph (f)(1); and by substituting at the end of paragraph (f)(1)(vi) the words "found to be socially disadvantaged by the Small Business Administration" in lieu of the words "group Americans"; to read as follows:

204.671–5 Instructions for completion of DD Form 350.

* * * * *

(e) * * *

(1) * * *

(v) Enter Code 9 if the award is made to Historically Black College or University or Minority Institution (see 226.7006).

* * * * *

(3) * * *

(v) Enter Code 5 if the award was made to a small disadvantaged business (see 219.70) and award was based on the application of an evaluation preference. If award was made to a small disadvantaged business concern without the application of an evaluation preference (i.e., the small disadvantaged

business was the low offeror without the differential), enter Code 3.

(vi) Enter Code 6 if award was made to a small disadvantaged business and award was made based on preferential consideration (see 219.502–3 (S–70)).

(vii) Enter Code 7 if the award was a total set-aside for Historically Black Colleges or Universities or Minority Institutions (see 226.7004).

(viii) Enter Code 8 if the award was a partial set-aside for Historically Black Colleges or Universities or Minority Institutions (see 235.016).

* * * * *

(f) *Part E, DD Form 350*—(1) *Item E1, Ethnic Group.* If the award was made to a small disadvantaged business firm pursuant to a solicitation issued after June 1, 1987, enter the code below which corresponds to the ethnic group of the contractor (see certification required by 252.219–7005).

* * * * *

PART 205—PUBLICIZING CONTRACT ACTIONS

3. Section 205.207 is amended by substituting in the first sentence of paragraph (d)(S–72) the reference "206.203–70" in lieu of the reference "206.203(S–72)"; by revising paragraph (d)(S–73); and by adding paragraphs (d)(S–74) through (d)(S–76), to read as follows:

205.207 Preparation and transmittal of synopses.

* * * * *

(d)(S–73) When the proposed acquisition is being considered for possible total small disadvantaged business set-aside under 206.203–70, state:

The proposed contract listed here is being considered for 100 percent set-aside for small disadvantaged business (SDB) concerns. Interested SDB concerns should, as early as possible but not later than 15 days of this notice, indicate interest in the acquisition by providing to the contracting office above evidence of capability to perform and a positive statement of eligibility as a small socially and economically disadvantaged business concern. If adequate interest is not received from SDB concerns, the solicitation will be issued as _____ (enter basis for continuing the acquisition, e.g., 100% small business set-aside with evaluation preference for SDBs, etc.) without further notice. Therefore, replies to this notice are requested from _____ (enter all types business to be solicited in the event an SDB set-aside is not made; e.g., all small business concerns, all business concerns, etc.) as well as from SDB concerns."

(d)(S–74) When an individual acquisition is being considered for possible total set-aside for Historically Black Colleges and Universities (HBCUs) or Minority Institutions (MIs) under 206.270, state:

The Proposed contract listed here is being considered for 100 percent set-aside for Historically Black Colleges and Universities (HBCUs) or Minority Institutions (MIs) as defined at Section 226.7002 of the DoD FAR Supplement. Interested HBCUs or MIs should, as early as possible but not later than 15 days of this notice, indicate interest in the acquisition by providing to the contracting office above evidence of capability to perform and a positive statement of eligibility as an HBCU or MI (see Section 226.7006 of the DoD FAR Supplement). If adequate interest is not received from HBCUs and MIs, the solicitation will be issued as _____ (enter basis for continuing the acquisition, e.g., unrestricted), without further notice. Therefore, replies to this notice are requested from (enter all types of entities to be solicited in the event a set-aside to HBCUs and MIs is not made).

(d) (S–75) When an individual acquisition provides for a total set-aside for HBCUs and MIs under 206.270, state:

The proposed contract listed here is a 100 percent set-aside for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) as defined at Section 226.7002 of the DoD FAR Supplement. Offers from other than HBCUs and MIs are not solicited.

(d) (S–76) When a notice of availability of a Broad Agency Announcement (BAA) is published in the CBD pursuant to FAR 35.016(c), the notice shall indicate whether any portions of the BAA will be set aside for HBCU and MI participation (see 235.016–70).

PART 206—COMPETITION REQUIREMENTS

4. Section 206.203–70 is revised to read as follows:

206.203–70 Set-Asides for small disadvantaged business concerns.

(a) To fulfill the objective of Section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180, contracting officers may, for fiscal years 1987–89 set-aside solicitations to allow only small disadvantaged business concerns as defined at 219.001 to compete under the procedures in 219.502–72. No separate justification or determination and findings is required under this Part to set-aside a contract action for small disadvantaged business.

5. Section 206.270 is added to read as follows:

206.270 Set-Asides for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

To fulfill the objective of section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180 (see 226.7003), contracting officers may, for fiscal years 1987–89, totally or partially set-aside solicitations for the acquisition of research and studies, normally acquired from Higher Education Institutions, to allow only HBCUs and MIs, as defined under the procedures in 226.7004 and 236.016–70, to compete. No separate justification or determination and findings is required under this Part to set-aside a contract action for HBCUs and MIs.

6. Part 219 is revised to read as follows:

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Sec.

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

219.000 Scope of part.

(a) (S–70) This part also implements certain provisions of Section 1207, Pub. L. 99–661, and section 806 of Pub. L. 100–180 which establish for DoD an objective of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987–89 to Small Disadvantaged Business (SDB) Concerns, Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs). Sections 1207 and 806 also provide certain discretionary authority to the Secretary of Defense to achieve that objective.

219.001 Definitions.

"Small disadvantaged business (SDB) concern", as used in this Part, means a small business concern, including mass media, owned and controlled by individuals who are both socially and economically disadvantaged, as defined in regulations prescribed by the Small Business Administration (SBA) at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals.

Subpart 219.1—Size Standards

219.102–70 Size standards for transportation industries.

No concern offering to provide local and/or long distance trucking, warehousing and/or packing and crating, and/or freight forwarding will be denied small business status for the purpose of Government acquisition solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded $7 million during its most recently completed fiscal year.

Subpart 219.2—Policies

219.201 General policy.

(a) In furtherance of the Government policy of placing a fair proportion of its acquisitions with Small Disadvantaged Business (SDB) Concerns and Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs), section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180 established an objective for the Department of Defense of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987–89 to SDBs, HBCUs and MIs (see Subpart 226.70), and of maximizing the number of such entities participating in Defense prime contracts and subcontracts. It is the policy of the Department of Defense to strive to meet these objectives through the enhanced use of outreach efforts, technical assistance programs, the section 8(a) Program, and the special authorities conveyed by section 1207 and section 806 (e.g., through the creation of an SDB set-aside, the use of evaluation preferences, and the use of advance payments, when appropriate under FAR Subpart 32.4). With regard to technical assistance programs, it is the Department's policy to provide SDB concerns technical assistance, to include information about the Department's SDB Program, advice about acquisition procedures, instructions on preparation of proposals, and such other assistance as is consistent with the Department's mission.

(b)(1) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(2) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command.

(3) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(4) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department. Such report shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

(d) (1) Small and disadvantaged business utilization specialists shall be appointed by name, in writing, for contracting activities, contract administration offices, and other such offices, as the Departments consider appropriate. They shall be responsible directly to the appointing authority and shall not be subject to the direction of contracting, contract administration, or technical personnel. The appointing authority, without power of redelegation, is as follows:

(i) *Army*—Commanders of major commands, Commanders of major subordinate commands, and installation, post, camp, station or activity commanders. For each major command, one specialist will be appointed as the Associate Director for Small and Disadvantaged Business Utilization, reporting directly to the Commander or the second-in-command. The Associate Director will have primary responsibility for the effective implementation of the Army's small business, disadvantaged business utilization, labor surplus area and other socio-economic business programs within the Command. The Associate Director for Small and Disadvantaged Business Utilization Policy at Major Command Headquarters other than at the Army Materiel Command (AMC), Office, Chief of Engineers (OCE), Forces Command (FORSCOM), and Training and Doctrine

Command (TRADOC), may be assigned on a part-time basis.

(ii) *Navy*—Head of a contracting activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;

(iii) *Air Force*—Commander of each central contracting activity; the Wing/Base Commander of each local contracting office and the Chief of each contract administration activity. In addition, an Executive for Small and Disadvantaged Business Utilization shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force small business, small disadvantaged business utilization and labor surplus area program(s) within the Command;

(iv) *Defense Logistics Agency*—Commanders of Defense Supply Centers, Commanders, Defense Contract Administration Services Regions and Commanders of other DLA contracting activities;

(v) *National Security Agency*—the Director;

(vi) *Defense Communications Agency*—the Director;

(vii) *Defense Nuclear Agency*—the Director;

(viii) *Defense Mapping Agency*—Director; directors of subordinate components;

(ix) *Strategic Defense Initiative Organization*—the Director.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Department or Agency Office of Small and Disadvantaged Business Utilization (219.201(S-71)). In addition to performing that portion of the specific program outlined in paragraph (d)(2) below that is normally performed in the activity to which the specialist is assigned, the small and disadvantaged business utilization specialist shall advise the head of the activity and shall perform such additional functions as are prescribed for the specialist in furtherance of the overall small business, small disadvantaged business utilization and labor surplus area programs. A small and disadvantaged business utilization specialist shall be appointed on a full-time basis in all activities having sufficient business or program responsibility to justify such action. When the volume of contracting does not warrant assignment of a full-time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over collateral responsibilities.

(2) A small and disadvantaged business utilization specialist (SADBUS), appointed pursuant to the above, shall perform the following duties, as determined to be appropriate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADBUS shall:

(i) Maintain a program designed to locate capable small business, small disadvantaged business and labor surplus area business sources for current and future acquisitions, through SBA or other methods;

(ii) Coordinate inquiries and requests for advice from small business, small disadvantaged business and labor surplus area business concerns on acquisition matters;

(iii) Review acquisitions to insure maximum opportunity for participation by small, small disadvantaged business, women-owned, and LSA concerns, and to make recommendations for set-aside and 8(a) awards (see 219.501(c));

(iv) When small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings of the current or future acquisitions, as appropriate, are available;

(v) Review acquisition programs for possible breakout of items suitable for acquisition from small business concerns;

(vi) Ensure that financial assistance available under existing regulations is offered and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(vii) Participate in determinations concerning responsibility of a prospective contractor whenever small business concerns are involved;

(viii) Participate in the evaluation of a prime contractor's small business, labor surplus, and small disadvantaged business subcontracting plans;

(ix) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the small business program;

(x) Assure that participation of small business concerns is accurately reported;

(xi) Bring to the attention of the Department Director or Staff Director for Small and Disadvantaged Business Utilization possible contracting opportunities in labor surplus areas;

(xii) Make available to SBA copies of solicitations when so requested;

(xiii) When a bid from a small business, small disadvantaged business or labor surplus area firm has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(xiv) Participate in government-industry conferences to assist small business, small disadvantaged business and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(xv) Advise potential suppliers how they may obtain information about sealed bidding and negotiated acquisitions and that they may subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) Brief the specialist's Commander at least once quarterly concerning the status of the installation's small business, small disadvantaged business utilization and labor surplus area programs in relation to goals and objectives established by higher headquarters;

(xvii) Participate in the development, implementation and review of automated contracting systems to assure that the interests of small business, small disadvantaged business and labor surplus area firms are fully considered with particular reference to FAR 19.202-4(c), FAR 19.501(c), and FAR 19.502;

(xviii) Assist program managers as early as possible in the development cycle of major system acquisitions and system programs as pertains to the small business programs;

(xix) Assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(xx) Assure that the installation's small business, small disadvantaged business and labor surplus area business programs are frequently publicized in the appropriate media;

(xxi) Assure that the organization maintains a list of products and services which have been placed on repetitive small business set-aside;

(xxii) Provide small business, small disadvantaged business and labor surplus area firms information regarding assistance available from Federal agencies such as the Small Business Administration, Office of Minority Business Enterprise, Bureau of Indian Affairs, Office of Economic Development, National Science Foundation, Department of Labor and others including state, trade, and other associations;

(xxiii) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, small disadvantaged business and firms located in labor surplus areas;

(xxiv) Recommend to the specialist's Commander the activity small business and disadvantaged business utilization overall goals and goals to be placed on subordinate contracting offices;

(xxv) Participate in interagency programs relating to small business, small disadvantaged business and labor surplus area matters as authorized by the Director of SADBU; and

(xxvi) Advise and assist contracting officers in discharging their responsibilities by:

(A) Monitoring and reviewing contractor performance to determine compliance with small and disadvantaged small business subcontracting plans;

(B) Developing and maintaining records and reports that reflect such compliance or noncompliance.

(xxvii) Assist contracting officers to seek and develop information on the technical competence of Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs), as defined at Subpart 226.70.

(S–70) *Office of the Secretary of Defense Directors*— (1) *Director of Small and Disadvantaged Business Utilization.* The Director of Small and Disadvantaged Business Utilization reports directly to the Deputy Secretary of Defense and is responsible for the overall management and direction of the DoD small business, disadvantaged business utilization, and labor surplus area programs and for advising the Secretary of Defense and the Deputy Secretary of Defense in matters relating to these programs. To that end, the Director will provide guidance to the Departments and periodically review the direction and implementation of their activities in promoting contract awards to small business, small disadvantaged business, and labor surplus area concerns.

(2) *Director of Small Business and Economic Utilization Policy.* The Director of Small Business and Economic Utilization Policy is responsible for the establishment, implementation, and execution of DoD small business and labor surplus area programs. Negotiations with the SBA, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning small business and labor surplus area policy, programs, and DoD goals shall be conducted by the Director of Small Business and Economic Utilization Policy or, with authorization, by representatives of the Departments. The Director of Small Business and Economic Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding small business and labor surplus area matters.

(3) *Director of Disadvantaged Business Utilization Policy.* The Director of Disadvantaged Business Utilization Policy is responsible for the establishment, implementation, and execution of the DoD socially and economically disadvantaged business utilization program. Negotiations with the Small Business Administration, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning disadvantaged business utilization policy, programs, and DoD goals shall be conducted by the Director for Disadvantaged Business Utilization Policy or, with authorization, by representatives of the Departments. The Director of Disadvantaged Business Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding disadvantaged business utilization matters.

(S–71) *Departmental Directors of Small and Disadvantaged Business Utilization.* (1) Each department or agency shall maintain an Office of Small and Disadvantaged Business Utilization as follows:

(i) *Army*—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Pentagon, Washington, DC 20310;

(ii) *Navy*—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, DC 20360;

(iii) *Air Force*—Director, Office of Small and Disadvantaged Business Utilization, SAF/SB, Pentagon, Washington, DC 20330;

(iv) *Defense Logistics Agency*—Staff Director, Office of Small and Disadvantaged Business Utilization, Code DLA–U, Cameron Station, Alexandria, VA 22314;

(v) *National Security Agency*—Director, Office of Small and Disadvantaged Business Utilization, Fort Meade, MD 20755;

(vi) *Defense Communications Agency*—Director, Office of Small and Disadvantaged Business Utilization, Code 260, Washington, DC 20035;

(vii) *Defense Nuclear Agency*—Director, Office of Small and Disadvantaged Business Utilization, (Code OAFR), Washington, DC 20305;

(viii) *Defense Mapping Agency*—Director, Office of Small and Disadvantaged Business Utilization, Headquarters, Washington, DC 20305.

(ix) *Strategic Defense Initiative Organization*—Director of Small and Disadvantaged Business Utilization, Headquarters, Washington, DC 20301–7100.

(2) Each Departmental Office of Small and Disadvantaged Business Utilization shall be managed by a Director who shall be appointed by the Secretary of the Department and shall be responsible to and report directly to the Secretary or Under Secretary of the Department. Directors of Defense agencies shall appoint a Staff Director for Small and Disadvantaged Business Utilization who shall be responsible to and report directly to the Director or the Deputy Director.

