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- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
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 2. The relationship between the Federal Register and Code of Federal Regulations.
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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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Federal Register

Vol. 53, No. 34

Monday, February 22, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Order Suspending a Certain Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of a rule.

SUMMARY: This action suspends for the months of February–July 1988 a portion of the "producer" definition of the Southwest Plains order. The suspended provision prevents dairy farmers from being considered producers under the order during the months of February–July if they have not sufficiently supplied the market during the previous September–November when fluid milk needs are seasonally greater. The suspension was requested by Southern Milk Sales, Inc. (SMS), a cooperative association that represents producers who supply milk for the Southwest Plains market. The action is necessary to permit the efficient use of advantageously located milk supplies to furnish the fluid milk needs of the market.

EFFECTIVE DATE: February 22, 1988.

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

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued January 19, 1988; published January 22, 1988 (53 FR 1790).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule

on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers by promoting hauling efficiencies and tends to ensure that dairy farmers who supply the market's fluid milk needs will have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the *Federal Register* on January 22, 1988 (53 FR 1790). Such notice invited comments on a proposal to suspend a certain provision of the Southwest Plains order. Interested persons were given 7 days after *Federal Register* publication to comment on the proposed action. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of February–July 1988 the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1106.12, paragraph (b)(5) in its entirety.

Statement of Consideration

This action suspends a portion of the producer definition for the months of February–July 1988. The suspended provisions prevent dairy farmers from being considered producers under the order during months when supplies are abundant if they have not sufficiently supplied the market during previous fall months when fluid milk needs are seasonally greater. Specifically, the order provides that a dairy farmer

cannot be a producer under the Southwest Plains order during the months of February–July unless during each of the immediately preceding months of September–November more than two-thirds of the producer's milk was pooled and priced under the order. This provision was suspended for the months of April–July 1987.

Southern Milk Sales, Inc. (SMS), a cooperative association that represents dairy farmers who supply milk for the Southwest Plains market requested a reinstatement of the suspension for 1988. As SMS contends, the action is necessary to give market suppliers the flexibility to ship the milk of advantageously located producers to supply the fluid milk needs of Southwest Plains distributing plants.

A shortage of milk for fluid uses in Federal order markets to the south during the fall of 1987 caused a considerable amount of SMS's milk (as well as the milk of other cooperative associations) that is normally pooled under the Southwest Plains order to become regulated under orders covering Texas, Louisiana, and more-distant markets in the Southeast. As a result, these producers did not establish the required prior association with the Southwest Plains market during September–November 1987 to be considered producers under such order for the months of February–July 1988. In addition, the whole-herd buyout program, which ended September 30, 1987, has affected overall milk supply arrangements to some extent. That program has necessitated a general restructuring of hauling routes as market suppliers under the Southwest Plains order attempted to fulfill their commitments to buyers efficiently by moving the milk from the farms of the most advantageously located producers. Such route changes also affected the eligibility of certain dairy farmers to supply the Southwest Plains market.

The suspension is necessary to allow the most efficient use of advantageously located milk supplies to meet the market's fluid needs. Absent a suspension, milk of such advantageously located dairy farmers would not be eligible to supply the fluid needs of Southwest Plains distributing plants.

SMS asked that the provision be suspended for all months of 1988.

However, since the provision applies only during the months of February through July, comments were invited on a proposal to suspend the provision for such months. No opposing views were received. Accordingly, the provision is suspended for the months of February-July 1988.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that such action promotes hauling efficiencies and ensures that dairy farmers who have regularly supplied the market's fluid needs will have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of such proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this action. No views opposing the suspension were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provision in § 1106.12(b)(5) of the Southwest Plains order is hereby suspended for the months of February-July 1988:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

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

§ 1106.12 [Amended]

2. In § 1106.12, paragraph (b)(5) is suspended in its entirety.

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

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-3666 Filed 2-19-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 85-022F]

Cured Pork Products; Added Substances and Labeling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending provisions of the Federal meat inspection regulations that were adopted in the final rule titled "Control of Added Substances and Labeling Requirements for Cured Pork Products; Updating of Provisions". This rule provides an additional option for the size of qualifying statements for names of cured pork products containing added substances, deletes the requirement for marking the full length of the product label with a qualifying statement, and deletes the limitation on the use of sweeteners, such as corn syrup, in "Chopped Ham". This rule provides the processor of cured pork products with greater flexibility while continuing to assure properly labeled products, and deletes as unnecessary compositional requirement.

EFFECTIVE DATE: March 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. C.R. Brewington, Chief, Labeling Policy and Approval Branch, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5388.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a "major rule" under Executive Order 12291. This final rule will not result in an annual effect on the economy of \$100 million or more; or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or 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.

This final rule essentially makes minor revisions to regulations promulgated as part of a final rule that was reviewed under Executive Order 12291 and determined not be a "major rule". This final rule offers flexibility to the affected industry by modifying

certain labeling requirements and deletes a regulatory restriction on product composition.

Effects on Small Entities

Under the circumstances mentioned above, the Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601 *et seq.*), because the final rule only makes minor revisions to the regulations which recognize nontraditional products and provide increased flexibility to produce a variety of cured pork products.

Background

On February 27, 1987, FSIS published in the Federal Register (52 FR 5991) a proposal to amend provisions of the Federal meat inspection regulations that were adopted in the final rule published on April 14, 1984 (49 FR 14856-14887), titled "Control of Added Substances and Labeling Requirements for Cured Pork Products; Updating of Provisions". That final rule, which became effective on April 15, 1985, modernized the regulatory program to assure that cured pork products are accurately labeled at all stages of commerce. Standards limiting the amount of added water and other substances were replaced with standards specifying a minimum meat protein content on a fat free basis (PFF) in the various finished cured pork products. In addition, the rule eliminated certain unnecessary restrictions or optional ingredients in the standard for "Chopped Ham".

The standards define cured pork products in terms of minimum meat PFF percentages (9 CFR 319.104 and 319.105). This controls the use of added substances by associating the meat protein in the nonfat portion of a cured product with product identification. As the level of added substances increases, the PFF content decreases. At specified PFF percentages, the type of product changes, as reflected in qualifying statements on the label. For example, the common and usual name "Cooked ham" is specified for a product containing a minimum meat PFF percentage of 20.5. If a product contains a minimum meat PFF percentage of 18.5, it is labeled "(Common and usual) with natural juices". At a minimum meat PFF content of 17, a product is labeled "(Common and usual) water added". Lastly, if a product contains a meat PFF of less than 17, it is labeled "(Common and usual) and water product—X% of weight is added ingredients".

During implementation of the revised cured pork product regulations, it became apparent that certain requirements should be reconsidered. The changes in this final rule eliminate or modify requirements that have been found to be unnecessary or impractical as initially adopted. These changes provide the processor with flexibility while continuing to assure properly labeled cured pork products and provide consistency with labeling requirements of other products.

One change amends the standard for "Chopped Ham" in § 319.105 of the Federal meat inspection regulations (9 CFR 319.105) by deleting the provision which has limited the amount of sweeteners that may be added to 2 percent on a dry basis. Maintaining this requirement was an oversight since the revised standard indirectly controls the use of all added substances. Thus, specific restrictions on the use of these added substances is unnecessary, and the Agency is amending § 319.105 of the regulations (9 CFR 319.105) by rescinding paragraph (d) and redesignating paragraph (e) as paragraph (d).

A second change amends § 319.104(b) of the regulations (9 CFR 319.104(b)). Cured pork products for which a qualifying statement is required (e.g., "water added" or "with natural juices") have been required to bear that statement in lettering at least 3/8 inch in height. (The Administrator, however, may approve smaller lettering for labels of packages of 1 pound or less, provided the lettering is at least one-third the size and of the same color and style as the product name.)

FSIS reviewed this requirement after being advised by the meat processing industry that processors were experiencing problems in printing labels to comply with the 3/8-inch type size requirement for qualifying statements. An alternative was proposed because this requirement appeared impractical, in some cases, due to the length of some of the qualifying statements required under § 319.104(a) of the regulations (9 CFR 319.104(a)) and some product packages cannot easily accommodate labeling statements of this size. FSIS has concluded that the regulations should include an alternative to the 3/8-inch lettering requirement for qualifying statements. Accordingly, the final rule provides that qualifying statements may be in lettering not less than one-third the size of the largest letter in the product name if they are in the same color and

style of print and on the same color background as the product name. This option will assure that the qualifying statements are sufficiently prominent and conspicuous to clearly indicate the nature of products. This approach is consistent with the size of many qualifying statements found presently on labels and reflects general Agency policy as set forth in Policy Memo 087A for words within a product name.