(3) The primary responsibility of the Director or Staff Director of each Office of Small and Disadvantaged Business Utilization shall be in matters concerning small business, small disadvantaged business utilization, and labor surplus areas. The Director or Staff Director advises the Secretary on small business, small disadvantaged business utilization and labor surplus area matters, implements such DoD programs within the Department or Agency and represents the Department or Agency in negotiations with other Departments or Governmental agencies on small business, small disadvantaged business utilization and labor surplus area matters. The Director or Staff Director will exercise supervisory authority over Department or Agency Small and Disadvantaged Business Utilization Specialists regarding small business, disadvantaged business

utilization and labor surplus area matters. Appointment of Small and Disadvantaged Business Utilization Specialists shall be made after consultation with the Director or Staff Director of the Office of Small and Disadvantaged Business Utilization of the Department or Agency involved. In addition, such Director shall be afforded an opportunity to comment upon, and contribute to the performance evaluations of the Specialists for the contracting activities and contract administration offices or major organizational elements of the Department involved, including pay pursuant to the Civil Service Reform Act of 1978.

(S–72) *Small Business Technical Advisor.* (1) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of the duties of the representative.

(2) A Small Business Technical Advisor (SBTA) shall be a full-time employee of the contracting activity and shall be well qualified, technically trained, and familiar with the supplies or services acquired at the activity.

(3) The principal duty of this advisor shall be to assist the SBA Procurement Center Representative in that person's duties and functions relating to sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the SBTA.

219–202 Special policies.

219.202–1 Encouraging small business participation in acquisitions.

(S–70) *Encouraging Small and Small Disadvantaged Business Participation in Acquisitions.* The Departments to the extent consistent with the best interests of the Government and in order to broaden the industrial base shall:

(1) Attempt to locate additional qualified small business suppliers by all appropriate methods including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(2) Give wide publicity to contracting methods and practices;

(3) Publicize proposed acquisitions by use of advance notices or other apporpriate methods (see FAR 5.2);

(4) Include all established and qualified potential small business suppliers on mailing lists;

(5) Send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to FAR 14.205–4, at least a *pro rata* number of small business concerns shall be solicited;

(6) Divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(7) Examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(8) Use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program;

(9) Maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns; and

(10) Require that contracting officers emphasize the award of contracts to SDBs in all industry categories in which SDBs have not traditionally dominated.

§ 219.202–5 Data collection and reporting requirements.

(a) Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report), DD Form 1057 (Monthly Procurement Summary by Purchasing Office), Standard Form 294 (Subcontracting report for Individual Contracts), and Standard Form 295 (Summary Subcontract Report), as appropriate.

(b) The contracting office shall complete the following report for initial awards (including options exercised at time of award) of $25,000 or greater, whenever such award is (1) the result of an SDB set-aside (219.502–72), (2) based on the application of an evaluation preference for SDBs (Subpart 219.70), or (3) based on preferential consideration of SDBs (219.502–3(S–70)). When awarded based upon SDB set-aside under 219.502–72, the amount entered in item 5 will be the fair market price determined in accordance with FAR 19.806–2. When awarded based upon preferential consideration under 219.502–3(S–70), the amount entered in item 5 will be the highest unit price for each item awarded on the non-set-aside portion, multiplied by the applicable set-aside quantity. When awarded based upon an evaluation preference under Subpart 219.70, the amount entered in item 5 will be the value of the otherwise responsive offer prior to application of the evaluation percentage.

Premium Paid on Small Disadvantaged Business (SDB) Awards Over $25,000

1. Contract number _____
2. Action date _____
3. Type of SDB preference

	(check one)
a. Total SDB set-aside	_____
b. Evaluation preference—unrestricted	_____
c. Evaluation preference—total small business set-aside	_____
d. Preferential consideration—partial small business set-aside	_____
	(whole dollars)
4. Award price (including options exercised):	_____
5. Total value of fair market price:	_____
6. Difference ((4) minus (5)):	_____
7. Premium percent ((6) divided by (5)):	_____

(c) The foregoing report shall be completed within three days of award and forwarded through channels as follows:

(1) Army contracting offices (excluding Corps of Engineers Civil Works) to SARD–KS, Washington, DC 20310–0600.

(2) Navy contracting offices as directed by COMNAVSUP (SUP–024).

(3) Air Force contracting offices as directed by HQ USAF.

(4) Defense Logistics Agency contracting offices as directed by HQ DLA.

(5) All other contracting offices of the Department of Defense shall forward the information to SARD–KS, Washington, DC 20310–0600.

The addresses listed above shall submit the data to DIOR–WHS within 18 calendar days after the end of each month in a format prescribed by Director, SADBU, OSD. The instructions for preparing the data are developed by DIOR–WHS with the agreement of the Departments.

Subpart 219.3—Determination of Status as a Small Business Concern

§ 219.301 Representation by the offeror.

§ 219.301–70 Eligibility for award.

(a) To be eligible for award under 219.502–72; for a partial set-aside with preferential consideration under 219.502–3(S–70); or, for an evaluation preference under Subpart 219.70, a concern must qualify as an SDB (see

219.001) upon the date of (1) submission of its offer and (2) contract award.

(b) The contracting officer shall accept an offeror's representation and certification under the provision at 252.219–7005 that it is an SDB unless another offeror or the SBA challenges the concern's SDB status, or the contracting officer has reason to question that status. The contracting officer may presume that socially disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian (Asian-Indian) Americans, and other minorities or any other individual found to be socially disadvantaged by the SBA pursuant to section 8(a) of the Small Business Act. The criteria used by the SBA in establishing economic disadvantage are specified at 13 CFR 124.106 and generally provide for consideration of the financial condition (income and assets) of both the individual and the concern, the concern's access to capital and credit, and a comparison with individuals and businesses in the same line of business and competitive market area. Challenges of and questions concerning the social or economic status of an offeror shall be processed in accordance with 219.302(S–70). Challenges of and questions concerning the size of an SDB shall be processed in accordance with FAR 19.302.

219.302 Protesting a small business representation.

(S–70) *Protesting an SDB representation.* (1) Any offeror or the SBA may, in connection with a contract involving an award to an SDB pursuant to 219.502–3(S–70), 219.502–72, or Subpart 219.70, challenge the social or economic disadvantaged status of a concern representing that it is an SDB by sending or delivering a protest to the contracting officer responsible for the particular acquisition. The protest shall contain the basis for the challenge together with specific detailed evidence supporting the protestor's claim.

(2) In order to apply to the acquisition in question, such protest must be filed with and received by the contracting officer prior to the close of business on the fifth business day after the bid opening date for sealed bids. In negotiated acquisitions, the contracting officer shall notify the apparently unsuccessful offerors of the apparently successful SDB offeror(s) in accordance with FAR 15.1001 and establish a deadline date by which any protest on the instant acquisition must be received.

(3) To be considered timely, a protest must be delivered to the contracting officer by hand or telegram within the period allotted or by letter postmarked within the period. A protest shall also be considered timely if made orally to the contracting officer within the period allotted, and if the contracting officer thereafter receives a confirming letter postmarked not later than one day after the date of such oral protest.

(4) Upon receipt of a protest concerning social or economic disadvantaged status of an SDB, the contracting officer shall withhold award and forward the protest to the Small Business Administration (SBA) District Office for the geographical area where the principal office of the concern in question is located. Award shall not be withheld (i) when the contracting officer determines in writing that an award must be made to protect the public interest, or (ii) if the SBA has recently determined the social and economic disadvantaged status of the SDB. In the event of a protest which is not timely, the contracting officer shall notify the protestor that its protest cannot be considered on the instant acquisition but has been referred to the SBA for consideration in the future acquisitions. However, the contracting officer may question the SDB status of an apparently successful offeror at any time either before or after award.

(5) The SBA Regional Administrator will determine the social and economic disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protestor of its determination. Award may be made on the basis of the determination. This determination is final for purposes of the instant acquisition unless it is appealed in accordance with paragraph (S–70)(7) below and a decision on the appeal is received by the contracting officer before award.

(6) If the SBA determination is not received by the contracting officer within 15 business days after the SBA's receipt of the protest, it shall be presumed that the challenged offeror is socially and economically disadvantaged. This presumption will not be used as a basis for award without first ascertaining when a determination can be expected from SBA, and where practicable, waiting for such determination, unless further delay in award would be disadvantageous to the Government.

(7) An appeal from the SBA determination may be filed by (i) any concern or other interested party whose protest of the disadvantaged business status of a concern has been denied by an SBA Regional Administrator, (ii) any concern or other interested party that has been adversely affected by a Regional Administrator's decision, or (iii) the SBA Associate Administrator for Minority Small Business and Capital Ownership Development. The appeal must be filed with the Associate Administrator for Minority Business and Capital Ownership Development, Small Business Administration, Washington, DC 20416, within five business days after receipt of the determination by the Regional Administrator. The SBA will inform the contracting officer of its ruling on the appeal. The SBA decision, if received before award, will apply to the instant acquisition. SBA rulings received after award will apply to future acquisitions.

219.304 Solicitation provisions.

(b) Department of Defense activities shall use the provision at 252.219–7005, Small Disadvantaged Business Concern Representation (DoD FAR Supplement Deviation), in lieu of the provision at FAR 52.219–2, Small Disadvantaged Business Concern Representation.

Subpart 219.4—Cooperation with the Small Business Administration

219.401 General.

(b) The contracting activity Small and Disadvantaged Business Utilization Specialist shall be the activity focal point for interface with the SBA.

219.402 Small Business Administration procurement center representatives.

(b) The SBA procurement center representative's request for access to contract information will be processed through the activity's Small and Disadvantaged Business Utilization Office.

Subpart 219.5—Set-Asides for Small Business

219.501 General.

(b) The determination to make an SDB set-aside is a unilateral determination by the contracting officer.

(c) The Small and Disadvantaged Business Utilization Specialist (SADBUS) is responsible for reviewing those acquisitions not set-aside for small disadvantaged business, or not acquired through small business-small purchase set-aside. The SADBUS shall, prior to the issuance of solicitation or contract modifications (except those which exercise an option), (1) for additional supplies or services in excess of $5,000 which have not been set-aside under FAR 19.502, or (2) for a dissolved small business-small purchase set-aside in excess of $5,000 (FAR 13.105), review the acquisition and the contracting officer's justification for not making a set-aside or for dissolving a small

business-small purchase set-aside. The SADBUS shall make a recommendation to the contracting officer for set-aside, as appropriate, on an individual acquisition, or class of acquisition, or portion thereof. In automated contracting systems, such reviews will be accomplished prior to entering the item into the automated system after which no further review of the individual acquisition will be necessary if the automated system is so programmed that any changes in the acquisition of the item satisfy the provisions of FAR 19.502–2. Disagreements between the specialist and the contracting officer on proposed set-aside actions for small business shall be resolved under FAR 19.505. Disagreements on small business-small purchase set-asides shall be resolved under FAR 13.105 by the contracting officer.

(d) All cases involving a decision not to set-aside for small business, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for that person's review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of FAR 19.505. Actions that have been unilaterally set-aside for SDBs are not referred to the SBA representative for review.

(g) This procedure is applicable to DoD.

(S–70) As provided by 10 U.S.C. 2855, architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Indefinite delivery and indefinite quantity contracts for architectural and engineering services that are set-aside for small business shall not exceed, for the total of orders placed under the contract, $85,000.

(S–71) Every proposed acquisition for construction, including maintenance and repairs, in excess of $5,000 and under $2 million (except dredging under $1 million) shall be considered individually, as though the Small Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 219.505 shall apply.

(S–72) Every proposed acquisition of $2 million or more for construction or $1 million or more for dredging, shall be considered on an individual acquisition basis under FAR 19.502–2.

(S–73) Every proposed acquisition for A–E services and construction design under $85,000 for military construction projects shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 219.505 shall apply. (See 10 U.S.C. 2855.)

219.501–70 Small disadvantaged business set-asides.

As authorized by the provisions of section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180, special categories of set-asides have been established for the Department of Defense for acquisitions conducted during fiscal years 1987–89. See 219.502–72 and 219.502–3.

219.502 Setting aside acquisitions.

219.502–1 Requirements for setting aside acquisitions.

Department of Defense activities follow the order of precedence in 219.504. Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set-aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

219.502–2 Total set-asides.

Where multiyear contracting procedures are appropriate, total set-asides may be made in connection therewith.

219.502–3 Partial set-asides.

(S–70) *Partial Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns.* (1) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation and afford preferential consideration (see paragraph (S–70) (2) below) to SDB concerns when—

(i) The circumstances described in FAR 19.502–3(a) (2), (4) and (5) are present; and

(ii) One or more responsible small disadvantaged business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a price not exceeding fair market price by more than 10 percent.

(2) Under this procedure, SDB concerns are given certain preferential consideration over non-SDB, small buisness and small business-labor surplus area concerns with respect to the set-aside portion of the contract. In addition, through use of the procedure set forth in the clause at 252.219–7010, award of the set-aside portion to an SDB concern may be made at a price exceeding that of the non-set-aside portion (see paragraph (b) of the clause at 252.219–7009). See FAR 19.502–3(b), (c)(1) and (c)(2)(i) for additional procedures.

(3) See 219.504 concerning the order of precedence to be accorded this procedure.

219.502–4 Methods of conducting set-asides.

(a) SDB set-asides may be conducted by using sealed bids or competitive proposals.

(b) Offers received on an SDB set-aside from concerns that do not qualify as SDB concerns shall be considered nonresponsive and shall be rejected.

219.502–70 Combined small business-labor surplus area set-asides.

(a) In the acquisition of certain items, the objectives of both the Small Business Act and Defense Manpower Policy (DMP) No. 4 may be attained in a single acquisition. Under this procedure, the total required quantity of an item would be set aside for exclusive participation by small business firms and a portion of that total quantity would be further set-aside for award to small business concerns which are also LSA firms.

(b) For acquisitions exceeding $25,000, the use of this combined small business-LSA set-aside procedure shall be considered. This procedure shall be used in preference to all others, except SDB set-asides, when the proposed acquisition meets the criteria for:

(1) Total small business set-aside (FAR 19.502–2), and

(2) A partial LSA set-aside (220.7003).

(c) Contracts utilizing this procedure may be entered into by sealed bidding or negotiation. (See FAR 6.102, FAR Parts 14 and 15.) This set-aside procedure may be used in multi-year contracting (FAR Subpart 17.1). Solicitations shall provide that offers may be submitted by small business firms only and that a part of the total requirement is further set-aside for LSA firms which are also small business concerns. Offers received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(d)(1) In combined small business-LSA set-asides each solicitation shall contain the clause at 252.219–7001, Notice of Combined Small Business-Labor Surplus Area Set-Aside (except see (d)(2) below).

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause at 252.219–7002, Notice of Combined Small Business-Labor Surplus Area Set-Aside, Alternate, may be used.

(e)(1) After the award price for the non LSA set-aside portion has been determined, negotiations may be conducted for the LSA set-aside portion. Acquisition of the LSA set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non LSA set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the foregoing clause; *provided* that, when equal low offers are received on the non LSA set-aside portion from concerns which are equally eligible for the LSA set-aside portion, the concern which is awarded the non LSA set-aside portion (under the equal low bid procedure of 214.407–6) shall have first priority with respect to negotiations for the LSA set-aside portion. The LSA set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds, or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses at FAR 52.215–1, Examination of Records by Comptroller General, and at FAR 52.215–2, Audit—Negotiation.

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses at FAR 52.215–1, Examination of Records by Comptroller General, and at FAR 52.215–2, Audit—Negotiation, applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (e)(2) and (e)(3) above. Also, the award shall reference in Block 26 of the Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient. For purposes of Subpart 204.6, the non-LSA set-aside portion shall be reported separately. (See FAR 19.507 for automatic dissolution of set-asides.)

219.502–71 [Reserved]

219.502–72 Total SDB set-asides.

(a) *Policy.* Except as provided in (b) below, the entire amount of an individual acquisition shall be set-aside for exclusive SDB participation if the contracting officer determines that there is a reasonable expectation that:

(1) Offers will be obtained from at least two responsible SDB concerns who—

(i) Can comply with the limitations on subcontracting in the clause at FAR 52.219–14; or

(ii) In the case of regular dealers, will provide the supplies of other SDBs (except as provided in Alternate I of the clause at 252.219–7006);

(2) Award will be made at a price not exceeding the fair market price (see FAR 19.806–2) by more than 10 percent; and

(3) Scientific and/or technological talent consistent with the demands of the acquisition will be obtained through use of a total SDB set-aside. (For R&D acquisitions, see FAR 35.007.)

(b) *Exceptions.* Total SDB set-asides shall not be conducted under the following circumstances:

(1) The product or service has been previously acquired successfully by the contracting office on the basis of a small business set-aside (see FAR 19.501(g));

(2) The acquisition is for construction, including maintenance and repairs and dredging, within the dollar limits in 219.501(g)(71);

(3) The acquisition is for A&E services or construction design for military construction projects;

(4) The acquisition has been reserved for the 8(a) program (see FAR 19.803); or

(5) The acquisition is conducted using small purchase procedures (see FAR Part 13).

(c) The contracting officer shall presume that there are two responsible SDB concerns meeting the criteria in paragraph (a) above when any of the following circumstances are present:

(1) The acquisition history shows that within the past 12-month period, a responsive offer of at least one responsible SDB concern was within 10 percent of an award price on a previous procurement and either—

(i) At least one other responsible SDB source appears on the activity's solicitation mailing list; or

(ii) At least one other responsible SDB responds to a presolicitation notice in the Commerce Business Daily; or

(2) The contracting officer has sufficient factual information, such as the results of capability surveys by DoD technical teams, to be able to identify at least two responsible SDB sources.

(d) When either of the circumstances described in paragraph (c)(1) or (2) above are present and the contracting officer has determined not to set-aside the acquisition, the contracting officer will refer the acquisition to the activity's SADBUS for review prior to issuing a solicitation. In the event of a disagreement between the contracting officer and the SADBUS, the case will be promptly referred to the appointing authority (see 219.201(d)(1)) for decision. The decision of the appointing authority is final.

(e) If it is necessary to obtain information in accordance with paragraph (c)(1) above, the contracting officer will include a notice in the synopsis indicating that the acquisition may be totally set aside for exclusive SDB participation if sufficient SDB sources are identified prior to issuance

of the solicitation (see 205.207(d) (S–73)). The notice should encourage such firms to make their interest and capabilities known as expeditiously as possible. If prior to synopsis, a decision has been made to set-aside the acquisition totally for SDBs, the synopsis shall so indicate (see 205.207(d) (S–72)). In this regard, section 806 of Pub. L. 100–180 requires that a procurement which is likely to be set-aside for SDBs be designated as such before a solicitation is issued, to the maximum extent practicable.

219.503 Setting aside a class of acquisitions.

(d) The contracting officer may initiate withdrawal of an individual acquisition or modification of a class set-aside by giving written notice to the activity's SADBUS and the SBA Procurement Center Representative. In case of disagreement, the matter will be resolved under the procedures in FAR 19.506(b).

219.504 Set-Aside program order of precedence.

(b) The following order of precedence applies to DoD:

(1) Total SDB Set-Aside (219.502–72)

(2) Combined small business/LSA set-aside (219.502–70)

(3) Partial set-aside for LSA firms (220.7003(a))

(4) Total set-aside for small business firms (FAR 19.502–2)

(5) Partial set-aside for small business firms with preferential consideration for SBDs (219.502–3(S–70))

(6) Partial set-aside for small business (FAR 19.502–3)

219.505 Rejecting set-aside recommendations.

(a) Upon a recommendation of the SADBUS that an individual acquisition or class of acquisitions, or portion thereof, be set-aside, the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing the reasons for disapproval.

If the contracting officer disapproves the recommendation of the SADBUS, the case shall be promptly referred to the SBA representative (if one is assigned and available) for review. No further appeal action will be taken by the small business specialist. In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist d sagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 219.201(d)(1)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or designee as identified in 219.201(c) (S–71). The specialist's signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

(b) The head of the contracting activity's designee shall be at a level no lower than the chief of the contracting office.

(d) The matter shall be forwarded with full justification of the action taken through normal channels.

(e) Should it be determiend that a decision cannot be made within 30 business days, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(f) The contracting officer must determine that contracting action must proceed without delay in order to protect the public interest. The contracting officer's statement shall be approved at a level above the contracting officer.

219.506 Withdrawing or modifying set-asides.

(a) Total SDB Set-Aside determinations will not be withdrawn for reasons of price reasonableness unless the low responsive responsible offer exceeds the fair market price by more than 10 percent. In such cases, or as provided at FAR 19.506(a), the contracting officer shall initiate a withdrawal.

(b) Disagreements between the contracting officer and the SADBUS will be resolved in accordance with the procedures in 219.505. These procedures do not apply to SDB set-asides.

219.507 Automatic dissolution of a set-aside.

(S–70) The dissolution of a Total SDB Set-Aside does not preclude subsequent solicitation as a Small Business Set-Aside.

219.508 Solicitation provisions and contract clauses.

(d) When using the clauses at 252.219–7009 or FAR 52.219–7, the contracting officer shall insert the clause at 252.219–7003, Determining the Set-Aside Award Price. See paragraph (S–72) below regarding use of the clause at FAR 52.219–7.

(S–70) The contracting officer shall insert the clause at 252.219–7004, Eligibility for Preference as a Labor Surplus Concern, in solicitations and contracts for partial small business set-asides under FAR 19.502–3, for Combined Small Business-Labor Surplus Area Set-Asides under 219.502–70, and for partial set-asides for Labor Surplus Area Concerns under 220.7003.

(S–71) (1) The contracting officer shall insert the clause at 52.219–7006, Notice of Total Small Disadvantaged Business Set-Aside, in solicitations and contracts for Total SDB Set-Asides (see 219.502–72).

(2) The contracting officer shall insert the clause with its Alternate I when the contracting officer determines, in coordination with the contracting activity's SADBU, that there are no SDB manufacturers available that can meet the requirements of the solicitation.

(S–72) The contracting officer shall insert the clause at 252.219–7010, Notice of Partial Small Business Set-Aside With Preferential Consideration For Small Disadvantaged Business (SDB) Concerns, in solicitations and contracts when the conditions at 219.502–3(S–70) are present. In such cases the clause at FAR 52.219–7, Notice of Partial Small Business Set-Aside, will not be used.

(S–73) The contracting officer shall insert the clause at 252.219–7011, Determining the Set-Aside Award Price (Preferential Small Disadvantaged Business Consideration), in solicitations and contracts when the clause at 252.219–7010 is used.

Subpart 219.6—Certificates of Competency and Determinations of Eligibility

219.602 Procedures.

219.602–1 Referral.

(a) When the contracting officer makes a determination that a small business concern is not responsible on a proposed award, the contracting officer will refer the matter directly to the SBA.

The activity that refers the matter to the SBA shall maintain close liaison. If the activity does not hear from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a Certificate of Competency (CoC) is being processed.

219.602-3 Resolving differences between the agency and the Small Business Administration.

(a) Prior to final SBA action, the contracting officer (or the preaward survey activity when authorized to act as contracting officer's representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the contracting officer or contracting officer's representative at such a meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or contracting officer's representative, but such files will not be released outside of SBA. Personnel from a contracting office or surveying activity who participated in a preaward survey of the prospective contractor or other personnel having cognizance of the survey shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the Departments through a complete exchange of preaward information developed by each agency.

(b)(2) If the contracting officer intends to appeal a proposed CoC issuance, upon receipt of initial notification from the SBA Central Office that it concurs with its Regional Office, the contracting officer shall immediately inform the Departmental or Agency Director of Staff Director of Small and Disadvantaged Business Utilization indentified in 219.201(71)(1). If the Department elects to present a formal appeal to HQ SBA, a factual case shall be prepared as expeditiously as possible and processed through Departmental channels for approval at the Sercretarial level prior to presenting the matter to HQ SBA. Any competent level of review within the Department or Agency may conclude that a formal appeal should not be made and that the contract should be awarded to the small business concern in question without a CoC or that a CoC should be accepted and the award made. If such action is taken, the contracting officer and HQ SBA shall be advised accordingly.

219.670 Quarterly reporting.

The Departmental Director or Staff Director of Small and Disadvantaged Business Utilization, identified in 219.201(S-71)(1), shall be informed by the contracting activity Small and Disadvantaged Business Utilization Specialist, in writing, on a quarterly basis, of all certificate of competency cases initiated during a particular quarter and of the final disposition made on cases during the quarter, including the number and dollar value of CoC's issued during the period. The information shall include company name, item being acquired, solicitation number, dollar value of the contract, and the date the case was submitted to SBA. In addition, advice and data will be furnished for all cases where (a) the small business concern elects not to file an application for a CoC; or (b) SBA declines to issue a CoC; or (c) the contracting activity reverses the preaward survey activity's negative finding concerning responsibility, withdraws the request for the CoC, and makes the award. This reporting requirement is assigned RCS DD-A&L (Q) 1152.

Subpart 219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

219.702 Statutory requirements.

219.702-70 Subcontract Awards to SDBs, HBCUs, and MIs.

Consistent with section 806(b)(2) of Pub. L. 100-180, contracting officers shall ensure that contractors required to submit subcontracting plans under FAR 52.219-9, also establish goals for subcontract awards to SDBs, HBCUs, and MIs. The clause at 252.2129-7009, Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, also provides financial incentives for subcontract awards to such entities.

219.703 Eligibility requirements for participating in the program.

(a) The SBA Size Appeals Board has final authority to determine the eligibility of a concern to be designated as a small business. The contracting officer, in connection with small business subcontracting requirements, may question the prime contractor concerning a written representation of small business status, or the refusal to accept such written representation by either the prime contractor or a subcontractor, of a concern offering as a subcontractor on a particular acquisition. Other interested parties may also question such representation or refusal. If the matter(s) cannot be resolved, the contractor (prime or sub) is responsible for referring it for a size determination to the SBA Regional Office in which region the concern submitting the written representation has its principal office.

(S-70) To be eligible as an HBCU or MI subcontractor under the program, such entity must be an HBCU or MI as defined at 226.7002.

(b)(S-70) A contractor may also rely on the written representation of an HBCU or MI as to its status. Lists of HBCUs and MIs are published periodically by the Department of Education (see 226.7006).

219.704 Subcontracting plan requirements.

(a)(3) A description of those efforts the contractor plans to undertake to provide technical assistance to SDB concerns.

(a) (S-70) The subcontracting plan must address each of the requirements listed in FAR 19.704(a) as they relate to subcontracting with HBCUs and MIs. The separate percentage goal required by FAR 19.704(a)(1) concerning SDBs shall be a composite goal which includes anticipated use of HBCUs and MIs as subcontractors. (See 252.219-7000.)

219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

219.705-1 General support of the program.

In negotiating SDB goals, the contracting officer shall ensure that the limitations in FAR 19.705-1 are applied.

219.705-4 Reviewing the subcontracting plan.

Any SDB goal of less than five percent must be approved two levels above the contracting officer.

(S-70) In reviewing the subcontracting plan to determine whether it provides the maximum practical opportunity for HBCUs and MIs to participate, the contracting officer should consider whether subcontracts are contemplated which involve research or studies of the type normally performed by higher education institutions.

219.706 Responsibilities of the cognizant administrative contracting officer.

(a) *Evaluation of subcontract reports.* The Contract Administration Office is responsible for reviewing, evaluating, and approving master subcontracting plans. In the evaluation of subcontract reports, the SADBU Specialist shall

support the Administrative Contracting Officer (ACO) in evaluating a contractor's performance and compliance with its subcontract plans. The original of the Standard Form 294, Subcontracting Report for Individual Contracts, and a copy of the Standard Form 295, Summary Subcontract Report, and reports of periodic reviews of contractor performance shall be retained by the cognizant SADBUS. These reports together with other pertinent information shall be used as a basis for advising the ACO as to contractor's compliance with subcontracting plans.

219.708 Solicitation provisions and contract clauses.

(b) The contracting officer shall include the clause at 252.219-7000, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), in all solicitations and contracts that contain the clause at FAR 52.219-9.

(c)(1) When contracting by negotiation, the contracting officer shall insert the clause at 252.219-7009, Incentive Program for Subcontracting with Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions in all solicitations and contracts that contain the clause at FAR 52.219-9. The contracting officer shall insert the clause with its Alternate I when the above criterion is met and when inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small businesses in addition to SDBs, HBCUs and MIs (see FAR 19.708(c) (2) and (3). When the clause at 252.219-7009 is prescribed, the clause at FAR 252.219-10 shall not be used.

Subpart 219.8—Contracting with the Small Business Administration (the 8(a) Program)

Subpart 219.801 General.

The Department of Defense, to the greatest extent possible, will award contracts under the authority of section 8(a) of the Small Business Act and will actively identify requirements to support the business plans of 8(a) concerns.

29.803 Selecting acquisitions for the 8(a) Program.

(a) Notwithstanding the DoD unique SDB procedure, requirements will be reviewed initially for suitability for inclusion in the 8(a) Program; activities will continue efforts required by FAR 19.803(a) as an added measure to meet the 5 percent goal discussed in 219.201.

(c) (1) Except as provided in (c)(2) below, when the SBA requests that a requirement be reserved for award of a contract (follow-on or otherwise) under the 8(a) Program, the request shall be honored, if otherwise appropriate, and the total SDB set-aside procedures shall not be used.

(2) An SBA request, that a new requirement be reserved for the 8(a) Program, need not be honored and a contracting officer may proceed with a total SDB set-aside if the SBA request is received after publication of a synopsis pursuant to 205.207(d) (S-72) or (S-73).

Subpart 219.70—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns

219.7000 Policy.

(a) In furtherance of the Department of Defense objectives and initiatives undertaken to award acquisition in all industrial categories in which small disadvantaged businesses (SDBs) have not dominated and to meet the five percent goal for SDBs established by section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180 (see 19.201), offers from SDB concerns shall be given an evaluation preference in accordance with the procedures of this subpart. The evaluation preference shall only be used in competitive acquisitions (except as provided in (b) below) where award is based on price and price related factors. However, in no event may award be made at a price which exceeds fair market price (see FAR 19.806-2) by more than 10 percent. The evaluation preference shall not apply when using—

(1) Small purchase procedures;

(2) Total SDB set-asides;

(3) Partial set-asides for LSA concerns;

(4) Partial small business set-asides;

(5) Purchases under the Trade Agreements Act, when the acquisition equals or exceeds the dollar threshold referenced in FAR 25.402; and

(6) Purchases where application of the evaluation preference would be inconsistent with any international agreement, Memorandum of Understanding, etc. with a foreign government.

(b) Subject to the exceptions in (a)(1) through (6) above, the evaluation preference may also be used in other competitive acquisitions, at the discretion of the source selection authority, when (1) SDBs are expected to possess the requisite qualifications, consistent with the demands of the acquisition (e.g., see FAR 35.007 with regard to technical qualification of sources) and, (2) award price will not exceed fair market price by more than 10 percent.

219.7001 Procedures.

Offers will be evaluated so as to give preference to offers submitted by SDB concerns. Each responsive offer, other than offers from SDB concerns, shall be adjusted for the purpose of price evaluation by adding a factor of 10 percent. The factor shall be applied on a line-item by line-item basis or to any group of line items on which award may be made as specifically provided by the solicitation. Other evaluation factors (e.g., transportation, rent-free use of Government facilities) shall be applied to prices offered prior to application of the factor.

219.7002 Contract clause.

(a) When the evaluation preference as described in 219.7000 is used in unrestricted procurements, the contracting officer shall insert the clause at 252.219-7007, Notice of Evaluation Preference for Small Disadvantaged Business Concerns (Unrestricted).

(b) When the evaluation preference as described in 219.7000 is used in a total small business set-aside, the contracting officer shall insert the provision at 252.219-7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns (Total Small Business Set-Aside).

PART 226—OTHER SOCIOECONOMIC PROGRAMS

7. Subpart 226.70, consisting of sections 226.7001 through 226.7010, is added to read as follows:

Subpart 226.70—Contracting with Historically Black Colleges and Universities or Minority Institutions

Sec.

Subpart 226.70—Contracting with Historically Black Colleges and Universities or Minority Institutions

226.7001 Scope of subpart.

This subpart implements certain provisions of section 1207 of Pub. L. 99-661, and Section 806 of Pub. L. 100-180,

which establish for DoD an objective of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987–89 to Historically Black Colleges and Universities (HBCUs), Minority Institutions (MIs), and to Small Disadvantaged Business (SDB) Concerns (see 219.201). Section 1207 also provided certain discretionary authority to the Secretary of Defense for achievement of that objective.