Another problem encountered by industry has been the requirement that cured pork products be labeled the full length of the product, so that cured pork products not placed in consumer-size packages must be marked repeatedly with any qualifying statement. This requirement was imposed to assure continued identification of product at the retail level when the product is subdivided. FSIS questioned the usefulness of this requirement. Often, these products do not remain in their original, fully labeled packages when offered for sale. Some products are sliced and repackaged while others are placed in delicatessen cases with no packaging. Additionally, other similar delicatessen products (e.g., cured beef products with additional moisture) are not subject to the requirement of repeating the qualifying statement the full length of the product. The deletion of the full length requirement for cured pork products does not appear to be necessary and the elimination of the requirement will result in cured products being marked in a manner comparable to that of other products. Therefore, a third change deletes this requirement from § 319.104(b) of the regulations (9 CFR 319.104(b)).

Comments on the Proposed Rule

FSIS received one comment from a trade association in response to the proposal. The commenter supported the proposed changes as being consistent with the original intent of the PFF regulations and encouraged their prompt adoption.

Final Rule

After careful consideration of all relevant information available to FSIS and for the reasons stated in the preamble, Title 9, Part 319 of the Code of Federal Regulations is revised as set forth below.

List of Subjects in 9 CFR Part 319

Meat and meat food products, Standards of identity, Food labeling.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

1. The authority citation for Part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 319.104 is amended by revising paragraph (b) to read as follows:

§ 319.104 Cured pork products.

(b) Cured pork products for which there is a qualifying statement required in paragraph (a) of this section shall bear that statement as part of the product name in lettering not less than 3/8 inch in height, or in lettering not less than one-third the size of the largest letter in the product name if it is in the same color and style of print and on the same color background as the product name. However, the Administrator may approve smaller lettering for labeling of packages of 1 pound or less, provided such lettering is at least one-third the size and of the same color and style as the product name.

§ 319.105 [Amended]

3. Section 319.105 is amended by removing the text of paragraph (d) and redesignating paragraph (e) as (d).

Done at Washington DC, on: February 17, 1988.

Lester M. Crawford,
Administrator, Food Safety and Inspection Service.

[FR Doc. 88-3667 Filed 2-19-88; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket Number R-0627]

Delegation of Authority To Reserve Banks To Stay, Modify, Terminate or Suspend Final Cease and Desist Orders

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending § 265.2(f)(26) of its Rules Regarding the Delegation of Authority (12 CFR 265.2(f)(26)) to delegate to the Federal

Reserve Banks the authority to stay, modify, terminate or suspend final cease and desist orders issued by the Board upon the prior approval of the Staff Director of the Board's Divisions of Banking Supervision and Regulation (the "Staff Director") and the General Counsel of the Board (the "General Counsel"). It is expected that this amendment will relieve the Board from having to act on routine matters that are more efficiently and effectively handled by the Federal Reserve Banks.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Herbert A. Biern, Assistant Director, (202/452-2620), Enforcement Section, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board is amending its existing delegations of authority concerning formal enforcement actions (12 CFR 265.2(f)(26)) so that it will no longer be required to act on routine matters involving modifications and terminations of final cease and desist orders. Under the Board's existing delegations of authority, the Federal Reserve Banks may enter into written agreements with State member banks, bank holding companies, and individuals and other entities associated with these institutions in order to prevent or correct unsafe and unsound practices and violations of laws, rules or regulations. The Federal Reserve Banks also have the authority to stay, modify, terminate or suspend written agreements. The Federal Reserve Banks may only exercise their authority to enter into and to terminate written agreements upon the prior approval of the Staff Director and the General Counsel. The Board has retained the authority to issue final cease and desist orders against institutions and individuals subject to the Board's jurisdiction and to stay, modify, terminate or suspend such orders.

Since the Federal Reserve Banks are responsible for monitoring compliance with final cease and desist orders and the Board's decision to modify or terminate these orders are now generally routine matters based on recommendations from the Federal Reserve Banks, the Board has determined that its supervision functions can be made more efficient and effective by delegating to the Federal Reserve Banks the authority to modify or terminate final cease and desist orders upon the prior approval of the Staff Director and the General Counsel.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment would ease the application of existing regulations and does not have particular effect on small entities.

Public Comment

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR Part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority for 12 CFR Part 265 continues to read as follows:

Authority: Section 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2(f)(26) is amended by removing "and" after the semi-colon (";" in (a) and the period (".") after (b) inserting "; and" after (b) and adding new subdivision (iii) thereafter to read as follows:

§ 265.2 Specific functions delegated to Board employees and the Federal Reserve Banks.

* * * * *

(f) * * *

(26) * * *

(iii) To stay, modify, terminate or suspend an outstanding cease-and-desist order that has become final pursuant to 12 U.S.C. 1818 (b) and (k).

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 16, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-3631 Filed 2-19-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-144-AD; Amdt. 39-5854]

Airworthiness Directive; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 767 series airplanes, which requires inspection, and modification, if necessary, of certain pneumatic system 8th stage check valves. This amendment is prompted by reports of valves being shipped from the factory with improperly swaged fasteners. This condition, if not corrected, could result in failure of the valve and engine shutdown, engine damage, or damage to the pneumatic system.

EFFECTIVE DATE: April 5, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection, and modification, if necessary, of certain pneumatic system 8th stage check valves of Boeing Model 767 series airplanes, was published in the *Federal Register* on November 20, 1987 (52 FR 44608).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received.

The commenter had no objection to the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule as proposed.

It is estimated that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$30,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, as listed in Boeing Service Bulletin 767-36-0021, dated September 17, 1987, certificated in any category. Compliance required within the next six months after the effective date of this AD, unless already accomplished.

To preclude engine or pneumatic system damage caused by failure of the pneumatic system 8th stage check valve, accomplish the following:

A. Within the next 6 months after the effective date of this AD, inspect the pneumatic system 8th stage check valves on both engines, in accordance with Boeing Service Bulletin 767-36-0021, dated September 17, 1987, or later FAA-approved revision, to determine if the serial numbers are among those listed in Hamilton Standard Service Bulletin 36-2056, dated June 29, 1987,

or later FAA-approved revision, as requiring further inspection.

B. If any valve is identified by serial number as requiring further inspection, prior to further flight, remove the valve from the airplane, inspect the valve retention collar and, if necessary, modify the valve in accordance with the above mentioned service bulletins.

C. Valves not installed on an airplane must be inspected, and modified if necessary, in accordance with the above-mentioned service bulletins, prior to their installation on airplanes.

D. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the rework required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 5, 1988.

Issued in Seattle, Washington, on February 12, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-3663 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-154-AD; Amdt. 39-5855]

Airworthiness Directives; the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, which requires replacement of aluminum alloy heat shield washers with stainless steel washers. This amendment is prompted by reports of cracking found in the

aluminum washers. This condition, if not corrected, could lead to in-flight separation of the heat shield from the wing, and consequent injury to people on the ground.

EFFECTIVE DATE: April 5, 1988.

ADDRESSES: The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Vito Pulera, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain de Havilland Model DHC-7 series airplanes, which requires replacement of aluminum alloy heat shield washers with stainless steel washers, was published in the Federal Register on December 4, 1987 (52 FR 46094).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, the Air Transport Association (ATA) of America, had no objection to the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$14,080.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,

1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane (\$320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

De Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.:
Applies to Model DHC-7 series airplanes, equipped with Modification No. 7/2414, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude the possibility of heat shield separation resulting from the failure of aluminum alloy washers, accomplish the following:

A. Within 60 days or 500 flight hours, whichever occurs first after the effective date of this AD, replace aluminum alloy washers with stainless steel washers, in accordance with Accomplishment Instructions of de Havilland DHC-7 Service Bulletin No. 7-57-29, dated August 1, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be

examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective April 5, 1988.

Issued in Seattle, Washington, on February 12, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-3664 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-143-AD; Amdt. 39-5853]

Airworthiness Directives; Sud Aviation Model Caravelle SE210

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Sud Aviation Model Caravelle SE210 series airplanes, which requires inspection and replacement, if necessary, of the main landing gear manual uplock release mechanism screwjack shaft and square end fitting. This amendment is prompted by reports of incidents involving breakage of the manual uplock release mechanism. If breakage of the screwjack shaft occurs, manual uplock release of the main landing gear is no longer possible. This condition, if not corrected, could lead to the inability to manually extend the main landing gear.

EFFECTIVE DATE: April 5, 1988.

ADDRESSES: The applicable service information may be obtained from Sud Aviation/Aerospaciale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation regulations to include an

airworthiness directive which requires inspection, and replacement, if necessary, of the main landing gear manual uplock release mechanism screwjack shaft and square end fitting on all Sud Aviation Model Caravelle SE210 series airplanes, was published in the **Federal Register** on December 1, 1987 (52 FR 45641).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$400.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Sud Aviation: Applies to Model Caravelle SE210 series airplanes, as listed in Sud Service Bulletin Number 32-121, dated September 9, 1982, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent breakage of main landing gear manual uplock release mechanism screwjack shaft, accomplish the following:

A. Prior to the accumulation of 2,500 landings or 12 months, whichever occurs first after the effective date of this AD, perform inspections of the square end fitting (LH and RH sides) P/N 210.43.20.123 and screwjack shafts P/N 210.43.20/122 or P/N 210.43.20.920, as described in paragraph 4B of Caravelle Sud Service Bulletin No. 32-121, dated September 8, 1982.