226.7002 Definitions.

"Historically Black Colleges and Universities (HBCUs)" means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

"Minority Institutions (MIs)" means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Subpart 637. The term also includes any nonprofit research institution that was an integral part of an Historically Black College or University before November 14, 1986.

226.7003 General policy.

In furtherance of the Government policy of placing a fair proportion of its acquisitions with HBCUs, MIs and SDBs, section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180 established an objective for the Department of Defense of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987–89 to HBCUs, MIs and SDBs (see 219.201) and of maximizing the number of such entities participating in Defense prime contracts and subcontracts. Executive Order 12320 also contains additional guidance concerning HBCUs. It is the policy of the Department of Defense to strive to meet these objectives through the enhanced use of outreach efforts, technical assistance programs, and the special authorities conveyed by these laws (e.g., through a total set-aside for HBCUs and MIs to acquire research and studies normally acquired from Higher Education Institutions (HEIs). With regard to technical assistance programs, it is the Department's policy to provide HBCUs and MIs technical assistance, to include information about the Department's HBCU and MI Program, advice about acquisition procedures, instructions on preparation of proposals, and such other assistance as is consistent with the Department's mission.

226.7004 Set-asides for historically black colleges and universities and minority institutions.

(a) Except for acquisitions made using simplified small purchase procedures or Broad Agency Announcement procedures (but see 235.016–70), the entire amount of an individual acquisition for research or studies normally acquired from HEIs shall be set aside for exclusive participation by HBCUs and MIs if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible HBCUs/MIs, (2) award will be made at a price not exceeding fair market price (see FAR 19.806–2) by more than 10 percent, and (3) scientific and/or technological talent consistent with the demands of the acquisition will be obtained through use of a total HBCU/MI set-aside. (See FAR 35.007 with regard to technical qualifications of sources.)

(b) If it is necessary to obtain information in accordance with paragraph (a) above, the contracting officer may include a notice in the synopsis indicating that the acquisition may be set-aside for exclusive HBCU/MI participation if sufficient HBCU/MI sources are identified prior to issuance of the solicitation (see 205.207(d) (S–74)). The notice at 205.207(d) (S–74) encourages such entities to make their interest and capabilities known as expeditiously as possible.

(c) If prior to synopsis, a decision has been made to set-aside the acquisition for HBCUs and MIs, the synopsis shall so indicate (see 205.207(d) (S–75)). Similarly, if discrete or severable areas of research interest contained in a Broad Agency Announcement have been set-aside for HBCUs and MIs, the synopsis shall so indicate (see 205.207(d) (S–76)). In this regard, section 806 of Pub. L. 100–180 requires that a procurement which is likely to be set-aside for HBCUs/MIs be designated as such before a solicitation is issued, to the maximum extent practicable.

226.7005 Methods of conducting set-asides.

Set-Asides for HBCUs/MIs will normally be conducted by using competitive proposals (see FAR 35.006; also see 235.016–70 regarding partially setting aside acquisitions when using Broad Agency Announcement procedures).

226.7006 Eligibility of offeror.

To be eligible for award under the preference procedures of this subpart, an offeror must, at time of submission of its offer and contract award, be an HBCU or an MI as defined at 225.7002 and provide the contracting officer with evidence of such status upon request (see paragraph (c) of the clause at 252.226–7000). Lists of HBCUs and MIs are published periodically by the Department of Education and may be obtained from the contracting activity's SADBU. The contracting officer's determination of eligibility shall be final.

226.7007 Protesting HBCU or MI status

Any offeror or other interested party may, in connection with a contract involving an HBCU/MI set-aside or otherwise involving award to an HBCU or MI based on preferential consideration, challenge the HBCU or MI status of an offeror by filing a protest with the contracting officer following the procedures in FAR 33.103.

226.7008 Withdrawing or modifying set-asides.

HBCU/MI set-asides will not be withdrawn for reasons of price reasonableness unless the low responsive responsible offer exceeds the fair market price, as determined in FAR 19.806–2, by more than 10 percent. In such cases, the contracting officer shall initiate a withdrawal.

226.7009 Contract clause.

The contracting officer shall insert the clause at 252.226–7000, Notice of Total Set-Aside for Historically Black Colleges and Universities/Minority Institutions, in solicitations and contracts for total HBCU/MI set-asides (see 226.7004).

226.7010 Goals and incentives for subcontracting with HBCUs and MIs.

Consistent with section 806(b)(2) of Pub. L. 100–180, contracting officers shall ensure that contractors required to submit subcontracting plans under the clause at FAR 52.219–9, also establish goals for subcontract awards to HBCUs and MIs. (See 219.704(a)(1) for procedures.) The clause at 252.219–7009 also provides financial incentives for subcontract awards to such entities.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

8. Section 235.004 is amended by revising paragraphs (a) and (a)(2) to read as follows:

235.004 Publicizing requirements and expanding research and development sources.

(a) In addition to the requirements of FAR 35.004(a), where the contracting mission warrants it, Research and Development Bidders Mailing Lists will be established by purchasing activities in accordance with Supplement No. 4,

Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists.

(2) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns, Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs), as defined at Subpart 226.70, for research and/or development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns, HBCUs, amd MIs that are apparently competent to perform research or development work in fields in which the contracting activity is interested. In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's need concerning research and development programs consideration for specific future acquisition actions. Normally, this information shall be provided, as early as practicable, to SBA representatives assigned to a contracting activity and shall cover the Government's requirements for each proposed research and development acquisition exceeding $25,000. To the maximum extent feasible, SBA shall be afforded a minimum of 15 working days to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such acquisitions. Full evaluation shall be given to any such information in selecting qualified sources. Sources recommended by SBA for a specific acquisition shall be solicited. Exception to the policy of providing SBA a minimum 15 working day interval to recommend additional qualified small research and development sources for a proposed acquisition will be permitted only in those cases where the head of the contracting activity or the HCA's designated representative advises the SBA representative that such action would result in unjustifiable delay.

9. Section 235.007 is amended by revising paragraphs (a), (a)(5) and (b); by removing paragraph (c); and by revising paragraph (g), to read as follows:

235.007 Solicitations.

(a) Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapon systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances and schedules. Second, it means continuing efforts to increase the number of qualified sources, and to encourage participation by small business concerns, HBCUs and MIs, as well as others, in Defense research and/or development (see also FAR 9.104).

(5) Other relevant factors include review of information obtained as a result of synopsis of the requirement or other advance publicity (FAR 35.004(a)(1)).

(b) The formal solicitation process is not the only method of entering into contracts for research and/or development. The ongoing research and development work pursued in industrial laboratories is producing ideas and products of interest to the Government; this is especially true in the exploratory and advanced development segment of the research and development spectrum. In the R&D areas where there has been unique and significant industrial accomplishment by a specific concern, the establishment of specifications for solicitation of others may defeat the purpose of taking advantage of this industrial initiative. In such cases, see FAR 35.007(i). In all acquisitions of (1) research and development in which no small business source was solicited, or (2) research or studies, normally acquired from Higher Education Institutions where no HBCU or MI was solicited, a statement shall be included in the solicitation file setting forth the reasons for not soliciting such sources. Where there is no substantial question as to the choice of the source, as set forth in (b)(2) (i), (ii) and (iii) below, solicitations may be limited to a single source in accordance with FAR Part 6:

(i) As a result of thorough evaluation, only one source is found fully qualified to perform the proposed work. (See FAR 6.302–1(b)(1).)

(ii) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source. (See FAR 6.302–1(b)(3).)

(iii) Where the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support. (See FAR 6.302–1(b)(7) or FAR 6.302–3(b)(2).)

(g) During the preproposal conference the contracting officer may elect to provide prospective offerors with the Government's estimate of the scientific and technical man-effort, or other reasonable indicators, it envisions when it is not possible to describe the magnitude of the proposed work to a sufficiently definitive degree. For example, the estimated effort may be expressed in terms of numbers of man-months or years in particular occupational categories. This technique may be appropriate in cases of contractors for research studies, investigations, or laboratory scale evaluations of feasibility where the Government desires to limit the scope of effort or depth of research.

* * * * *

10. Section 235.016 is added to read as follows:

235.016 Broad agency announcements.

(a)(S–70) *Partial Set-Asides for HBCUs and MIs Under Broad Agency Announcements.* To facilitate achievement of the goals established by section 1207 of Pub. L. 99–661 and section 806 of Pub. L. 100–180 (see 226.7003), whenever practicable, contracting officers shall reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among HBCU and MI entities, and so indicate in the announcement synopsis (see 205.207(d)(S–76)) and within the BAA. Decisions not to reserve such requirements for HBCUs and MIs shall be documented in the contract file (see 235.007(b)(1).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 252.219–7000 is revised to read as follows:

252.219–7000 Small business and small disadvantaged business subcontracting plan (DoD contracts).

As prescribed at 219.708(b), insert the following clause:

Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts) (February 1988)

(a) Wherever in the clause of this contract entitled "Small Business and Small Disadvantaged Business Subcontracting

Plan", FAR 52.219-9, the term "small disadvantaged business" is used, such term shall be deemed to include (in addition to small disadvantaged business concerns), Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) as those terms are defined at DoD FAR Supplement 226.7002. Lists of qualifying HBCUs and MIs are published periodically by the U.S. Department of Education, and are available from the Contracting Officer.

(b) In addition, master plans referred to in FAR 52.219-9 must be approved by the Government's cognizant Contract Administration Office.

(End of clause)

12. Section 252.219-7005 is revised to read as follows:

252.219-7005 Small disadvantaged business concern representation (DoD FAR Supplement deviation).

As prescribed in 219.304(b), insert the following provision:

Small Disadvantaged Business Concern Representation (DoD FAR Supplement Deviation) (February 1988)

(a) *Definition.* "Small disadvantaged business concern", as used in this provision, means a small business concern, including mass media, owned and controlled by individuals who are both socially and economically disadvantaged, as defined in regulations prescribed by the U.S. Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. (13 CFR Part 124 generally provides that a small disadvantaged business concern is a small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the voting stock of which is owned by one or more socially and economically disadvantaged individuals, and (2) whose management and daily business operations are controlled by one or more such individuals.) (See 13 CFR 124.101 through 124.110.)

(b) *Representation.* The Offeror represents that its qualifying ownership falls within at least one of the following categories, as defined in 13 CFR Part 124 (check the applicable categories):

___ Subcontinent Asian (Asian-Indian) American (US Citizen)
___ Asian-Pacific American (US Citizen)
___ Black American (US Citizen)
___ Hispanic American (US Citizen)
___ Native American
___ Individual/concern certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act (15 U.S.C. 637(a))
___ Other minority found to be socially disadvantaged by the Small Business Administration (U.S. Citizen)

(c) *Certification.* The Offeror represents and certifies, as part of its offer, that it is ___, is not ___ a small disadvantaged business concern.

(d) *Notification.* The Offeror agrees to notify the Contracting Officer before award of any change in its status as a small disadvantaged business concern occurring between the submission of its offer and contract award.

(e) *Penalty.* The Offeror represents and certifies that the above information is true and understands that whoever for the purpose of securing a contract or subcontract under subsection (a) of Section 1207 of Pub. L. 99-661 misrepresents the status of any concern or person as a small business concern owned and controlled by a minority (as described in subsection (a)) shall be punished by a fine of not less than $10,000 or by imprisonment for not more than a year, or both.

(End of provision)

12. Section 252.219-7006 is revised to read as follows:

252.219-7006 Notice of total small disadvantaged business set-aside.

As prescribed in 219.508(S-71)(1), insert the following clause:

Notice of Total Small Disadvantaged Business Set-Aside (February 1988)

(a) *Definition.* The term "small disadvantaged business (SDB) concern", as used in this clause, has the meaning set forth in Section 219.001 of the DoD Federal Acquisition Regulation Supplement.

(b) *General.*

(1) Offers are solicited only from SDB concerns. Offers received from concerns that are not SDB concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to an SDB concern.

(c) *Agreement.* An SDB manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing this contract, only end items manufactured or produced by SDB concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

ALTERNATE I

If a determination has been made in accordance with 219.508(S-71(2) that there are no SDB manufacturers available who can meet the requirements of the solicitation, insert the following paragraph (c) in lieu of paragraph (c) of the basic clause:

(c) *Agreement.* An SDB regular dealer submitting an offer in its own name agrees to furnish, in performing this contract, only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

14. Sections 252.219-7007 through 252.219-7011 are added to read as follows:

252.219-7007 Notice of evaluation preference for Small Disadvantaged Business (SDB) concerns (unrestricted).

As prescribed in 219.7002(a), insert the following clause:

Notice of Evaluation Preference for Small Disadvantaged Business (SDB) Concerns (Unrestricted) (February 1988)

(a) *Definition.* The term "small disadvantaged business (SDB) concern," as used in this clause, has the meaning set forth in the clause entitled Small Disadvantaged Business Concern Representation (DoD FAR Supplement Deviation) (Date).

(b) *Evaluation.* After all other evaluation factors described in this solicitation are applied, offers will be evaluated by adding a factor of ten percent (10%) to offers from concerns that are not SDB concerns and to offers from those SDB concerns which elect to waive the SDB evaluation preference (see paragraph (c) below) by checking the box below. However, in no event may award be made to an SDB concern at a price which exceeds fair market price (as determined under FAR 19.806-2) by more than ten percent (10%).

☐The SDB Offeror requests that the evaluation preference in paragraph (b) above not be given to this offer.

(c) *Agreement.* By submission of an offer and execution of a contract, the SDB Offeror/Contractor (except a regular dealer) who did not waive the evaluation preference by checking the box in paragraph (b) above agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least fifty percent (50%) of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies.* The concern shall perform work for at least fifty percent (50%) of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction.* The concern will perform at least fifteen percent (15%) of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors.* The concern will perform at least twenty-five percent (25%) of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

252.219-7008 Notice of evaluation preference for Small Disadvantaged Business (SDB) concerns (total small business set-aside).

As prescribed in 219.7002(b), insert the following provision:

Notice of Evaluation Preference for Small Disadvantaged Business (SDB) Concerns (Total Small Business Set-Aside) (February 1988)

(a) *Definition.* The term "small disadvantaged business (SDB) concern", as

used in this clause, has the meaning set forth in the clause entitled Small Disadvantaged Business Concern Representation (DoD FAR Supplement Deviation) (Date).

(b) *Evaluation.* After all other evaluation factors described in this solicitation are applied, offers will be evaluated by adding a factor of ten percent (10%) to offers from concerns that are not SDB concerns. However, in no event may award be made at a price which exceeds fair market price (as determined under FAR 19.806–2) by more than ten percent (10%).

(End of provision)

252.219–7009 Incentive program for subcontracting with small and small disadvantaged business concerns, Historically Black Colleges and Universities and Minority Institutions.

As prescribed in 219.708(c) (1), insert the following clause:

Incentive Program for Subcontracting with Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions (Feb 1988)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns and a certain percentage to small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

(b) To encourage placement of subcontracts with SDBs/HBCUs/MIs, the Contractor will be entitled to receive an incentive award under this clause, as follows:

(1) Where the SDB/HBCU/MI goal in this contract is less than five percent (5%) of the contract price and the Contractor both exceeds its SDB/HBCU/MI goal and awards more than five percent (5%) of the contract price (see FAR 15.801) to SDBs/HBCUs/MIs in performing this contract, the Contractor will receive ten percent (10%) of the difference between the actual dollar amount of subcontracts awarded to SDBs/HBCUs/MIs and five percent (5%) of the contract price.

(2) Where the SDB/HBCU/MI goal in this contract is equal to or greater than five percent (5%) of the contract price and the Contractor both exceeds its SDB/HBCU/MI goal and awards more than five percent (5%) of the contract price (see FAR 15.801) to SDBs/HBCU/MIs in performing this contract, the Contractor will receive ten percent (10%) of the difference between the actual dollar amount of subcontracts awarded to SDBs/HBCUs/MIs and the SDB/HBCU/MI goal.

(c) The Contractor will not be entitled to receive an incentive award under this clause if the Contracting Officer determines that the amount by which the Contractor exceeded its goal was not due to the Contractor's efforts (e.g., a subcontractor cost overrun, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations, caused the actual subcontract amount to exceed that estimated in the subcontracting plan). Determinations made under this paragraph are not subject to the Disputes clause.

(d) If this is a cost contract, the limitations of FAR Subpart 15.9 may not be exceeded.

(End of clause)

ALTERNATE I (FEBRUARY 1988)

As prescribed at 219.708(c)(1), insert the following paragraph (c) and reidentify the existing paragraphs (c) and (d) as (d) and (e):

(c) With reference to small businesses other than SDBs, if the Contractor exceeds its small business subcontracting goals in performance of this contract, it will receive ____ (insert the appropriate number between 0 and 10) percent of the dollars in excees of the goal in the plan.

252.219–7010 Notice of partial small business set-aside with preferential consideration for Small Disadvantaged Business (SDB) concerns.

As prescribed at 219.508(72), insert the following clause:

Notice of Partial Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business (SDB) Concerns (Feb 1988)

(a) *Definitions.*

"Labor surplus area", as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

"Labor surplus area concern", as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.

"Perform substantially in labor surplus areas", as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed fifty percent (50%) of the contract price.

"Small business concern", as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

"Small disadvantaged business (SDB) concern", as used in this clause, means a small business concern, including mass media, owned and controlled by individuals who are both socially and economically disadvantaged, as defined in regulations prescribed by the Small Business Administration (SBA) at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals.

(b) *General.* (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) Except as provided in paragraph (a)(4)(iii) below, the set-aside portion will be awarded at the highest unit price(s) in the contract for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractors.

(4)(i) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. These concerns fall into four groups:

(A) Group 1—SDB concerns that are also labor surplus area concerns.

(B) Group 2—Small business concerns that are also labor surplus area concerns.

(C) Group 3—Other SDB concerns.

(D) Group 4—Other small business concerns.

(ii) Negotiations will be conducted with the concern in Group 1 that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the Group 1 concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue, first with concerns in Group 1, and then with concerns in Groups 2 through 4, until a contract or contracts are awarded for the entire set-aside portion.

(iii) Award to SDB concerns on the set-aside portion will be at the lower of either: (A) The price offered by the concern on the non-set-aside portion; or (B) a price that does not exceed the award price on the non-set-aside portion by more than ten percent (10%). However, in no event may award to an SDB exceed fair market price (as determined under FAR 19.806–2) by more than ten percent (10%).

(5) The Government reserves the right not to consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* (1) The Offeror agrees that if awarded a contract as an SDB-labor surplus area concern or as a small business-labor surplus area concern, it will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance of this contract. However, if an area selected by the Offeror is no longer classified as a labor surplus area at the time of performance, the Offeror will make an effort to select another area for performance that is classified at that time as a labor surplus area.

(2) The Offeror agrees that, if awarded a contract that exceeds ten thousand dollars ($10,000), it will submit a report to the Contracting Officer within thirty (30) days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(i) The dollar amount of the contract;

(ii) Identification of each labor surplus area in which contract (and subcontract) performance is taking or will take place;

(iii) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the prime Contractor and (B) first-tier subcontractors;

(iv) The total dollar amount attributable to performance in labor surplus areas.

(3) A small business or SDB manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

252.219-7011 Determining the set-aside award price (preferential small disadvantaged business consideration).

As prescribed at 219.508(S-73), insert the following clause:

Determining the Set-Aside Award Price (Preferential Small Disadvantaged Business Consideration) (February 1988)

Except as provided in the clause of this contract entitled, Notice of Partial Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns (DFARS 252.219-7010), in determining the price for the set-aside portion of this contract, the following procedures will be used:

(a) *General Rule.* Subject to the exceptions listed in (b) and (c) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent-free use of Government property and other cost factors considered in evaluating offers on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(b) *Award Price Involving Foreign End Products (see Part 25 of the FAR and Part 225 of the DoD FAR Supplement).* (1) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns submitting foreign end products, in which case the general rule applies.

(2) Award under the set-aside to a concern offering a foreign end product, when the highest award price on the non-set-aside portion is established by a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(c) *Obtaining Offers and Processing Set-Aside Awards.* (1) When an unaccepted low offer is not involved; if there is no unaccepted low offer meeting the criteria in (c)(2)(ii) below, eligible concerns in the order of priority in the clause of this contract entitled, Notice of Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns, will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. If any part of the set-aside portion is not taken by eligible small business concerns, the partial set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be acquired by sealed bidding or negotiation, as appropriate, in accordance with existing regulations.

(2) When an unaccepted low offer is involved; if (i) A responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (ii) at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in the clause of this contract entitled, Notice of Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns), will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in the clause of this contract entitled, Notice of Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns), shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the set-aside, Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at the higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (c)(2) (i) and (ii) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer, in turn, from lowest to highest.

Step Five. Eligible concerns in the order of priority in the clause of this contract entitled, Notice of Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns, will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire set-aside portion is not taken by eligible small business concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be acquired by sealed bidding or negotiation as appropriate, in accordance with existing regulations.

(End of clause)

14. Section 252.226-7000 is added to read as follows:

252.226-7000 Notice of total set-aside for historically black colleges and universities and minority institutions.

As prescribed in 26.7009, insert the following clause:

Notice of Total Set-Aside for Historically Black Colleges and Universities and Minority Institutions (February 1988)

(a) *Definitions.* The terms used in this clause have the same meaning given them at 226.7002 of the DoD FAR Supplement.

(b) *General.* (1) Offers are solicited only from Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

(2) Any award resulting from this solicitation will only be made to an entity which is an HBCU or MI both at the time of submission of its offer and at contract award.

(c) If requested by the Contracting Officer, an Offeror may be required to furnish evidence, prior to award, that it has been determined to be an HBCU or MI by the Secretary of Education.

(d) The Offeror agrees to notify the Contracting Officer before award of any change in its status as an HBCU or MI occurring between the submission of its offer and contract award.

(End of clause)

[FR Doc. 88-3523 Filed 2-18-88; 8:45 am]

BILLING CODE 3810-01-M

federal register

Friday
February 19, 1988

Part VI

Department of Education

Electronic Bulletin Board; Availability; Notice

DEPARTMENT OF EDUCATION

Electronic Bulletin Board; Availability

AGENCY: Department of Education.

ACTION: Publication of notice of an electronic bulletin board.

SUMMARY: The Secretary announces the availability of an electronic bulletin board, known as the OPEnet, for anyone wishing to obtain electronically disseminated policy documents of the Office of Postsecondary Education of the United States Department of Education (OPE).

SUPPLEMENTARY INFORMATION: The purpose of the electronic bulletin board is to disseminate OPE policy guidelines and information expeditiously to the postsecondary education community and to reduce OPE's costs for printing, mailing, and handling of documents. This electronic information network will make possible the paperless dissemination of: Regulations; notices of proposed rulemaking (NPRMs); "Dear Colleague" letters; Questions and Answers; news bulletins; calendars; an index of OPE student financial assistance program policy-related publications; data and program files; and electronic messages. Since the OPEnet establishes an electronic information network facilitating the electronic dissemination of policy documents, OPE will evaluate this mode of dissemination as an alternative to the mass mailings of selected documents. As subscribers become familiar with the electronic bulletin board and as it is expanded, OPE expects that the need to receive printed materials will diminish to the point where many of OPE's mailings may become superfluous.

The above described database will be accessible on a 24-hour basis through the use of terminals or microcomputers. The database may be reviewed, retrieved, or searched, thereby, reducing the need to submit questions to OPE.

The OPEnet is available through Dialcom, the Department's E-Mail contractor. Anyone may participate in OPEnet by registering with Dialcom. The Department of Education will absorb the cost of maintaining and storing the database, but all access costs will be charged to the users. Inquiries regarding costs may be addressed to: OPEnet, U.S. Department of Education c/o DIALCOM Inc., 600 Maryland Avenue, SW., Suite 307 West, Washington, DC 20024.

While anyone may register and use OPEnet, the Secretary encourages institutions and schools participating in the student aid programs authorized by Titles III and IV of the Higher Education Act of 1965, guarantee agencies, lenders, servicers, and professional organizations to register and use OPEnet. Electronic dissemination is both cost and time effective and designed to be used by persons with little computer experience.

The Secretary emphasizes that notices of proposed rulemaking solicit public comment and will indicate the deadline by which comments must be submitted.

For final regulations, interested parties are urged to note the Effective Date Section in the Preamble.

Request to Participate in the OPEnet

Inquiries concerning OPEnet should be addressed to: OPEnet, U.S. Department of Education c/o DIALCOM Inc., 600 Maryland Avenue SW., Suite 307 West, Washington, DC 20024, or Division of Program Operations and Systems, Office of Postsecondary Education, 400 Maryland Avenue SW., (ROB–3, Room 5004), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Keith Wilson, Systems Analyst, Data Management Branch, Division of Program Operations and Systems, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue, SW., (ROB–3, Room 5012), Washington, DC 20202, Telephone (202) 732–4842.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: February 16, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–3592 Filed 2–18–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
February 19, 1988

Part VII

Department of Education

34 CFR Part 30

Debt Collection; Administrative Offset; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 30

Debt Collection

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education (Secretary) proposes to amend Part 30 of Title 34 of the Code of Federal Regulations. The amendments would implement revisions to the Federal Claims Collection Standards (FCCS), which require each Federal agency to issue its own debt collection regulations, adapted to the agency's particular requirements, implementing those aspects of the FCCS that require further regulation. The proposed regulations are intended to strengthen the ability of the Secretary to collect outstanding debts.

DATES: Comments must be received on or before April 19, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to James A. Neilson, U.S. Department of Education, Office of Management, 400 Maryland Avenue SW., Room 3034 FOB–6, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James A. Neilson, (202) 732–4194.

SUPPLEMENTARY INFORMATION: The Federal Claims Collection Standards (FCCS) (4 CFR Parts 101–105) were revised on March 9, 1984 (49 FR 8889), to reflect changes made by the Debt Collection Act of 1982 to the Federal Claims Collection Act of 1966. The FCCS, published jointly by the Department of Justice and the General Accounting Office, require agencies to publish implementing regulations.

The Secretary has already published various rulemaking documents to implement some of the revised FCCS requirements, including—

1. Proposed regulations regarding the charging of interest, published in the **Federal Register** on July 11, 1984 (49 FR 28264). (That NPRM proposed to amend various regulations, including the Education Department General Administrative Regulations. However, the Department now plans to publish those regulations in Subpart D of Part 30);

2. Final regulations regarding referral of debts to the Interal Revenue Service (IRS) for offset against tax refunds, published in the **Federal Register** on July 1, 1986 (51 FR 24095) (34 CFR 30.33);

3. Final regulations providing for: (a) Offset of debts owed under programs and activities of the Department or referred to the Department by other Federal agencies; and (b) referral of debts to other Federal agencies for offset, published in the **Federal Register** on October 7, 1986 (51 FR 35645) (34 CFR Part 30, Subpart C); and

4. Final regulations regarding the reporting of debts to Consumer Reporting Agencies, published in the **Federal Register** on October 7, 1986 (51 FR 35645) (34 CFR 30.35).

The Department has also published final regulations in Parts 31 and 32 that provide salary offset procedures. The offset procedures in Part 31 are used to recover debts owed under the Department's financial assistance programs by employees of all Federal agencies. The offset procedures in Part 32 are used to collect debts, other than those covered by Part 31 or 30, that are owed by the Department's current and former employees.

This NPRM includes regulations on debt collection matters not covered by the other rulemaking documents. This rulemaking action, together with most of the other debt collection rules of the Department, will complete a unified set of debt collection regulations in 34 CFR Part 30.

Unless otherwise provided in these proposed rules, the Secretary proposes to adopt the standards and procedures in the FCCS. Thus, these regulations supplement the FCCS in those instances where the FCCS requires agency-specific rules or the nature of a particular debt collection activity administered by the Department calls for further clarification of the FCCS. In some cases, these regulations clarify the relationship between the laws administered by the Secretary and the requirements of the FCCS.

The citations of legal authority appearing after the various sections of these regulations include references to 31 U.S.C. 3711(e), 20 U.S.C. 1221e–3(a)(1), and the Secretary's general debt collection authority under 20 U.S.C. 1226a–1. Various other statutory provisions contain authority for the promulgation of these rules with respect to particular programs administered by the Secretary. See, e.g., 20 U.S.C. 1082(a) (Guaranteed Student Loan Program). These supplemental authorities have been omitted from the citations of legal authority contained in these rules for the sake of brevity. This omission is not intended to limit in any way the programs or activities under which the Secretary is authorized to engage in debt collection under these or other procedures. Further, the Secretary reserves the right to rely on these other authorities to support these regulations. A discussion of the procedures and standards proposed by this NPRM follows.

Section 30.1 What administrative actions may the Secretary take to collect a debt?

The proposed introductory section lists the major techniques that the Secretary uses to collect debts owed to the United States. The FCCS describe the many techniques used to collect debts under statutory and other authority. Those aspects of the FCCS for which the Secretary has established additional regulations are listed in paragraph (c) of this section. As specified in proposed paragraph (c)(7), the fact that a particular technique is not listed in these proposed regulations would not limit the Secretary's authority to rely on that technique. Paragraph (c)(3) of the proposed regulations refers to a Subpart D regarding the charging of interest on debts. As indicated at the beginning of this preamble, the Secretary plans to publish final interest regulations in Subpart D of Part 30.

If the interest regulations are not published as final regulations before these regulations are published in final, the Secretary will revise paragraph (c)(3) of this section accordingly.

Under the Perkins Loan Program, the Secretary has authority to collect Perkins loans referred to him by an institution of higher education (20 U.S.C.

1087gg). Even though the debt in such a case is not assigned to the United States, the Secretary has a statutory right to collect the debt. In any event, the reference in paragraph (a) to "a debt owed to the United States" is in no way intended to prohibit the Secretary from using the same means authorized for collecting Federal debts to collect loans referred to him by an institution under the Perkins Loan Program.

Section 30.2 On what authority does the Secretary rely to collect a debt under this Part?

This proposed section lists the various authorities available to the Secretary for collecting debts. The proposed section is patterned after § 30.20, the introductory section to the offset regulations promulgated on October 7, 1986. If one authority prohibits use of a particular type of collection action, the Secretary may rely on another authority that permits that type of collection action. The listing of the Secretary's common-law authority in this section is intended to make clear that the Secretary will rely on his common-law authority to collect debts if that reliance is not prohibted by law. Because proposed § 30.2 is broader in scope than § 30.20 of the offset regulations, the Secretary intends to amend § 30.20 to remove its duplicative provisions when these regulations become final.

Section 30.60 What costs does the Secretary impose on delinquent debtors?

The FCCS directs agencies to charge delinquent debtors for the cost of collection. The Secretary proposes to charge debtors for the actual documented costs of particular collection actions. In those cases where the Secretary has contracted with collection agencies to collect certain debts, the Secretary proposes to collect from debtors an amount in addition to the amount of each debt so that the Secretary recovers both the full amount of the debt and the amount the Secretary must pay the agency for its collection services. The Secretary currently charges student loan debtors some or all of the actual contingent fee incurred to collect the debt. This proposed rule articulates this Department practice, which is authorized by current law.

The Secretary also proposes to modify that practice, as discussed below regarding weighted average collection costs.

The amount of the contingent fee charged by the collection agency for its services is one of several actual costs incurred by the Department in handling delinquent accounts, and in assessing this cost against the debtor the Secretary relies upon the authority of 31 U.S.C. 3717(e)(1), as specifically interpreted in the FCCS in 4 CFR 102.(13)(d) to include costs incurred by a Federal agency in using a private debt collector. Other statutory or contractual provisions also authorize the assessment of collection costs against a delinquent or defaulting debtor; these include, as particularly pertinent to the Department's use of collection contractors to recover on defaulted student loans, section 484A(b) of the Higher Education Act. 20 U.S.C. 1091a(b).