B. Repeat the inspection required by paragraph A., above, as follows:

1. At intervals not exceeding 5,000 landings or 2 years, whichever occurs first, for aircraft on which the procedures described in Sud Service Bulletin 32-96 have not been accomplished.

2. At intervals not exceeding 15,000 landings or 6 years, whichever occurs first, for aircraft on which the procedures described in Sud Service Bulletin 32-96 have been accomplished.

C. In the event that damage or cracks are detected on the square end fitting or screwjack shaft, or there are more than two pin holes on the screwjack shaft, replace affected parts in accordance with Sud Service Bulletin No. 32-96, Revision 3, dated January 18, 1982.

D. An alternate means of compliance or adjustment of the compliance times, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Sud Aviation/Aerospaiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 5, 1988.

Issued in Seattle, Washington, on February 12, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-3662 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-18]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of Federal Airway V-419 located in the vicinity of Boston, MA. Inadvertently, the description aligned the airway via Sparta, NJ, and Stillwater, NJ, when the alignment should have been via Solberg, NJ. This action corrects that mistake and is consistent with the airway alignment designed for the Expanded East Coast Plan (EECP).

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-2111 was published on February 3, 1988, that altered the descriptions of four airways located in the Boston, MA, area. These airways are part of the EECP designed to reduce en route and terminal delays along the east coast of the United States. Inadvertently, the description of V-419 is not correct and this action corrects that mistake.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 88-2111, beginning on page 3008 of the Federal Register on February 3, 1988, the description of V-419 is corrected as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Corrected]

2. In the amendment to § 71.123, the description of V-419 in the first column of page 3010 is corrected to read as follows:

V-419 [Revised]

From Boston, MA, INT Boston 252° and Bradley, CT, 072° radials; Bradley, Carmel, NY; INT Carmel 243° and Solberg, NJ, 044° radials; Solberg; Modena, PA; to Westminster, MD.

Issued in Washington, DC., on February 8, 1988.

Robert G. Burns,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-3359 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket No. RM83-39-000; Order No. 484]

List of Property for Use in Accounting for the Addition and Retirement of Reactor Plant Equipment

February 17, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; notice of OMB control number; correction.

SUMMARY: The Federal Energy Regulatory Commission (Commission), issued a Notice of OMB control number in Order No. 484, on January 25, 1988, establishing a list for utilities to use in classifying certain property at nuclear power plants as "retirement units" for accounting purposes. (53 FR 2593, Jan. 29, 1988). This notice corrects the title which appeared on the first page.

EFFECTIVE DATE: February 17, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra S. Vincent, Office of the General

Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

On January 25, 1988, the Commission issued a Notice of OMB control number in Order No. 484, establishing a list for utilities to use in classifying certain property at nuclear power plants as "retirement units" for accounting purposes. (53 FR 2593, Jan. 29, 1988). This notice corrects the title shown on the prior notice. At 53 FR 2593, second column (page 1 of the Commission's order), the title is revised to read: "List of Property for Use in Accounting for the Addition and Retirement of Reactor Plant Equipment."

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3685 Filed 2-19-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. 84-48]

Schedules of Controlled Substances; Scheduling of 3,4-Methylenedioxymethamphetamine (MDMA) Into Schedule I of the Controlled Substances Act; Remand

AGENCY: Drug Enforcement Administration.

ACTION: Final rule.

SUMMARY: This is a final rule placing the drug 3,4-methylenedioxymethamphetamine (MDMA) into Schedule I of the Controlled Substances Act (CSA) following a remand from the United States Court of Appeals for the First Circuit. This rule will classify MDMA as a Schedule I hallucinogenic controlled substance and is the culmination of a formal rulemaking on the record conducted before an Administrative Law Judge of the Drug Enforcement Administration (DEA). The original final rule placing MDMA in Schedule I was published on October 14, 1986, with an effective date of November 13, 1986. (51 FR 36552). On review by the United States Court of Appeals for the First Circuit the rule was vacated and remanded to the Administrator for further findings. Following a review of the record in this matter, the Administrator concludes that MDMA should be classified as a Schedule I

controlled substance. This rule will impose the criminal and regulatory controls of Schedule I on the manufacture, distribution and possession of MDMA.

EFFECTIVE DATE: The effective date of this order is March 23, 1988.

FOR FURTHER INFORMATION CONTACT:

Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: On October 14, 1986, the Administrator of DEA, following rulemaking on the record which included a hearing before an Administrative Law Judge, issued a final rule placing MDMA into Schedule I under the Controlled Substances Act. (51 FR 36552) The effective date of this rule was November 13, 1986. In this final rule, the Administrator made findings required by the statute, 21 U.S.C. 812(a), and concluded that MDMA met the criteria for placement of substances into Schedule I. The Administrator found that MDMA: (1) Had no currently accepted medical use in treatment in the United States; (2) lacked accepted safety for use under medical supervision; and (3) had a high potential for abuse.

On September 19, 1987, the United States Court of Appeals for the First Circuit issued its opinion on the Petition for Review of the Order of the Drug Enforcement Administration. See, *Grinspoon v. Drug Enforcement Administration*, 828 F.2d 881. The mandate was issued on December 22, 1987. The Court found that the Administrator applied an incorrect standard in determining the meaning of the phrases "currently accepted medical use in treatment in the United States" and "lack of accepted safety for use under medical supervision." Specifically the Court stated that—

The Administrator erroneously applied an interpretation of the "accepted medical use in treatment in the United States" and "accepted safety for use . . . under medical supervision" criteria of section 812(b)(1) that directly conflicts with congressional intent. We therefore vacate the Administrator's determination that MDMA should be placed in Schedule I of the CSA and remand the rule for further consideration by the DEA. On remand, the Administrator will not be permitted to treat the absence of FDA interstate marketing approval as conclusive evidence that MDMA has no currently accepted medical use and lacks accepted safety for use under medical supervision. 828 F.2d 881, 891.

The Court did not provide any further parameters for the Administrator in reconsidering his decision, stating that it would not infringe on the

Administrator's statutory authority to develop such a standard.

The Administrator concludes that further hearings are not necessary in this matter since the record below is extraordinarily complete and since all the parties had the opportunity to provide evidence and brief all the relevant issues, which included:

What constitutes "currently accepted medical use in treatment in the United States" within the purview of 21 U.S.C. 812(b)?

What constitutes "accepted safety for use . . . under medical supervision" within the purview of 21 U.S.C. 812(b)?

Does MDMA have a "currently accepted medical use in treatment in the United States" within the purview of 21 U.S.C. 812(b)?

Is there a lack of "accepted safety for use [of MDMA] under medical supervision" within the purview of 21 U.S.C. 812(b)?

The Administrator further concludes that since all parties have had ample opportunity to be heard on these issues, there is no necessity to publish his conclusions as a proposed rule, but rather as a final rule.

Findings

The Administrator adopts the following findings regarding "accepted medical use in treatment in the United States" and "accepted safety for use under medical supervision" which were published as part of the original final rule found at 51 FR 36552 (October 14, 1986); 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 44, 45, 46, 47. These findings are incorporated into this final rule as though they were set out fully herein. The Administrator further finds, based upon the record in the proceedings conducted before the Administrative Law Judge:

A. The published scientific and medical literature and the information from the files of the Food and Drug Administration do not establish or support claims of therapeutic use of MDMA, as an adjunct to psychotherapy, in treatment in the United States.

B. There are insufficient and inadequate studies and reports characterizing MDMA from a chemical, toxicological and pharmacological perspective to justify use of MDMA in humans.

C. There were no published accounts of MDMA's pharmacology or toxicology until 1973, when an animal study conducted by the U.S. Army Chemical Corps was released. It showed that the acute lethal doses of MDMA and MDA were similar.

D. Three reports published by Alexander Shulgin and others beginning in 1976 mention the effects of MDMA in humans. These studies describe MDMA's psychopharmacological profile in relation to other psychoactive drugs such as marijuana, psilocybin and MDA. Minimal descriptions of test procedures were included, and the studies included no data to indicate a potential therapeutic utility of MDMA as an adjunct to psychotherapy in humans.

E. The therapeutic use of MDMA is not mentioned in any medical, psychiatric or psychotherapy textbooks, pharmacopeia or clinical pharmacology textbooks.