The Secretary recognizes that local law may limit the ability of other creditors to recover from a debtor the full cost incurred by the creditor for a contingent fee charge; however, in determining the elements of damages and costs that compromise a debt owed to the Department, the Secretary proceeds under the authority of Federal law, not State or local law. Because Federal law establishes that the cost *incurred by a Federal agency* to collect a delinquent claim are chargeable against the debtor, local rules to the contrary are preempted here. Such preempted rules include both those that would bar imposition of any collection costs, and those that would permit the creditor to assess against the debtor only that portion of the contingent fee actually incurred by the creditor which represents the cost the creditor would have incurred had it chosen to collect the debt using its own staff and resources. The Federal rule is that the real costs of collection are the actual costs paid by the agency. The charge to be assessed against the debtor is therefore the actual contingent fee paid by the Federal agency, not some speculative reconstruction of what might have been incurred if the agency had chosen to do precisely what it lacked the resources to do—collect the debt using its own staff.

The legislative history of 31 U.S.C. 3718 shows that Congress based the reasonableness of contingent fee charges not on whether the charges exceeded the amounts that Federal agencies might have spent to perform the task themselves, but rather on the results of competitive bidding among potential contractors. Sen. Rep. No. 378, 97th Cong. 2d Sess. (1982) at 19, 30, 31. The experience of the Department in the use of collection contractors secured through competitive bidding over the past nine years has been that the rates secured have in all instances equaled or bettered those commonly charged in the industry for similar levels of collection activity, and that this experience will continue with future contracting.

Federal law does require that agencies ensure that contracts for debt collection provide that the debt collector comply with applicable Federal and State law regarding debt collection practices. (31 U.S.C. 3718(a)(2).) This provision plainly governs the decisions and conduct of the contractor in dealings with the debtor and with third parties regarding the debt, which are matters within its discretion and for which it is rightly held responsible; however, the contractor has no discretion to determine the amount owed the Department. The Secretary believes this authority to engage debt collection contractors must be read with the preceding section of the same statute that authorizes him to charge the debtor the costs incurred in handling the debt. 31 U.S.C. 3717(e)(1). By directing that the contractor shall be subject to State law related to debt collection practices, 31 U.S.C. 3718(a) holds the contractor responsible for its *own* practices, and in no way limits the authority of the Department under 3717(e) to inlcude contingent fee costs in the amount of the debt owed by the debtor and lawfully collected by the contractor. A consistent reading of these companion provisons leads to the conclusion, therefore, the State law can neither directly limit the authority of the Secretary to include the contingent fee cost in the amount of the debt, nor indirectly limit this authority by barring his agent from collecting the amount of the cost from the debtor.

The Secretary also proposes to recover the weighted average collection costs that the agencies charge under their contracts with the Department.

There are many costs associated with the collection of debts that can only be recovered as average costs associated with certain types of collection activities. These costs include, among others, costs for maintaining and operating computers used in collection activity and salaries and other expenses incurred by Federal loan servicing and debt collection personnel.

If a debtor has agreed to pay specified collection costs at a stipulated rate or amount in a repayment or settlement agreement for a particular debt, the Secretary would, under proposed paragraph (e), assess those costs according to the terms of the agreement without having to document the actual costs for collection.

Section 30.61 What penalties does the Secretary impose on delinquent debtors?

The Secretary proposes to impose penalties under 4 CFR 101.13(e) and this section.

Section 30.62 When does the Secretary forego interest, administrative costs, or penalties?

This section contains standards for when the Secretary foregoes interest, administrative costs, and penalties, either by refraining from the collection of these costs in the case of loans, or waiving the charging or collection of these costs for debts not involving loans. The notice of proposed rulemaking for the interest regulations of the Department published in the **Federal Register** on July 11, 1984 (49 FR 28264) did not contain provisions regarding refraining from the collection of interest under loans, or waiving the charging of interest for debts not involving loans. Upon issuance of these regulations in final form, the Secretary will modify the interest regulations as necessary. The Secretary is interested in comments on whether waiver is appropriate under other non-loan circumstances.

Section 30.70 How does the Secretary exercise discretion to compromise a debt or to suspend or terminate collection of a debt?

This section describes the relationship between the Secretary's authority to compromise debts, or to suspend or terminate collection action, under the FCCS Parts 103 and 104 and the Secretary's ability to compromise debts under other authorities, including the Education Appeal Board provisions of the General Education Provisions Act (GEPA) (GEPA sections 451–456, 20 U.S.C. 1234–1234e).

For those programs or activities that are subject to the compromise authority of GEPA section 452(f) (20 U.S.C. 1234a(f)), the Secretary may compromise a debt without referral to the Justice Department if the initial determination of the debt is not more than $50,000. For those programs and activities that are not subject to the GEPA compromise authority, the Secretary may compromise a debt that is not more than $20,000. If the debt is more than $20,000 and arose under a program or activity not subject to the GEPA compromise authority, the Secretary refers any final decision on a compromise to the Justice Department.

The Secretary has independent authority to compromise a debt in any amount under the Guaranteed Student Loan Program or the Perkins Loan Program. Section 30.70 also recognizes the independent authority of a contracting officer under applicable law to resolve a contract dispute.

Because § 30.70 describes the relationships among the various authorities for compromise, suspension, and termination, the section does not address the substance of the Secretary's authority under the FCCS or purport to exhaust the circumstances providing the Secretary with authority to compromise, suspend, or terminate. Therefore, for example, § 30.70 does not address such issues as the Secretary's authority to redetermine a claim in any amount, including his authority to terminate collection action in any amount, without referral to the Justice Department, if the Secretary determines that the basis for collection of the debt is plainly erroneous or clearly without legal merit.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major regulations because they do not meet the criteria for major regulations established in that Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. While some small local educational agencies and small nonprofit organizations would be affected by these regulations, the Secretary does not expect the total number of these entities to be significant in comparison to the total number of entities that would be subject to those regulations.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

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 3034, FOB #6, 400 Maryland Avenue SW., Washington DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Education Impact

The Secretary particularly requests comments on whether the proposed 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 30

Claims, Debt collection.

Dated: November 13, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Part 30 of Title 34 of the Code of Federal Regulations, as follows:

1. The table of contents is amended by adding Subparts A, E, and F, and revising the authority citation, to read as follows:

PART 30—DEBT COLLECTION

Subpart A—General

Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e), 31 U.S.C. 3716(b) and 3720A, unless otherwise noted.

2. New Subparts A, E, and F are added, to read as follows:

Subpart A—General

§ 30.1 What administrative actions may the Secretary take to collect a debt?

(a) The Secretary may take one or more of the following actions to collect a debt owed to the United States:

(1) Collect the debt under the procedures authorized in the regulations in this part.

(2) Refer the debt to the General Accounting Office for collection.

(3) Refer the debt to the Department of Justice for compromise, collection, or litigation.

(4) Take any other action authorized by law.

(b) In taking any of the actions listed in paragraph (a) of this section, the Secretary complies with the requirements of the Federal Claims Collection Standards (FCCS) at 4 CFR Parts 101–105 that are not inconsistent with the requirements of this part.

(c) The Secretary may—

(1) Collect the debt under the offset procedures in Subpart C of this part;

(2) Report a debt to a consumer reporting agency under the procedures in Subpart C of this part;

(3) Charge interest on the debt as provided in Subpart D of this part;

(4) Impose upon a debtor a charge based on the costs of collection as determined under Subpart E of this part;

(5) Impose upon a debtor a penalty for failure to pay a debt when due under Subpart E of this part;

(6) Compromise a debt, or suspend or terminate collection of a debt, under Subpart F of this part;

(7) Take any other actions under the procedures of the FCCS in order to protect the United States Government's interests; or

(8) Use any combination of the procedures listed in this paragraph (c) as may be appropriate in a particular case.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e))

§ 30.2 On what authority does the Secretary rely to collect a debt under this part?

(a)(1) The Secretary takes an action referred to under § 30.1(a) in accordance with—

(i) 31 U.S.C. Chapter 37, Subchapters I and II;

(ii) Other applicable statutory authority; or

(iii) The common law.

(2) If collection of a debt in a particular case is not authorized under one of the authorities described in paragraph (a)(1) of this section, the Secretary may collect the debt under any other available authority under which collection is authorized.

(b) The Secretary does not use a procedure listed in § 30.1(c) to collect a debt, or a certain type of debt, if—

(1) The procedure is specifically prohibited under a Federal statute; or

(2) A separate procedure other than the procedure described under § 30.1(c) is specifically required under—

(i) A contract, grant, or other agreement;

(ii) A statute other than 31 U.S.C. 3716; or

(iii) Other regulations.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e)).

* * * * *

Subpart E—What Costs and Penalties Does the Secretary Impose on Delinquent Debtors?

§ 30.60 What costs does the Secretary impose on delinquent debtors?

(a) The Secretary may charge a debtor for the costs associated with the collection of a particular debt. These costs include, but are not limited to—

(1) Salaries of employees performing Federal loan servicing and debt collection activities;

(2) Telephone and mailing costs;

(3) Costs for reporting debts to credit bureaus;

(4) Costs for purchase of credit bureau reports;

(5) Costs associated with computer operations and other costs associated with the maintenance of records;

(6) Bank charges;

(7) Collection agency costs;

(8) Court costs and attorney fees; and

(9) Costs charged by other Governmental agencies.

(b) Notwithstanding any provision of State law, if the Secretary uses a collection agency to collect a debt on a contingent fee basis, the Secretary charges the debtor, and collects through the agency, an amount sufficient to recover—

(1) The entire amount of the debt; and

(2) The amount that the Secretary is required to pay the agency for its collection services.

(c)(1) The amount recovered under paragraph (b) of this section is the entire amount of the debt, multiplied by the following fraction:

$$\frac{1}{1-cr}$$

(2) In paragraph (c)(1) of this section, cr equals the commission rate the Department pays to the collection agency.

(d) If the Secretary uses more than one collection agency to collect similar debts, the commission rate (cr) described in paragraph (c)(2) of this section is calculated as a weighted average of the commission rates charged by all collection agencies collecting similar debts, computed for each fiscal year based on the formula

$$\sum_{i=1}^{N} \left(\frac{Xi \cdot Yi}{Z} \right)$$

where:

(1) Xi equals the dollar amount of similar debts placed by the Department with an individual collection agency as of the end of the preceding fiscal year;

(2) Yi equals the commission rate the Department pays to that collection agency for the collection of the similar debts;

(3) Z equals the dollar amount of similar debts placed by the Department with all collection agencies as of the end of the preceding fiscal year; and

(4) N equals the number of collection agencies with which the Secretary has placed similar debts as of the end of the preceding fiscal year.

(e) If a debtor has agreed under a repayment or settlement agreement with the Secretary to pay costs associated with the collection of a debt at a specified amount or rate, the Secretary collects those costs in accordance with the agreement.

(f) The Secretary does not impose collection costs against State or local governments under paragraphs (a) through (d) of this section.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e), 3717(e)(1), 3718)

§ 30.61 What penalties does the Secretary impose on delinquent debtors?

(a) If a debtor does not make a payment on a debt, or portion of a debt, within 90 days after the date specified in the first demand for payment sent to the debtor, the Secretary imposes a penalty on the debtor.

(b)(1) The amount of the penalty imposed under paragraph (a) of this section is 6 percent per year of the amount of the delinquent debt.

(2) The penalty imposed under this section runs from the date specified in the first demand for payment to the date the debt (including the penalty) is paid.

(c) If the debtor has agreed under a repayment or settlement agreement with the Secretary to pay a penalty for failure to pay a debt when due, or has such an agreement under a grant or contract under which the debt arose, the Secretary collects the penalty in accordance with the agreement, grant, or contract.

(d) The Secretary does not impose a penalty against State or local governments under paragraph (a) and (b) of this section.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e))

§ 30.62 When does the Secretary forgo interest, administrative costs, or penalties?

(a) For a debt of any amount based on a loan, the Secretary may refrain from collecting interest or charging administrative costs or penalties to the extent that compromise of these amounts is appropriate under the standards for compromise of a debt contained in 4 CFR Part 103.

(b) For a debt not based on a loan the Secretary may waive, or partially waive, the charging of interest, or the collection of administrative costs or penalties, if—

(1) Compromise of these amounts is appropriate under the standards for compromise of a debt contained in 4 CFR Part 103; or

(2) The Secretary determines that the charging of interest or the collection of administrative costs or penalties is—

(i) Against equity and good conscience; or

(ii) Not in the best interests of the United States.

(c) The Secretary may exercise waiver under paragraph (b)(1) of this section without regard to the amount of the debt.

(d) The Secretary may exercise waiver under paragraph (b)(2) of this section if—

(1) The Secretary has accepted an installment plan under 4 CFR 102.11;

(2) There is no indication of fault or lack of good faith on the part of the debtor; and

(3) The amount of interest, administrative costs, and penalties is such a large portion of the installments that the debt may never be repaid if that amount is collected.

(e)(1) The Secretary does not charge interest on any portion of a debt, other than a loan, owed by a person subject to 31 U.S.C. 3717 if the debt is paid within 30 days after the date of the first demand for payment.

(2) The Secretary may extend the period under paragraph (e)(1) of this section if the Secretary determines that the extension is appropriate.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3711(e))

Subpart F—What Requirements Apply to the Compromise of a Debt or the Suspension or Termination of Collection Action?

§ 30.70 How does the Secretary exercise discretion to compromise a debt or to suspend or terminate collection of a debt?

(a) The Secretary uses the standards in the FCCS, 4 CFR Part 103, to determine whether compromise of a debt is appropriate if—

(1) The debt must be referred to the Department of Justice under this section; or

(2) The amount of the debt is less than or equal to $20,000 and the Secretary does not follow the procedures in paragraph (e) of this section.

(b) The Secretary refers a debt to the Department of Justice to decide whether to compromise a debt if—

(1) The debt was incurred under a program or activity subject to section 452(f) of the General Education Provisions Act and the initial determination of the debt was more than $50,000; or

(2) The debt was incurred under a program or activity not subject to section 452(f) of the General Education Provisions Act and the amount of the debt is more than $20,000.

(c) The Secretary may compromise the debt under the procedures in paragraph (e) of this section if—

(1) The debt was incurred under a program or activity subject to section 452(f) of the General Education Provisions Act; and

(2) The initial determination of the debt was less than or equal to $50,000.

(d) The Secretary may compromise a debt without following the procedures in paragraph (e) of this section if the amount of the debt is less than or equal to $20,000.

(e) The Secretary may compromise the debt pursuant to paragraph (c) of this section if—

(1) The Secretary determines that—

(i) Collection of any or all of the debt would not be practical or in the public interest; and

(ii) The practice that resulted in the debt has been corrected and will not recur;

(2) At least 45 days before compromising the debt, the Secretary publishes a notice in the **Federal Register** stating—

(i) The Secretary's intent to compromise the debt; and

(ii) That interested persons may comment on the proposed compromise; and

(3) The Secretary considers any comments received in response to the **Federal Register** notice before finally compromising the debt.

(f)(1) The Secretary uses the standards in the FCCS, 4 CFR Part 104, to determine whether suspension or termination of collection action is appropriate.

(2) The Secretary—

(i) Refers the debt to the Department of Justice to decide whether to suspend or terminate collection action if the amount of the debt at the time of the referral is more than $20,000; or

(ii) May decide to suspend or terminate collection action if the amount of the debt at the time of the Secretary's decision is less than or equal to $20,000.

(g) In determining the amount of a debt under paragraphs (a) through (f) of this section, the Secretary excludes interest, penalties, and administrative costs.

(h) Notwithstanding paragraphs (b) through (f) of this section, the Secretary may compromise a debt, or suspend or terminate collection of a debt, in any amount if the debt arises under the Guaranteed Student Loan Program authorized under Title IV, Part B, of the Higher Education Act of 1965, as amended, or the Perkins Loan Program authorized under Title IV, Part E, of the Higher Education Act of 1965, as amended.

(i) The Secretary refers a debt to the General Accounting Office (GAO) for review and approval before referring the debt to the Department of Justice for litigation if—

(1) The debt arose from an audit exception taken by GAO to a payment made by the Department; and

(2) The GAO has not granted an exception from the GAO referral requirement.

(j) Nothing in this section precludes—

(1) A contracting officer from exercising his authority under applicable statutes, regulations, or common law to settle disputed claims relating to a contract; or

(2) The Secretary from redetermining a claim.