F. An unpublished study entitled "MDMA: A New Psychotropic and its Effects in Humans" was prepared by Dr. George Greer. Dr. Greer is a psychiatrist in New Mexico with a private practice and little or no background as a researcher. His report describes the administering of MDMA to 29 individuals for a variety of reasons ranging from curiosity and fun to a desire to change consciousness and behavior patterns. Only nine of the individuals had diagnosable psychiatric disorders. Dr. Greer reported that all the individuals experienced "positive" effects and relatively few side effects.

The conclusions were based upon the subjective observations of Dr. Greer and a nurse, as well as conclusions of the subjects. Dr. Greer described the study as anecdotal and not a study designed to determine the efficacy of MDMA. Experts in psychiatry, psychotherapy and pharmacology concluded that Dr. Greer's study did not provide a reasonable basis for regarding MDMA as efficacious for enhancing therapeutic benefits of psychotherapy, and lacked scientific merit. They agreed that the study was not scientifically sound and produced only anecdotal results. The study contained no controls; it was not a blind or double blind study and thus significant bias was introduced; there were no criteria to measure improvement or change; there was no defined therapeutic procedure; and the investigator lacked standing as a scientist and researcher.

G. An unpublished study entitled, "MDMA Pilot Study—Physiological, Psychological and Sociological Study," by Dr. Joseph J. Downing examined the effects of MDMA in 21 healthy individuals with no diagnosable psychiatric disorders. Dr. Downing is not a researcher and has little or no experience in designing and conducting toxicological or clinical studies. All the subjects had previously used MDMA and a variety of other psychoactive drugs. The individuals brought their own

alleged MDMA to the study and determined the dose to be taken. The subjects concluded that they had "benefitted" from the use of MDMA. Dr. Downing concluded that "there is insufficient evidence to judge accurately either harm or benefit." Scientific experts who reviewed Dr. Downing's work concluded that his study suffers from the same problems as Dr. Greer's and that it has little or no scientific merit. An FDA pharmacologist, experienced in evaluating the safety and efficacy of drugs, concluded that the study presents no data or evidence to support a claim that MDMA is effective as a therapeutic agent.

H. Four psychiatrists presented evidence that they had used MDMA in their practices. Several other psychiatrists testified that use of MDMA by these individuals was consistent with accepted medical practice in their community. Each physician also described MDMA only in terms of therapeutic potential. All agreed that no scientific studies were done on which to conclude that MDMA has therapeutic utility. Most of these physicians had used MDMA themselves. The number of physicians who have used MDMA in their practices is very small in relation to the physician population.

I. The World Health Organization (WHO) Expert Committee on Drug Dependence reviewed MDMA for possible scheduling under the 1971 Convention on Psychotropic Substances in April 1985. The Expert Committee included internationally recognized experts in the field of psychiatry, clinical pharmacology and other medical professions. The Committee found that MDMA had no defined therapeutic use. The Committee further noted that the anecdotal data regarding MDMA's clinical utility were intriguing but that the studies lacked appropriate methodological design to ascertain the reliability of the observations and results. The Expert Committee recommended that MDMA be placed into Schedule I of the Convention because there was insufficient evidence to indicate that the substance has therapeutic usefulness. The United States is a party to the 1971 Convention on Psychotropic Substances.

J. Published scientific literature does not support the safety of MDMA for use in humans. It strongly suggests that MDMA may not be safe for human use.

K. Unpublished studies by Drs. Greer and Downing indicate that all individuals who took MDMA under their supervision experienced unpleasant side effects ranging from nausea and vomiting to ataxia, anxiety attacks, hallucinations and short-term memory

loss. Dr. Greer's and Dr. Downing's studies suffer from severe methodological and other problems which lead experts to conclude that they contain no scientific evidence to assess the safety of MDMA. Dr. Downing concluded that there is insufficient evidence to accurately judge MDMA's safety.

L. The substance administered by Dr. Greer in his study, as well as that administered by the other psychiatrists, was made by them under the supervision of a medicinal chemist and was not manufactured or tested under controlled conditions.

M. The substances ingested by the subjects in Dr. Downing's study were provided by the subjects themselves, and were of unknown origin, composition and purity.

Discussion

In order for a drug or other substance to be placed into Schedule I, a finding is required that the substance has "no currently accepted medical use in treatment in the United States." The other four Schedules require a finding that the drug or other substance has a "currently accepted medical use in treatment in the United States." The United States Court of Appeals for the First Circuit has indicated that "currently accepted medical use in treatment in the United States," does not mean that a drug or other substance is lawfully marketed in the United States pursuant to the Federal Food, Drug and Cosmetic Act of 1938. While the Court clearly stated that whether a substance is lawfully marketed in the United States may be a factor to be considered in making a determination of accepted medical use, it may not be the sole factor upon which the Administrator relies in making that determination.

The characteristics of a drug or other substance with an accepted medical use in treatment include scientifically determined and accepted knowledge of its chemistry; the toxicology and pharmacology of the substance in animals; establishment of its effectiveness in humans through scientifically designed clinical trials; general availability of the substance and information regarding the substance and its use; recognition of its clinical use in generally accepted pharmacopeia, medical references, journals or textbooks; specific indications for the treatment of recognized disorders; recognition of the use of the substance by organizations or associations of physicians; and recognition and use of the substance by a substantial segment

of the medical practitioners in the United States. The drug MDMA has not been approved for marketing in the United States by the Food and Drug Administration. The chemistry, toxicology and pharmacology of MDMA have not been sufficiently studied in animals to provide a scientific basis for experimentation or clinical use in humans. The published literature contains no references to the clinical use of MDMA nor animal studies to indicate such a clinical use. Recognized texts, reference books and pharmacopeia contain no references to the therapeutic use of MDMA. The two unpublished studies supporting the therapeutic use of MDMA which were presented during the hearings, do not contain any data which can be assessed by scientific review to draw a conclusion that MDMA has a therapeutic use. Indeed, the psychiatrists who conducted the studies admit that the information which they obtained was anecdotal, and that the studies were not scientifically controlled.

Evidence in the record indicates that at least four psychiatrists have administered MDMA in their practice to approximately 200 subjects. These physicians were not conducting scientific studies with MDMA, they were administering the drug as if it was an approved product which had been scientifically tested. The evidence they presented was merely anecdotal accounts of observations of patients.

While many witnesses in this proceeding, including those presented by the agency, indicated that MDMA may have a potential therapeutic use, such a potential use is not sufficient to establish accepted medical use. A panel of international experts reached the same conclusion, namely that there was insufficient evidence to indicate that the substance had therapeutic usefulness.

The evidence in the record in this proceeding does not support a finding that MDMA has a "currently accepted medical use in treatment in the United States." MDMA's lack of marketing approval by the Food and Drug Administration, coupled with the absence of reliable scientific data to establish the therapeutic usefulness and absence of widespread acceptance and recognition in the medical community, clearly demonstrates that it has "no currently accepted medical use in treatment in the United States."

The second of the three factors required for placement of a substance in Schedule I is that there is "lack of accepted safety for use of the drug or other substance under medical supervision." The United States Court of Appeals for the First Circuit indicated

that "lack of accepted safety for use of the drug or other substance under medical supervision," is not conclusively demonstrated by lack of FDA approval for marketing of a drug or other substance in the United States. The fact that a drug or other substance is not lawfully marketed in the United States may be a factor to be considered in determining whether a substance lacks accepted safety for use under medical supervision, but it is not conclusive.

Before a drug may be tested in humans, the Food and Drug Administration, the agency charged by Congress with determining the safety and efficacy of drugs, requires that it be safe as demonstrated by animal testing. The first requirement in determining the safety of a substance is that the chemistry of the substance must be known and reproducible. The next step is to conduct animal toxicity studies to show that the substance will not produce irreversible harm to organs at proposed human doses. Limited clinical trials may then be initiated but they must be carefully controlled so that adverse effects can be monitored and studies terminated if necessary. Very little of this information has been generated for MDMA. Safety in humans is evaluated as a risk/benefit ratio for a specific use. Any side effects found in human testing are required to be made known to the physician in labeling or package inserts which accompany the drug. MDMA is not available under these conditions.

The claims of safety by the psychiatrists who have administered MDMA are based on gross observations of the few subjects treated as well as self-evaluation by the subjects. These anecdotal observations, while useful in the overall evaluation of a substance, cannot substitute for controlled studies in animals and humans. There have been studies in animals to show that MDMA produces long term serotonergic nerve terminal degeneration. Such effects would not necessarily be observed immediately in individuals who had taken the drug. The long term safety of MDMA has not been established through reproductive or carcinogenic studies. Since MDMA has not been shown to be effective for treating a specific condition, it is impossible to make a risk/benefit analysis of the drug. Two psychiatrists who testified on behalf of the agency in the proceedings indicated that they would not administer MDMA to humans until and unless further studies had been conducted to establish its safety and lack of neurotoxicity.