(Authority: 20 U.S.C. 1082(a) (5) and (6), 1087hh, 1221e–3(a)(1), 1226a–1, and 1234a(f), 31 U.S.C. 3711(e))

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Friday
February 19, 1988

Part VIII

Environmental Protection Agency

40 CFR Parts 141 and 143

National Primary Drinking Water Regulations; Analytical Techniques; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 143

[-FRL-3254-5]

National Primary Drinking Water Regulations; Analytical Techniques

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the National Primary Drinking Water Regulations (NPDWRs) promulgated pursuant to Sections 1401, 1412 and 1445 of the Safe Drinking Water Act (SDWA). (42 U.S.C. 300f *et seq.*, as amended). These amendments specify two alternate analytical techniques that have been added to the list of analytical methods approved by EPA to measure the concentration of six inorganic chemicals and four organochlorine pesticides in drinking water. These techniques are the: (1) Inductively coupled plasma (ICP) atomic emission spectrometric method for inorganic contaminants, and (2) solid phase extraction method for pesticides. In addition, this notice amends the National Secondary Drinking Water Regulations (NSDWRs) by adding the ICP technique to the list of analytical techniques that may be used in the determination of four inorganic chemicals.

EPA proposed the approval of the two techniques listed above on October 23, 1986 (51 FR 37608). The Agency requires that only approved analytical techniques be used for determining compliance with the maximum contaminant levels (MCLs) for NPDWR contaminants. The Agency also provides guidance on the adequacy of analytical techniques for the determination of NSDWR contaminants. The Agency has determined that the proposed techniques are substantially equivalent in both precision and accuracy to techniques already approved.

EFFECTIVE DATE: This rule is effective March 21, 1988. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for the purposes of judicial review at 1:00 eastern daylight savings time on March 4, 1988.

ADDRESSES: The public comments and supporting documents are in the public docket. The public docket is located in the Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water (WH-550D), WSM, Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460. The public docket is available for review by contacting Mrs. Colleen Campbell-Jozefczyk (202) 382-3027.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph. D., Director, Criteria and Standards Division, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-7575.

SUPPLEMENTARY INFORMATION:

I. Summary of Today's Action

Today's action makes available two additional analytical methods for determining compliance with existing NPDWRs. They are: (1) The Inductively Coupled Plasma (ICP) Atomic Emission Spectrometric Method for the determination of arsenic, barium, cadmium, chromium, lead and silver, and (2) the Solid Phase Extraction (SPE) Method for the determination of endrin, lindane, methoxychlor and toxaphene. In addition, the ICP method is being added to the list of analytical techniques that may be used for determining compliance with existing NSDWRs for copper, iron, manganese and zinc.

II. Statutory Authority and Regulatory Background

A. *Statutory Authority*

The SDWA requires the EPA to promulgate NPDWRs which include MCLs or treatment techniques which public water systems must meet. SDWA section 1412. NPDWRs also contain "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to ensure compliance with such levels * * * SDWA sections 1401(1)(D); 42 U.S.C. 330F(1)(D). In addition, section 1445(b), 42 U.S.C. 300j-4(b), authorizes the Administrator to require monitoring to assist in determing whether persons are acting in compliance with the Act. EPA's promulgation of analytical techniques is authorized under these sections of the Act.

The Act also requires EPA to promulgate NSDWRs for contaminants in drinking water that primarily affect the aesthetic qualities relating to the public acceptance of drinking water. SDWA section 1412. These regulations are not Federally enforceable but are guidelines for the States. The NSDWRs also include analytical techniques for determining compliance with the regulations.

EPA promulgated NPDWRs in 1975, 1976, 1980, and 1987 for a total of 32 drinking water contaminants. *See* 40 CFR 141.11-.16. At the same time, EPA promulgated analytical techniques for these contaminants. *See* 40 CFR 141.21-.30. Under these regulations, persons must use one of several approved analytical techniques for determining compliance with the MCLs. In addition, under 40 CFR 141.27, alternate analytical techniques may be used by public water systems upon request and after concurrence by the State and EPA.

B. *Regulatory Background*

EPA proposed the approval of two analytical techniques in the October 23, 1986 **Federal Register.** (1) The Inductively Coupled Plasma (ICP) Atomic Emission Spectrometric Method for the determination of arsenic, barium, cadmium, chromium, lead and silver, and (2) the Solid Phase Extraction Method for the determination of endrin, lindane, methoxychlor and toxaphene.

In addition, the ICP method was proposed for determining compliance with existing NSDWRs for copper, iron, manganese and zinc.

These techniques have been reviewed by EPA and they are deemed equivalent to the EPA's approved test procedures in terms of precision and accuracy at the established MCLs. EPA will reexamine all the approved procedures as part of its revision of the existing primary drinking water regulations being conducted pursuant to the 1986 amendments to the Safe Drinking Water Act. Below is a description of these techniques.

1. Inductively Coupled Plasma (ICP)—Atomic Emission Spectrometric Method

This method (also know as "EPA Method 200.7") describes a technique for the simultaneous or sequential multi-element determination of trace elements in solution. This method was developed by EPA's Environmental Monitoring and Support Laboratory (EMSL) in Cincinnati and has been validated through an interlaboratory method study. The Agency proposed the approval of this technique for the

determination of six primary contaminants—arsenic, barium, cadmium, chromium, lead and silver—and of four secondary contaminants—copper, iron, manganese and zinc. The basis of the method is the measurement of atomic emission by an optical spectroscopic technique. Samples are nebulized and the aerosol that is produced is transported to the plasma torch where excitation occurs. Characteristic atomic line emission spectra are produced by a radio frequency ICP. The spectra are dispersed by a grating spectrometer and the intensities of the lines are monitored by photomultiplier tubes. The photocurrents from the photomultiplier tubes are processed and controlled by a computer system. A background correction technique is required to compensate for variable background contribution to the determination of trace elements. Background must be measured adjacent to analyte lines on samples during analysis.

Pursuant to 40 CFR 141.27, the Agency has granted limited approval in the past to laboratories requesting the use of Method 200.7 as an alternative analytical technique for certain inorganics in drinking water samples. The acceptability of this technique has been demonstrated through various data sources including: (1) Performance evaluation study data and (2) the interlaboratory method validation study (i.e., EPA Method Study 27, Method 200.7, Trace Metals by ICP).

The Agency developed a concentration technique that allows for the determination of trace metals at levels significantly lower than the established MCLs. This procedure has been written as an Appendix to Method 200.7 entitled, "Inductively Coupled Plasma Atomic Emission Analysis of Drinking Water." The concentration technique requires concentration of samples at least four times prior to analysis. The concentration step is necessary because Method 200.7, without concentration of the samples, is not sensitive enough for the determination of arsenic and lead at the established MCLs. This concentration technique improves the sensitivity of ICP to other elemental contaminants as well. EMSL gathered performance data (i.e., precision, accuracy, limits of detection) for the following primary elemental contaminants—arsenic, barium, silver, cadmium, chromium, and lead—and for four secondary elemental contaminants—copper, iron, manganese, and zinc. These data showed improved performance for all the analytes of interest.

2. Solid Phase Extraction Method

The Solid Phase Extraction (SPE) Method describes the use of an SPE procedure developed by J.T. Baker Chemical Company as an alternative to the present liquid/liquid extraction procedure. The new test procedure is described in a document entitled, "Methods for Organochlorine Pesticides and Chlorophenoxy Acid Herbicides in Drinking Water and Raw Source Water." This method was proposed for the analysis of endrin, lindane, methoxychlor, and toxaphene. The method uses a serological polypropylene column which is packed with a 40 um average particle diameter 60A° silica gel covalently bonded and endcapped with a reversed phase organosilane. The packing is held in place by compression between two 40 um polyethylene frits.

After conditioning the column with suitable solvents, the drinking water sample is drawn or forced through the column. The low levels of contaminants are selectively extracted and concentrated in the packing. Co-extracted interferences and impurities are selectively removed with a solvent/solution wash. The compounds of interest are then eluted with a small volume of solvent, typically 1 ml. The collected eluants are subsequently analyzed for organochlorine pesticides using the USEPA-approved test procedure. Use of the Baker Solid Phase columns eliminates the liquid/liquid extraction step in the USEPA approved test procedure, thereby saving considerable time and resources. Since the analytes are adsorbed onto the bonded surface of the column packing, the extracted compounds of interest are in an "immobilized" state and the extraction columns can be easily transported to central laboratories for immediate analyte elution.

J.T. Baker Chemical Co. completed a study which indicated comparability of the SPE technique to the approved technique for four organochlorine pesticides: endrin, lindane, methoxychlor, and toxaphene. Details regarding the proposed and approved methods used for developing the comparability data, spiking levels, and the data points from analysis of water supplies were provided in a report to the Agency. (Collaborative Study, Proposed J.T. Baker Chemical Co. Solid Phase Extraction (SPE) Alternate Test Procedure (ATP); Test Method No. SPE-500 for EPA Test—Methods for Organochlorine Pesticide and Chlorophenoxy Acid Herbicides in Drinking Water and Raw Source Water, NIPDWR Compliance Monitoring, February 5, 1985). Statistical analyses of the data provided in this report were performed by EMSL-Cincinnati. The results show that in those cases where there were statistical differences between the two methods, the SPE procedure provided more complete recovery of the compound tested or the SPE procedure was more precise than the EPA-approved procedure. Inspection of the recoveries and precision by each method and analyte indicated that these differences were very small and were insignificant relative to the applicable maximum contaminant level for endrin, lindane, methoxychlor, and toxaphene.

III. Comments and Responses

EPA requested comments on the suitability of the ICP for determining compliance with primary and secondary MCLs for metals. EPA also requested comments on the suitability of the Solid Phase Extraction technique for determining compliance with four primary MCLs for organochlorine pesticides.

EPA received a total of nine comments on the proposed rule. Of these comments, one was a general comment commending EPA for its efforts to approve suitable, new and improved analytical techniques. The other eight commenters provided specific comments on the ICP technique and/or the SPE technique. Seven comments addressed the ICP technique and four comments addressed the Solid Phase Extraction (SPE) technique. The commenters were generally in favor of approval of these analytical techniques, with the exception of one negative comment on the ICP technique and one negative comment on the SPE technique. For each technique, a general summary of the comments received, with EPA's responses, are presented below. A detailed comment-response document is contained in the record for this rulemaking.

A. Approval of Inductively Coupled Plasma (ICP)—Atomic Emission Spectrometric Method

Seven comments were received concerning the approval of the ICP technique for the primary contaminants—arsenic, barium, cadmium, chromium, lead and silver—and of four secondary contaminants—copper, iron, manganese and zinc. Six commenters agreed with EPA's recommendation for approval of this technique and one disagreed with the proposed action. One of the favorable commenters stated that "the ICP method is routinely used to monitor select inorganic constituents in various water matrices with success, and the

technique is considerably more cost-effective than other EPA-approved techniques for compliance monitoring."

The commenter opposing approval of the ICP method cited three reasons why the Agency should not approve the technique for compliance monitoring purposes. First, the commenter claimed that the concentration procedure provided for in the appendix to the method could potentially cause variability in the results obtained by the method. The commenter argued that the Agency should have assessed the extent of that variability by conducting an interlaboratory validation study of the concentration component of the method. Second, the commenter asserted that the method detection limits cited in the appendix to Method 200.7 were too low; the commenter calculated alternate MDLs in order to demonstrate that the ICP technique was not sufficiently sensitive to serve as a monitoring method for lead and arsenic. Third, the commenter claimed that certain procedures followed in Method Study 27 were flawed and undermined the reliability of the study's results. The discussion below reponds to each of these comments in turn.

1. Potential variability due to concentration procedure, and necessity of conducting interlaboratory validation study

EPA agrees with the commenter that concentration procedures can introduce additional variability in the results obtained by an analytical method. However, data gathered and summarized in the appendix to Method 200.7 demonstrate that the overall precision of the method improves significantly as a result of the four-fold concentration of the sample which is required for drinking water samples. The commenter asserts that, in the general population of laboratories, error added by the concentration step may be sufficiently large to offset any additional precision which may be obtained through concentration. To judge the variability across different laboratories, the commenter asserts that an interlaboratory study is necessary.

EPA rejects these contentions on several grounds. First, EPA believes that the concerns expressed by the commenter are addressed by the mandatory quality control requirements described in the Appendix to Method 200.7. EPA believes that the best way to assure acceptable analytical results is to require that each laboratory which proposes to use a method demonstrate its ability to meet specified quality control requirements. As long as laboratories properly follow the procedures described in the Appendix, the ICP technique will yield satisfactory results. Second, while the precision and bias estimates in the Appendix to Method 200.7 are based on single laboratory data, the Agency has also examined multilaboratory performance evaluation (PE) data on the ICP Method collected by EPA's Environmental Monitoring and Support Laboratory. These data indicate that better precision is attained by laboratories using the ICP as opposed to the approved atomic absorption methods, and refute the commenter's argument that unacceptable variability will occur during the day-to-day operations of various laboratories.

The commenter's position also appears to be based on the erroneous assumption that interlaboratory validation studies must always be conducted prior to approval of an analytical technique. While such studies are generally beneficial, EPA has repeatedly approved the use of alternative analytical techniques without having perfomed any interlaboratory studies. This was the case with the gas chromatographic methods for trihalomethanes and the furnace atomic absorption methods for metals which were approved in 1979 and 1980, respectively. In 1987, the Agency approved five analytical methods for some volatile organic chemicals (VOCs) that were modifications of existing methods for VOCs without having conducted interlaboratory validation studies of those methods. The costs to the Agency of conducting interlaboratory validation studies for every analytical method or modification of existing methods would be prohibitive. Thus, emphasis is given in the drinking water program to the demonstration of the laboratory's ability to attain results within specified accuracy limits. This demonstration of capabilities is an integral part of the Drinking Water Laboratory Certification Program. This program provides a mechanism for the evaluation of laboratories to help assure the validity of data generated. Laboratories wishing to analyze compliance samples must meet the requirements of this program.

2. Method detection limit of the ICP technique

The commenter also objects to approval of the ICP technique on the basis of the requirement written in the appendix to Method 200.7 that the detection limits for each element must not exceed one-fifth of its corresponding MCL. Using established procedures contained in 40 CFR Part 136 Appendix B, EPA projected MDLs for each element, and included those MDLs in the Appendix to Method 200.7. The commenter seemed to challenge the validity of these MDLs, and performed calculations using data from Method Study 27 (interlaboratory validation of Method 200.7) to project different MDLs.

EPA examined the statistical manipulations performed by the commenter and concluded that many assumptions made by the commenter are not technically justifiable. The manipulation of Method Study 27 data to estimate MDLs does not follow the procedure in 40 CFR Part 136 which EPA has determined is appropriate for determining MDLs. Therefore, EPA believes that the conclusions derived from these manipulations are inaccurate. Multilaboratory method studies are simply not designed to estimate MDLs. The lowest concentrations actually tested in Method Study 27 are higher than those which, under EPA procedures, must be used to estimate MDLs (Glaser et. al., *Env. Sci. Tech.*, 15, 1426, 1981). Generally, the use of concentrations higher than required by EPA procedures results in overestimates of MDLs. As a result, the detection limits calculated by the commenter were too high. This is not to say that all laboratories will be able to achieve the method detection limit calculated under ideal research conditions by EPA laboratories. EPA recognizes that detection limits can vary depending upon the precision attainable by individual laboratories. To minimize this variability and insure satisfactory analytical results, Method 200.7 with appendix requires laboratories to demonstrate that they can reliably analyze compliance samples at the maximum containment levels.

3. Challenges to design of interlaboratory validation Study—Method Study 27

The commenter also questions the appropriateness of that portion of the interlaboratory study for ICP where participants collected and spiked their own tap, surface and reagent waters. The commenter expressed concern that this practice caused the study results to be non-uniform and, therefore, not of sufficient quality to ensure that the precision and bias of the ICP Method 200.7 were acceptable for compliance monitoring purposes.

The commenter asserted that this problem arose in connection with the interlaboratory validation study of the furnace atomic absorption methods (Method Study 31) because in that study as well, participants collected and spiked their own samples of reagent, tap

and surface waters. According to the commenter, Method Study 31 concluded that the performance data were adversely affected by this practice. While noting that no such conclusions were drawn in Method Study 27, the commenter hypothesized that non-uniformity would have had a negative influence on the precision and bias of the ICP technique, if the preconcentration procedure had been studied along with Method 200.7.