Although a few psychiatrists claim that there has been relatively little

reported major harm to individuals who have used MDMA, this does not establish that MDMA is safe for use under medical supervision. Scientists and prudent physicians have concluded that administration of MDMA to humans must not occur until further animal studies are conducted to adequately assess its potential toxicity in humans. Based upon the lack of MDMA's established safety by animal and human testing, the lack of an FDA finding that MDMA is safe and may be safely administered to humans, its neurotoxicity in animals, and scientific and medical opinions that further testing is necessary prior to human use, the Administrator concludes that MDMA lacks accepted safety for use under medical supervision.

MDMA has no accepted medical use in treatment in the United States and lacks accepted safety for use under medical supervision. The Administrator previously found that MDMA had a high potential for abuse, a finding that was upheld on review by the United States Court of Appeals for the First Circuit. The Administrator therefore concludes that MDMA should be placed into Schedule I of the Controlled Substances Act.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice, 28 CFR 0.100(b), the Administrator hereby orders that Part 1308, Title 21, Code of Federal Regulations, be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11 is amended by redesignating the existing paragraphs (d)(7) through (d)(24) as (d)(8) through (d)(25) and adding a new paragraph (d)(7) as follows:

§ 1308.11 Schedule I.

* * *	
(d) * * *	
(7) 3,4-	
methylendioxyamphetamine	
(MDMA).....	7405
* * *	

Dated: February 18, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-3801 Filed 2-19-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Approval of Amendment to Alaska Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Alaska permanent regulatory program [hereinafter referred to as the Alaska program] received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment consists of modification to eight articles of the Alaska regulations addressing the following areas: Environmental Resource Information; Reclamation and Operation Plan; Performance Standards; Inspection and Enforcement; Conflict of Interest; Training, Examination and Certification of Blasters; Abandoned Mines; and General Provisions. The Federal rules at 30 CFR Part 902 codifying decisions concerning the Alaska program are being amended to implement this action. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformance with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: February 22, 1988.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On May 2, 1983, the Secretary of the Interior approved the Alaska program. Information pertinent to the general background, revisions and amendments to the Alaska program submission, as well as the Secretary's findings and the disposition of comments, can be found in the March 23, 1983 *Federal Register*

(48 FR 12274-12289). Subsequent actions concerning the Alaska program and amendments to the program are identified at 30 CFR 902.16.

II. Discussion of Proposed Amendment

On March 2, 1987, by letter dated February 24, 1987, OSMRE received a proposed amendment from the State of Alaska. By notice published in the May 12, 1987 *Federal Register*, the Assistant Director, Western Field Operations, announced receipt of this proposed amendment and requested public comment on its adequacy (52 FR 17772). The comment period closed June 11, 1987. Since no one requested a public hearing, none was held.

The amendment revised eight articles of Title 11, Chapter 90 of the Alaska Administrative Code (AAC) as described below:

Article 4—Environmental Resource Information Requirements

Subsection (b) of 11 AAC 90.065 is amended by adding language that allows registered professional land surveyors to prepare and/or certify certain maps, planviews and cross-sections.

Article 5—Reclamation and Operation Plan

Subsection (d) of 11 AAC 90.077 is amended by adding language that allows registered professional land surveyors to prepare and/or certify certain maps, planviews and cross-sections.

Article 11—Performance Standards

Paragraph (a)(3) of 11 AAC 90.331 is amended by adding language that requires sedimentation ponds to provide sediment storage volume and detention time sufficient to meet applicable Federal effluent limitations and water quality standards as well as State standards.

Subsection (f) of 11 AAC 90.461 is amended by replacing an incorrect reference to subsection (d) with the correct reference to subsection (e).

Article 12—Inspection and Enforcement

Section 90.601 is amended by making minor editorial revisions to subsections (d), (e) and (f) and by adding a new paragraph (g), which addresses inspection frequency requirements for those operations that have temporarily ceased operation or have met the Phase II (revegetation) bond release requirements of Alaska Statutes (AS) 27.21.170 (c)(2) and (d).

Section 90.625 is amended by deleting all existing provisions and replacing them with language establishing a

specific formula for computing penalty assessments. Subsection (a) of 11 AAC 90.627 is amended by adding language that grants the operator an opportunity to request an informal meeting with the State to discuss the facts surrounding the alleged violation. Subsection (b) of this section has also been revised to extend the time within which the Commissioner must render a decision and propose a penalty from 20 days to 30 days.

Article 14—Conflict of Interest

Section 90.751 is amended by replacing the reference to a specific form, OSM Form 705-1, with a more general reference to the "required OSM form."

Article 15—Training, Examination and Certification of Blasters

The February 24, 1987 amendment package includes a completely new Article 15, which contains requirements concerning the training, examination and certification of blasters, as required by 30 CFR 850.12(a) and 902.16(a)(1). As discussed in the May 12, 1987 *Federal Register* (52 FR 17772), Alaska had previously submitted a blaster certification program amendment on May 28, 1985 (50 FR 34863, August 28, 1985), which, on November 19, 1986, it supplemented with a cooperative agreement between the Department of Natural Resources (DNR) and the University of Alaska (52 FR 4630, February 13, 1987).

The February 24, 1987 submission contained regulations replacing those originally submitted on May 28, 1985. At the time of the February 24, 1987 submission, OSMRE had not yet completed processing of the original blaster certification amendment. Therefore, the Director is combining the March 28, 1985 amendment and all related modifications with the February 24, 1987 amendment and is addressing both in this notice.

Article 16—Abandoned Mines

To accommodate the addition of the blaster training, examination and certification regulations at Article 15, the State has redesignated the previous contents of Article 15 as Article 16. The article, which concerns the abandoned mine land reclamation program, is otherwise unchanged.

Article 17—General Provisions

The contents of this article, previously known as Article 16, have been redesignated as Article 17, but, except for minor revisions to 11 AAC 90.907 (d) and (g), remain otherwise unchanged.

Subsection (d) has been modified to clarify that the Commissioner must designate the manner in which public notice of pending State actions will be given. Subsection (g) has been revised to render its provisions applicable regardless of the method of notice designated under subsection (d).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment package submitted by Alaska on February 24, 1987. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less effective than the Federal rules and no less stringent than SMCRA.

A. Article 4—Environmental Resource Information Requirements

Alaska has amended 11 AAC 90.065(b) to allow registered professional land surveyors to prepare certain maps, planviews and cross-sections required to be submitted as part of surface coal mine permit applications. This modification is being made to correspond to similar revisions to the Federal provisions at 30 CFR 779.25(b). Therefore, the Director finds the proposed modification to 11 AAC 90.065(b) no less effective than the Federal requirement at 30 CFR 779.25(b).

B. Article 5—Reclamation and Operation Plan

Alaska regulation 11 AAC 90.077(d) identifies those structures for which maps, planviews and cross-sections are required and identifies those individuals who are allowed to prepare such maps, planviews and cross-sections. The State has revised its regulation by adding registered professional land surveyors to the group of individuals allowed to prepare certain required components of the reclamation and operation plan. The State's proposed revision is analogous to the revised Federal standards at 30 CFR 780.14(c). Therefore, the Director finds the State's provision allowing registered professional land surveyors to prepare and certify certain maps, planviews and cross-sections no less effective than the Federal rule in this respect.

C. Article 11—Performance Standards

1. *Sedimentation ponds.* Alaska has revised regulation 11 AAC 90.331(a)(3) by requiring sedimentation ponds to provide sediment storage volume and detention time sufficient to meet not only State but applicable Federal effluent limitations and water quality

standards as well. The State's provision is analogous to the Federal provisions at 30 CFR 816.46(c)(1)(iii) (A) and (B). Alaska submitted the proposed revision in response to a program deficiency identified by OSMRE in a May 7, 1986 letter prepared pursuant to 30 CFR 732.17(f)(1). The Director finds the State's revision to 11 AAC 90.331(a)(3) requiring compliance with applicable Federal effluent limitations and water quality standards to be no less effective than the Federal provisions of 30 CFR 816.46(c)(1)(iii) (A) and (B).

2. *Subsidence control.* Alaska has modified slightly the regulations at 11 AAC 90.461(f) by making an editorial change that removes an incorrect cross-reference to a related provision of the Alaska program. The State replaced the incorrect reference to subsection (d) of 11 AAC 90.461 with the correct reference to subsection (e) of 11 AAC 90.461. No other modifications were made to the regulation. The State made this modification in response to a deficiency identified in OSMRE's May 7, 1986 letter prepared pursuant to 30 CFR 732.17(f)(1). The Director finds that the editorial revision removes a program deficiency and renders the State's rule at 11 AAC 90.461(f) no less effective than the Federal provisions of 30 CFR 817.121(e).

D. Article 12—Inspection and Enforcement

1. *Inspection frequency.* Alaska has revised 11 AAC 90.601 by adding a new subsection (g), which addresses inspection frequency for inactive mine sites and those operations in Phase II reclamation. The revised rule requires at least one complete inspection per calendar quarter and such partial inspections as are necessary to ensure effective enforcement of the Alaska Act and regulations. The State's actions respond to revisions to the Federal regulations at 30 CFR 840.11 (a) and (b), which contain identical inspection frequency requirements. Therefore, the Director finds proposed 11 AAC 90.601(g) to be no less effective than the Federal regulations.

Alaska has also editorially revised 11 AAC 90.601 (d), (e) and (f) without changing their meaning or intent. The Director finds these changes to be nonsubstantive and, therefore, no less effective than the Federal regulations at 30 CFR 840.11.

2. *Civil penalty assessment and computation.* Alaska has revised 11 AAC 90.625 to delete all existing provisions and replace them with a detailed civil penalty assessment and computation system. Like the corresponding Federal regulations at 30 CFR 845.12, the introduction of new

subsection (a) provides that assessment of penalties is mandatory for cessation orders and discretionary for notices of violation.

The remainder of subsection (a) establishes a formulaic penalty computation system. The rules previously contained no such system, specifying only that the Commissioner establish a penalty account after considering the permittee's history of violations on the operation, the seriousness of the violation, the degree of permittee negligence and the good faith demonstrated by the operator in abating the violation. The new system prescribes a dollar amount based on the seriousness of the violation. This amount is then adjusted by the use of multipliers for the extent of damage or hazard resulting from the violation and the degree of permittee negligence. If three or more other violations occurred during the previous 12 months at the same operation, a \$500 assessment is added to the penalty amount. If the operator abates the violation within 75% or less of the originally established abatement time, the total penalty will be reduced according to a set schedule. While this penalty computation method varies considerably from the point system contained in the Federal regulations at 30 CFR 845.12, 845.13 and 845.14, it does incorporate the four criteria (history of violations, seriousness of the violation, permittee negligence, and any good faith as demonstrated by rapid abatement) mandated by sections 518 (a) and (i) of SMCRA.

Section 518(i) of SMCRA requires that State programs incorporate penalties no less stringent than those set forth in section 518 and include the same or similar procedural requirements relating thereto. In *In re: Permanent Surface Mining Regulation Litigation* (Civil Action 79-1144, February 26, 1980), the U.S. District Court for the District of Columbia ruled that, with respect to penalty amounts, this provision requires only that the States adopt penalty computation provisions which consider the four criteria listed in section 518(a) and which result in penalty amounts no less stringent than those listed in SMCRA. Under this decision, State civil penalty systems need not impose penalties equal to or greater than those of 30 CFR Part 845, nor are States required to compute penalty amounts in a similar manner. Therefore, the Director finds that the Alaska civil penalty assessment and computation provisions at 11 AAC 90.625(a), which replace the previous provisions of 11 AAC 90.625 (a), (b) and (c), are no less

stringent than those of section 518(a) of SMCRA and no less effective than their Federal counterparts at 30 CFR 845.12, 845.13 and 845.14.

Subsection (b) of 11 AAC 90.625 establishes the conditions under which the Commissioner may, in his or her discretion, assess a separate penalty for any day after the date of issuance of the notice of violation of cessation order. Section 518(a) of SMCRA and the corresponding Federal regulations at 30 CFR 845.15(a) provide that each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. The Federal regulations also specify certain conditions under which a minimum separate assessment must be made; however, as explained in the preceding discussion, States need not assess penalties in every instance or in the same amount as would be required under 30 CFR Part 845. Therefore, the Director finds that 11 AAC 90.625(b), which replaces previous 11 AAC 90.625(d), is no less stringent than section 518(a) of SMCRA and no less effective than the Federal regulations at 30 CFR 845.15(a).

In repealing all of previous 11 AAC 90.625, Alaska has deleted the 30-day maximum penalty assessment period (30-day cap) for cessation orders issued for failure to abate a violation, a provision previously located at 11 AAC 90.625(e). In doing so, Alaska has also deleted the accompanying requirement that the Commissioner take appropriate alternative enforcement action within 30 days to ensure abatement of the violation. Nothing in SMCRA or the Federal regulations prohibits a State from either assessing penalties greater than those which would be assessed under the Federal provision or assessing them for a longer timeframe. In addition, the corresponding Federal regulations at 30 CFR 845.15(b)(2) indicate that the requirement to take alternative enforcement action within 30 days is dependent upon, and a consequence of, implementation of the 30-day cap.

Therefore, the Director finds that Alaska's deletion of 11 AAC 90.625(e) does not render its program less stringent than SMCRA or less effective than the Federal regulations. However, the Director notes that, while this action provides Alaska with additional flexibility with respect to the timing of alternative enforcement actions, it does not relieve the State of its responsibility under the approved program to take such actions as are necessary to ensure that all violations are abated or that there will not be a recurrence of the failure to abate.

3. Informal preassessment meetings. Alaska has revised 11 AAC 90.627 (a) and (b) by adding language that grants the operator an opportunity to request an informal meeting to discuss the finding of violation. If such an informal review does occur, it does not take the place of or deprive the alleged violator of the right to an assessment conference as provided in 11 AAC 90.629. To accommodate this meeting, subsection (b) has also been revised to extend the timeframe within which the Commissioner must render a decision concerning a notice or order and propose a civil penalty from 20 days to 30 days after service of the notice or order. All other provisions of these rules concerning the assessment process remain unchanged.

Section 518 of SMCRA, and the Federal regulations at 30 CFR 845.17, neither require nor prohibit an informal meeting of this nature. The proposed Alaska regulations, like section 518(c) of SMCRA and the corresponding Federal rules at 30 CFR 845.17(b), provide that the proposed penalty assessment shall be served on the operator within 30 days after issuance of the notice or order. Therefore, the Director finds that 11 AAC 90.627 (a) and (b), as revised, contain penalty assessment procedures which are similar to those of section 518 of SMCRA and no less effective than those of 30 CFR 845.17 (a) and (b).

E. Article 14—Conflict of Interest

Alaska has revised its conflict of interest regulations at 11 AAC 90.751(a) by eliminating the specific reference to OSM Form 705-1 and replacing it with a more generic reference to "the required OSM form." The Federal regulations at 30 CFR 705.17(a) require that each State employee who performs a function or duty under SMCRA file this form, which contains a statement of employment and financial interests.

The State deleted the reference to a specifically numbered form out of concern that OSMRE could change the title or number of the form, at which time the Alaska program would contain a regulatory reference to an obsolete form. Since the amendment is nonsubstantive in nature, the Director finds that the revised Alaska regulation is no less effective than the corresponding Federal rules at 30 CFR 705.17(a).

F. Article 15—Training, Examination and Certification of Blasters

1. General. On March 4, 1983, OSMRE issued final rules establishing Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9486). The Federal rules

require each State to design and implement its own blaster certification program, including the method of training, examining, and certifying blasters which best meets local needs within the Federal regulatory framework.

Paragraph (a) of 30 CFR 850.12 requires the State regulatory authority to develop rules governing the blaster certification program and submit them to OSMRE as a proposed program amendment. To meet the requirements, Alaska is adding a new Article 15 to 11 AAC Chapter 90, the specifics of which are discussed below.

Paragraph (b) of 30 CFR 850.12 requires that each State develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. Accordingly, as described in its May 28, 1985 submission and modified pursuant to a November 19, 1986 cooperative agreement with the University of Alaska, the Department has developed a training program combining approved self-study materials with on-site instruction conducted by the Mining and Petroleum Training Service (MAPTS) of the University of Alaska. The examination will be provided by the Department and administered by MAPTS. MAPTS will handle the mechanics of certification, while the Department remains responsible for enforcing all of the blaster certification regulations of Article 15. In addition, the Department retains review and approval authority for all materials developed by MAPTS. The Director has reviewed the training materials and examination developed by Alaska; he finds that they meet the content requirement of 30 CFR 850.13 and 850.14 and are technically adequate.

Therefore, the Director finds that Alaska has complied with the provisions of 30 CFR 850.12 as required by 30 CFR 902.16(a). Accordingly, he is amending 30 CFR Part 902 to remove the requirement imposed upon Alaska at 30 CFR 902 CFR 902.16(a).

2. Definition of "blaster". At 11 AAC 90.771(b), Alaska defines a blaster as a person directly responsible for the use of explosives in surface coal mining operations who is certified under the applicable provisions of the Alaska program. Except for the State-specific references, the Federal Definition of blaster at 30 CFR 850.5 is identical. Therefore, the Director finds that the State definition at 11 AAC 90.771(b) is no less effective than the corresponding Federal definition at 30 CFR 850.5.

3. *Use of certified blasters.* As proposed, 11 AAC 90.771 (a), (c), (d), (e) and (f) would require that:

(1) No later than 12 months after Article 15 is approved by OSMRE, all blasting at surface coal mining operations must be conducted by a certified blaster; prior to that date all blasting operations must be conducted by competent, experienced persons who understand the hazards involved.