EPA agrees that concentration may interfere with the recovery of an analyte in certain water matrices (i.e., cause matrix effects), but disputes the commenter's belief that the procedure described in the Appendix to Method 200.7 poses such problems. The commenter's reliance on Method Study 31 is misplaced. While the study observed some statistically significant matrix effects for a few elements in surface and effluent waters, no such effects were noted in the drinking water matrices. This observation indicates that drinking water, being relatively free of contaminants, is not likely to contain many elements which interfere with accurate recoveries of elements of concern.

In addition, the appendix to Method 200.7 addresses potential interferences caused by concentration of samples. High levels of calcium and magnesium are the primary interferents which result from concentration of samples prior to ICP analysis. The method requires that a matrix-matched calibration standard be used when the concentration of calcium or calcium and magnesium combined exceed certain levels. Laboratories following this practice will not experience matrix effects due to the concentration procedure contained in the Appendix to Method 200.7.

B. Approval of Solid Phase Extraction Method

Four comments were received concerning the approval of the SPE technique for endrin, lindane, methoxychlor and toxaphene. Three of the commenters agreed with EPA's recommendation for approval of this technique. One of these commenters provided specific research references that support the use of solid-phase extraction methods for organochlorine pesticide analysis. The fourt commenter, the Chemical Manufacturers Association (CMA), stated that the applicant, J.T. Baker Chemical Company, failed to establish equivalency for the SPE method, and argued, therefore, that this method should not be granted approval. J.T. Baker conducted a collaborative study to compare the performance of the proposed SPE method and the USEPA-approved method. The analyses were conducted by two different laboratories, Rutgers University and Virginia Polytechnic Institute. J.T. Baker provided a report to the Agency that included the concentration levels used and the data points generated from analysis of water samples using the proposed and approved methods.

CMA stated that the Baker "Collaborative Study" submitted to EPA in support of their application does not contain an interpretative text, statistical evaluation of data, or any interlaboratory assessments of precision and accuracy. However, the purpose of the J.T. Baker study was only to provide the Agency analytical data using both the proposed and the approved procedures. The Agency does not require the report to contain statistical evaluation, data interpretation, or assessments of precision and accuracy. The subject report satisfies the comparability data requirements for nationwide approval of alternate test procedures. To satisfy these requirements, J.T. Baker was instructed to collect drinking water from six geographically dispersed water supply systems which utilized ground and surface water. From each system, six grab samples were collected, spiked with known amounts of lindane, endrin, methoxychlor, or toxaphene, split, and analyzed eight times; four each using the approved liquid/liquid extraction method as specified in 40 CFR Part 141, and four using the Baker SPE technique.

Two EPA laboratories conducted statistical analysis and technical reviews of the data provided by J.T. Baker. CMA's critique of Baker's collaborative study appears to be based on their assumption that the applicant had to provide statistical analysis of the submitted data. CMA apparently did not obtain copies of the technical reviews listed under the Public Docket/References section of the proposed rule. During the technical reviews, EPA addressed the specific issues raised by CMA: (1) That one of the universities involved in the study experienced serious problems with the recovery/analysis of methoxychlor, (2) that there are some questionable results, and (3) that there are a high number of false negatives. EPA responses to these issues are summarized below.

1. The commenter correctly points out that one university had difficulty with the recovery/analysis of methoxychlor. However, this difficulty was experienced with both the proposed and the approved analytical methods. This problem in quantitation using both analytical methods indicates that the preparation technique which is the unique feature of the proposed method was not the cause of the recovery problem. Since both the approved and proposed methods utilize identical procedures to determine the presence and the amount of analyte in a sample, and since there were recovery problems with both methods, it is likely that those problems were due to deficiencies in the determinative procedure. Therefore, the experience of this laboratory does not refute other evidence that the solid phase extraction technique is equivalent to the approved analytical methods.

2. Approximately forty-one questionable data points were encountered, the majority of which were immediately noticeable by excessively high recoveries. All but five were documentable reporting or calculation errors and were corrected prior to statistical analysis. The remaining number of questionable data points is not significant considering the total number of results.

3. EPA's review also revealed false negative results, i.e., zero percent recoveries for an analyte extracted by the SPE procedure when the approved extraction yielded acceptable recoveries. Of the 960 individual analyses reported, six such results were observed. However, this number is slightly smaller than the incidence of zero percent recoveries for samples extracted using the approved procedure when the SPE technique yielded acceptable results. EPA does not consider the number of false negative results obtained by the SPE technique to be significant considering the total number of data points.

In fact, it appears that the SPE technique performed better than the approved liquid-liquid extraction procedure. The statistical analyses of the comparability data indicated that in those cases where there were statistically significant differences between the two methods, the mean recoveries of the SPE procedure were slightly higher or the SPE procedure was significantly more precise than the approved technique. Therefore, the Agency maintains that the Baker SPE procedure is suitable for monitoring compliance with MCLs for the four organochlorine pesticides: endrin, lindane, methoxychlor, and toxaphene.

IV. Future Review of Analytical Methods

EPA is approving the use of these new analytical methods to make them available to the regulated community as soon as possible. However, the Agency

will also generally examine the approved drinking water methods as part of its promulgation of MCLs pursuant to the 1986 amendments to the SDWA. Before EPA promulgates MCLs for inorganic contaminants and pesticides, the Agency expects to reevaluate all methods (including those approved today) and determine whether to continue their approval.

The analytical method approved today are only applicable to the existing MCLs. Public water systems are cautioned that detection limits for certain inorganic chemicals such as lead and arsenic are higher using the ICP technique than with atomic absorption methodology. Thus, the ICP technique may not be adequate for very low concentrations.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the adverse effects described in the Executive Order. This rule simply specifies two analytical techniques which may be used by laboratories to measure concentrations of certain pesticides and inorganic chemicals and, therefore, has no adverse economic impacts. However, this action was submitted to OMB for their review under the Executive Order.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the *Regulatory Flexibility Act* (5 U.S.C. 602 *et seq.*) because it will not have a significant economic impact on a substantial number of small entities. The methods which are included in this final rule give all laboratories, including small laboratories, the flexibility to use these alternate methods.

C. Paperwork Reduction Act

This rule contains no requests for information and is, therefore, exempt from the requirements of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*

VI. Effective Date

This rule is issued under SDWA section 1401, 1412 and 1445. Although section 1412(b) provides that the National Primary Drinking Water Regulations (as described in section 1401) take effect 18 months after their promulgation, under section 1445 there is no such limitation for monitoring, reporting, and recordkeeping regulations which may be used to assist in determining compliance. To allow the monitoring methods to be used after 30 days of promulgation, EPA is promulgating these regulations under section 1445. Effective 18 months after promulgation, the analytical methods will also be deemed to be promulgated under section 1412.

VII. References and Public Docket

The following references are included in the Public Docket together with other correspondence and information. The Public Docket is available for reviewing in Washington, DC, at the address listed at the beginning of this notice. All public comments received on the proposal are included in the Docket.

- Technical reviews of the proposed analytical techniques.
- Report with recommendations from the Director, Environmental Monitoring and Support Laboratory in Cincinnati to the Director, Office of Drinking Water.
- Copies of the proposed analytical techniques and performance data.
- Method Validation Study Report for ICP technique.
- Collaborative Study Report for SPE technique.
- Public Comments and EPA Responses.

List of Subjects in 40 CFR Parts 141 and 143

Chemicals, Analytical methods, Reporting and recordkeeping requirements, Water supply, Administrative practice and procedure.

Dated: February 9, 1988.

Lee M. Thomas,

Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, Parts 141 and 143 of Title 40, Code of Federal Regulations are amended as set forth below.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g–1, 300g–3, 300j–4, and 300j–9.

2. Section 141.23 is amended by revising paragraphs (f) introductory text, (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) and (f)(9), footnotes 1–4 are republished, and footnote 8 added to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

(f) Analyses conducted to determine compliance with 141.11 shall be made in accordance with the following methods, or their equivalent as determined by the Administrator.

(1) Arsenic-Method [1] 206.2, Atomic Absorption Furnance Technique; or Method [1] 206.3, or Method [4] D2972–78B or Method [2] 301.A VII, pp. 159–162, or Method [3] I–1062–78, pp. 61–63, Atomic Absorption-Gaseous Hydride; or Method [1] 206.4, or Method [4] D–2972–78A, or Method [2] 404–A and 404–B(4), Spectrophotometric, Silver Diethyldithiocarbamate; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(2) Barium-Method [1] 208.1, or Method [2] 301–A IV, pp. 152–155, Atomic Absorption-Direct Aspiration; or Method [1] 208.2, Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(3) Cadmium-Method [1] 213.1 or Method [4] D 3557–78A or B, or Method [2] 301–A II or III, pp. 148–152, Atomic Absorption-Direct Aspiration; or Method [1] 213.2 Atomic Absorption Furnance Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(4) Chromium-Method [1] 218.1 or Method [4] D 1687–77D, or Method [2] 301–A II or III, pp. 148–152, Atomic Absorption-Direct Aspiration; or Chromium-Method [1] 218.2, Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(5) Lead-Method [1] 239.1, or Method [4] D 3559–78A or B, or Method [2] 301–A II or III, pp. 148–152, Atomic Absorption-Direct Aspiration; or Method [1] 239.2, Atomic Absorption Furnace Technique;

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[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA–600/4–79–020), March 1979. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. For approved analytical procedures for metals, the technique applicable to total metals must be used.

[2] "Standard Methods for the Examination of Water and Wastewater," 14th Edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1976.

[3] Techniques of Water-Resources Investigation of the United States Geological Survey, Chapter A–1, "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," Book 5, 1979, Stock #024–001–03177–9. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[4] Annual Book of ASTM Standards, part 31 Water, American Society for Testing and Materials, 1976 Race Street, Philadelphia, Pennsylvania 19103.

* * * * *

[8] "Inductively Coupled Plasma-Atomic Emission Spectrometic Method for Trace Element Analysis of Water and Wastes—Method 200.7" with Appendix to Method 200.7 entitled, "Inductively Coupled Plasma-Atomic Emission Analysis of Drinking Water," March 1987. Available from EPA's Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

or Method [8] 200.7, Inductively Coupled Plasma Technique.

* * * * *

(9) Silver-Method [1] 272.1, or Method [2] 301-A II, pp. 148-152, Atomic Absorption-Direct Aspiration; or Method [1] 272.2, Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

* * * * *

3. Section 141.24 is amended by revising paragraph (e), and the footnotes thereto by republishing footnotes 2 and 5 unamended and by adding a new footnote 6, as follows:

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.

* * * * *

(e) Analysis made to determine compliance with § 141.12(a) shall be made in accordance with the following methods, or their equivalent as determined by the Administrator: "Methods for Organochlorine Pesticides and Chlorophenoxy Acid Herbicides in Drinking Water and Raw Source Water," available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268; or "Organochlorine Pesticides in Water," Annual Book of ASTM Standards, part 31, Water, Method D-3086-79; or Method 509-A, pp. 555-565; [2] or Gas Chromatographic Methods for Analysis of Organic Substances in Water,[5] USGS, Book 5, Chapter A-3, pp. 24-39; or Solid Phase Extraction (SPE) [6] Test Method Number SPE-500 for EPA's "Methods for Organochlorine Pesticides and Chlorophenoxy Acid in Herbicides in Drinking Water and Raw Source Water."

[2] See footnote 2 to § 141.23.

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[5] Techniques of Water-Resources Investigation of the United States Geological Survey, Chapter A-3, "Methods for Analysis of Organic Substances in Water," Book 5, 1971, Stock #2401-1227. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC.

[6] Solid Phase Extraction (SPE) Test Method Number SPE-550 is available from J.T. Baker Chemical Company, 22 Red School Lane, Phillipsburg, New Jersey 08865.

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

4. The authority citation for Part 143 continues to read as follows:

Authority: 42 U.S.C. 300g-1(c), 300j-4, and 300j-9.

5. Section 143.4 is amended by revising paragraphs (b)(3), (b)(5), (b)(6), and (b)(11) to read as follows:

§ 143.4 Monitoring.

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(b) * * *

(3) Cooper—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 108-109, EPA, Office of Technology Transfer, Washington, DC 20460, 1974, or "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210-215, 14th Edition, pp. 144-147; or Inductively Coupled Plasma Method, "Inductively Coupled Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7," available from EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

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(5) Iron—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 110-111, EPA, Office of Technology Transfer, Washington, DC 20460, 1974, or "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210-215, 14th Edition, pp. 144-147; or Inductively Coupled Plasma Method, "Inductively Coupled Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7," available from EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

(6) Manganese—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 116-117, EPA, Office of Technology Transfer, Washington, DC 20460, 1974, or "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210-215, 14th Edition, pp. 144-147; or Inductively Coupled Plasma Method, "Inductively Coupled Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7" available from EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

* * * * *

(11) Zinc—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 155-156, EPA, Office of Technology Transfer, Washington, DC 20460, 1974, or "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210-215, 14th Edition, pp. 144-147; or Inductively Coupled Plasma Method, "Inductively Coupled Plasma—Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7," available from EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

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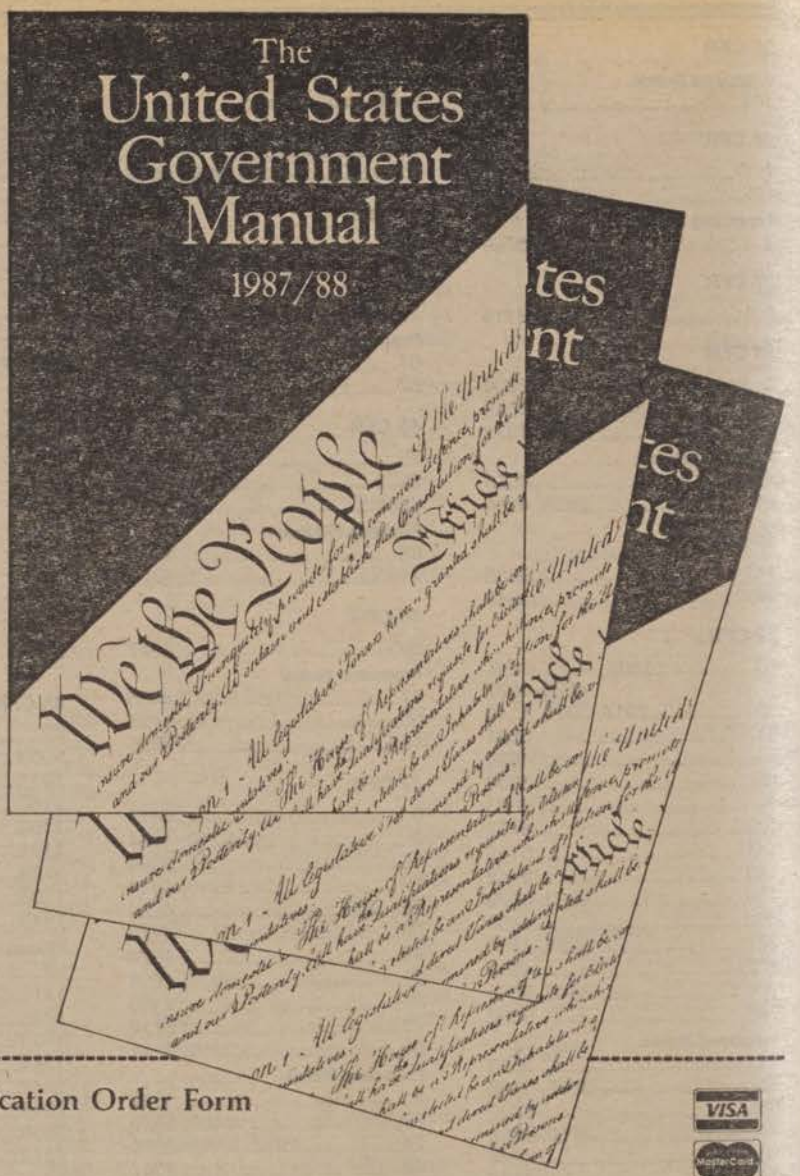

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