(2) The blaster's certificate must be available for inspection at the permit area during blasting operations.

(3) All uncertified persons assigned to the blasting crew or assisting in the use of explosives must receive direction and on-the-job training from a blaster.

(4) A blaster and a least one other person must be present at the firing of all blasts.

(5) A person responsible for blasting operations (i.e., per 11 AAC 90.771(b), the blaster) must be familiar with the blasting plan and any site-specific performance standards or stipulations.

While the language differs somewhat from the corresponding Federal rules at 30 CFR 816.61(c), the State rules are substantively identical to the Federal regulations. Therefore, the Director finds that they are no less effective than the Federal provisions.

4. *Training.* The Federal regulations at 30 CFR 840.13 provide that the regulatory authority shall (a) require that persons seeking to be certified as blasters receive training, (b) ensure that training courses are available, and (c) require that persons assigned to a blasting crew or assisting in the use of explosives receive direction and on-the-job training from a blaster. Alaska has addressed the last requirement at 11 AAC 90.771(d), as previously discussed.

With respect to the first two requirements, 11 AAC 90.773(a) requires that applicants for blaster certification first complete verifiable training in specified subject areas. These topics are identical to the training course content standards established by 30 CFR 850.13(b). Subsection (b) of 11 AAC 90.773 specifies that the Commissioner shall ensure that training is available in all subject areas by maintaining and periodically updating a list of formal training courses and self-study materials that provide the required training.

On May 28, 1985, Alaska submitted a list of formal training courses, which the Director found acceptable. On November 19, 1986, the State entered into a cooperative agreement with the University of Alaska whereby the university was designated the primary training provider. Pursuant to this agreement, the university developed a training program covering all required

subject areas through a combination of self-study and on-site instruction. This program addressed the Director's concern that the self-study materials submitted earlier might not adequately cover all subject areas.

Therefore, the Director finds that the Alaska blaster training program and the related rules at 11 AAC 90.773 are no less effective than the training requirements of the Federal regulations at 30 CFR 850.13.

5. *Application and examination procedures.* At 11 AAC 90.775, Alaska establishes the procedures that applicants for blaster certification must follow when submitting an application. The candidate must submit his/her application at least 30 days before the date on which he/she wishes to take a scheduled examination. If, after an initial review by the Commissioner, it is determined that the applicant has not met the training and experience requirements of 11 AAC 90.773 (a) and (c), the application will be returned to the applicant with an explanation of what must be done to meet the requirements. The Director finds that these procedures fulfill the Federal requirement at 30 CFR 850.14(a)(2) that applications be reviewed to verify that the candidate has the requisite practical field experience and knowledge.

The proposed Alaska regulations at 11 AAC 90.777 require the Commissioner to schedule the blaster certification examination on a quarterly basis. The examination must be written and must, at a minimum, test the applicant's knowledge in each of the subjects listed in 11 AAC 90.773. At the Commissioner's discretion, the examination also may include oral or written questions concerning field blasting situations and the blasting plan of a particular operation. An applicant who fails the examination may apply for reexamination by submitting a new application and fee. The director has reviewed the examination, and found it to be technically comprehensive and, at the specified minimum passing grade, adequate to ensure the competency of persons passing the examination, as required by the Federal regulations at 30 CFR 850.14 (a)(1) and (b).

Therefore, the Director finds that 11 AAC 90.775 and 90.777 are no less effective than the Federal blaster examination requirements at 30 CFR 850.14.

6. *Certification.* In accordance with the Federal regulations at 30 CFR 850.15(a), which require that the regulatory authority certify qualified candidates for a fixed period of time, 11 AAC 90.779 establishes three years as the fixed period for which certification

is valid. As authorized by 30 CFR 850.15(c), the Alaska regulations at 11 AAC 90.781 establish procedures for certification renewal.

Subsection (c) of 11 AAC 90.779 establishes conditions applicable to all certifications. These conditions provide that the certification is non-transferable and require the blaster to (1) take every reasonable precaution to protect the certificate and to report any losses, thefts or unauthorized duplications to the Commissioner; (2) immediately exhibit the certificate upon the request of an authorized representative of the Commissioner or OSMRE; and (3) refrain from delegating his or her responsibility to an uncertified individual. Since these conditions mirror those of 30 CFR 850.15(d), the Director finds that they are no less effective than the Federal regulations. Subsection (b) of 11 AAC 90.779(b) allows the Commissioner to replace Alaska certificates which are lost or destroyed, a provision which the Director finds to be not inconsistent with the Federal regulations at 30 CFR 850.15.

The provisions of 11 AAC 90.783 allow the Commissioner, at his or her discretion, to issue a blaster certificate to an applicant who currently holds a valid blaster certificate issued under an out-of-state blaster certificate program approved by OSMRE. A person so certified must successfully complete the next regularly scheduled blasted examination or face revocation of the certificate. While the Federal regulations at 30 CFR Part 850 are silent with respect to reciprocity, the preamble to 30 CFR 850.12 contains a discussion in which OSMRE endorses State reciprocity, since all State certification programs must meet minimum Federal standards (48 FR 9488, March 4, 1983). Therefore, the Director finds that 11 AAC 90.783 is no less effective than the Federal blaster certification requirements.

The Alaska regulations at 11 AAC 90.785 establish standards and procedures for suspension or revocation of an individual's blaster certificate. These standards and procedures are substantively identical to and expand upon the Federal suspension and revocation provisions of 30 CFR 850.15(b). Therefore, the Director finds that 11 AAC 90.784 is no less effective than 30 CFR 850.15(b).

G. Article 16—Abandoned Mines

To accommodate the placement of the blaster certification requirements in Article 15, Alaska has redesignated the previous contents of Article 15 as Article 16. As there are no changes in

the language of new Article 16, the Director does not find this modification to the Alaska regulations inconsistent with any Federal provisions.

H. Article 17—General Provisions

Alaska made a minor change in the wording of 11 AAC 90.907(d) to clarify that the Commissioner must designate the manner in which public notification of State actions will be given. In addition, the language of 11 AAC 90.907(g) has been altered slightly to render it consistent with the method of notification designated under subsection (d). Since these changes are editorial in nature, the Director finds that they are not inconsistent with any Federal provision.

To accommodate the redesignation of previous Article 15 as new Article 16, Alaska also has redesignated the previous contents of Article 16 as Article 17. Since this change is nonsubstantive, the Director finds the redesignation is not inconsistent with any Federal provision.

IV. Public Comment

On May 2, 1987, OSMRE published a proposed rule in the *Federal Register* (52 FR 17772) announcing receipt of the amendment provisions submitted by the State of Alaska on February 24, 1987, and inviting comment on their adequacy. No public comments were received during the comment period, which closed on June 11, 1987.

Pursuant to 30 CFR 732.17(h)(1)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies with an actual or potential interest in the Alaska program. Agency comments received in response to the May 28, 1984 submission are not discussed here. These comments pertained to the blaster training program and certification regulations which were subsequently substantially revised by the submissions of November 19, 1986, and February 24, 1987, on which the Director also solicited agency comments.

A summary of the comments received on the latter submissions and their disposition appears below:

1. The U.S. Department of Transportation, Federal Aviation Administration (FAA), expressed concerns relative to possible safety hazards to pilots of small aircraft that might fly over a blasting zone. FAA recommended that all areas of blasting be designated as controlled firing zones during those times of explosives detonation so that advance warning to airspace users may be given by means of the FAA issuing Notices to Airmen (NOTAMS)

The Director is equally concerned about the safety of all individuals in the vicinity of blasting associated with surface coal mining operations. It should be noted that the proposed amendment contains only those regulations pertaining to the training, examination and certification of blasters, not safety requirements. The approved Alaska program regulations addressing blasting safety can be found in Article 11—Performance Standards. However, the Director notes that the Federal regulations at 30 CFR 816.64 do not contain such a specific notification requirement, although they, like the existing Alaska regulations at 11 AAC 90.375 do require publication and dissemination of a blasting schedule. The schedule is distributed to residents within ½ mile of the blasting area, local utilities and all local governments. The Director believes that the existing Alaska program regulations adequately address public safety requirements associated with blasting.

2. The Bureau of Indian Affairs (BIA) expressed some confusion as to how the penalty assessments addressed in proposed rule 11 AAC 90.625 would be calculated. It was then suggested that examples be provided by the State as part of the amendment package.

Although examples might be helpful, it is not required by the Federal regulations. The Director has determined that the proposed Alaska regulation at 11 AAC 90.625 concerning calculation of proposed penalties adequately addresses the same four mandatory criteria found in the Federal civil penalty requirements at 30 CFR Part 845. The four criteria are history of previous violations, seriousness of violation, negligence on the part of the operator, and good faith on the part of the operator in attempting to achieve compliance.

3. The BIA asked if other State agencies, specifically the Alaska Department of Environmental Conservation and the Alaska Department of Fish and Game, will be notified or consulted during the penalty assessment process for violations that have resulted in negative impacts to natural resources.

The Director notes that, as the approved regulatory authority in the State of Alaska, the Commissioner of the Department of Natural Resources has the responsibility for civil penalty assessment and computation. However, this does not prevent the Commissioner from consulting with natural resources specialists in other State agencies during the penalty assessment process to determine the degree of impact, if any, that may have been the result of

violations associated with mining. It should be noted that cooperative agreements between the Alaska Department of Environmental Conservation, the Alaska Department of Fish and Game and the Alaska Department of Natural Resources do exist and are part of the approved Alaska program.

4. The National Park Service (NPS) suggested that Alaska add to proposed regulation 11 AAC 90.331 a provision stating that in some cases consideration should be given to requiring operators to use impervious liners or other impervious materials, such as concrete, in the construction of sedimentation ponds.

The NPS only had access to subsection (a) of regulation 11 AAC 90.331, which is that portion being modified. In its entirety 11 AAC 90.331 addresses in detail the design, construction, and maintenance of sediment control structures used in conjunction with surface coal mining operations in Alaska. Subsection (a), which is being modified by the State, is but a small part of the more comprehensive design requirements addressed elsewhere in 11 AAC 90.331. The Director finds that the sedimentation pond design, construction and maintenance provisions of 11 AAC 90.331, when evaluated as a whole, are no less effective than the counterpart Federal provisions at 30 CFR 816.46.

5. The NPS suggested that Alaska add a definitions section to its civil penalty regulations at 11 AAC 90.625(a). However, it did not identify specific terms that should be defined. The counterpart Federal provisions at 30 CFR Part 845 do not contain a definitions section or definitions apart from those affiliated with the point system. Since States are not required to adopt the point system, and since Alaska has chosen not to do so, the Director does not find this suggested revision necessary.

6. The NPS observed that the dollar values assessed for the environmental impact of violations at 11 AAC 90.625(a)(1)(A) are approximately equal to those assessed for public health and safety hazards at 11 AAC 90.625(a)(1)(B). It suggested that the State increase the penalty amounts for those violations that adversely impact public health and safety. However, the NPS failed to cite a statutory or regulatory requirement for such a distinction. As discussed in Finding D.2, the Director finds that the Alaska civil penalty assessment program meets the requirements of SMCRA and the Federal regulations.

V. Director's Decision

Based on the above findings, the Director is approving the amendment submitted by Alaska on February 24, 1987, and the blaster training, examination and certification program submitted on May 28, 1985, as modified on November 19, 1986, and February 24, 1987. He is amending 30 CFR Part 902 to implement this decision.

The Director is also taking this opportunity to approve the reorganization of Chapter 90 of the Alaska rules, as accomplished in concert with the State's adoption of its abandoned mine land reclamation (AMLR) plan. As part of its November 12, 1983 submission, Alaska designated 11 AAC 90.001 as Article 1 and the remainder of previous Article 1 as Article 2. All succeeding articles were renumbered accordingly. To accommodate the addition of Article 15, which contained regulations pertaining to the AMLR program, Alaska also redesignated previous Article 14 (General Provisions) as Article 16. All substantive language pertaining to the State's regulatory program remained unchanged. In announcing his approval of the State's AMLR plan in the December 23, 1983 *Federal Register* (48 FR 56753), the Director inadvertently failed to formally approve the reorganization. To correct this oversight, he is using this notice to announce his approval, which is being made retroactive to December 23, 1983, to coincide with the date of his approval of all other provisions of the November 12, 1983 submittal.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

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

2. Executive Order 12291 and the Regulatory Flexibility Act

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

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) This rule will not

impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 902

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

James W. Workman,

Deputy Director, Operations and Technical Services.

Date: February 16, 1988.

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

PART 902—ALASKA

1. The authority citation for Part 902 is revised to read as follows:

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

2. Section 902.15 is added to read as follows:

§ 902.15 Approval of regulatory program amendments.

(a) The following revisions to Title 11, Chapter 90 of the Alaska Administrative Code (AAC), as submitted to OSMRE by the Alaska Department of Natural Resources on November 12, 1983, are approved effective December 23, 1983:

(1) Designation of 11 AAC 90.001 as Article 1, and redesignation of the remaining contents of former Article 1 (11 AAC 90.002 through 90.011) as Article 2;

(2) Redesignation of previous Articles 2 through 13 as Articles 3 through 14, respectively; and

(3) Redesignation of previous Article 14 as Article 16.

(b)(1) Amendments to the following provisions of Title 11, Chapter 90 of the Alaska Administrative Code (AAC), as submitted by the Alaska Department of Natural Resources to OSMRE on February 24, 1987, are approved effective February 22, 1988:

(i) Revisions to 11 AAC 90.065(b) and 90.077(d) to allow registered professional land surveyors to certify certain permit application materials;

(ii) Revisions to the performance standards for sedimentation ponds at 11 AAC 90.331(a)(3);

(iii) Correction of an erroneous cross-reference in the subsidence control requirements of 11 AAC 90.461(f);

(iv) Revisions to the inspection and enforcement requirements of 11 AAC 90.601 (d), (e) and (f) and addition of the inspection frequency requirements of 11 AAC 90.601(g);

(v) Revisions to the civil penalty assessment provisions of 11 AAC 90.625 and 90.627 (a) and (b);

(vi) Revisions to the conflict of interest provisions of 11 AAC 90.751(a);

(vii) Redesignation of previous Articles 15 and 16 as Articles 16 and 17, respectively;

(viii) Addition of a new Article 15 containing regulations concerning the training, examination and certification of blasters; and

(ix) Revisions to 11 AAC 90.907 (d) and (g) to clarify their meaning and remove internally inconsistent language.

(2) The Alaska blaster training, examination and certification program as developed, modified and reviewed by OSMRE pursuant to the materials submitted to OSMRE by the Alaska Department of Natural Resources on May 28, 1985, November 16, 1986, and February 24, 1987, is approved effective February 22, 1988.

§ 902.16 [Removed]

3. Section 902.16 is removed.

[FR Doc. 88-3665 Filed 2-19-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-87-11]

Drawbridge Operation Regulations; Bayou La Batre, AL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Bayou La Batre and the Alabama Highway Department (AHD), the Coast Guard is changing the regulation governing the operation of the lift span bridge on State Highway 188 over Bayou La Batre, mile 2.3 at Bayou La Batre, Mobile County, Alabama, by permitting the draw to remain closed to navigation from 6:30 to 8:30 a.m. and 2 to 5 p.m. Monday through Saturday, and from 8 p.m. to 4 a.m. daily. This change is being made because there is a need to relieve major vehicular traffic problems in the area during the rush hour periods. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on March 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 19 November 1987, the Coast Guard published a proposed rule (52 FR 44447) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 1 December 1987. In each notice interested parties were given until 4 January 1988 to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Six letters of comment were received about the proposed rule change. Four commenters expressed approval of the proposed change, one suggested that the bridge be closed to navigation for a longer morning period, from 5:15 to 8 a.m., and a shorter afternoon period, from 2:15 to 5 p.m., and also suggested that the bridge be operated manually. The other commenter recommended that both vehicular and vessel traffic be considered in the case. The Coast Guard has carefully considered the comments. The bridge does operate manually, by bridgetenders. We have determined that the original study and determination to close the bridge during the hours as published (52 FR 44447) on 19 November 1987, will afford the most relief to congested vehicular traffic while still providing for the reasonable needs of navigation. Therefore, the final rule is unchanged from the proposed rule.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that there have been no requests to open the bridge between 8 p.m. and 4 a.m. since 1955, and the bridge opens an average of only 7.6 times per day, otherwise, for passage of vessels. These vessels can easily schedule their passages to avoid the new closure periods. Since the economic impact of this regulation is expected to

be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.103 is revised to read as follows:

§ 117.103 Bayou La Batre.

The draw of the S188 bridge, mile 2.3 at Bayou La Batre, shall open on signal; except that, the draw need not be opened from 8 p.m. to 4 a.m. daily, and from 6:30 to 8:30 a.m. and from 2 to 5 p.m. Monday through Saturday except holidays.

Dated: February 1, 1988.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88-3691 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD5 87-088]

Safety Zone; Chesapeake Bay, Hampton Roads, Elizabeth River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety zone regulations for liquefied petroleum gas (LPG) carriers movements within the port of Hampton Roads. This rule establishes a moving safety zone around LPG vessels, whose cargo tanks are not gas free, during inbound and outbound transits of the Chesapeake Bay and Elizabeth River between Thimble Shoals Channel Lighted Buoy #3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River. The safety zones are intended to minimize the risk of collision between LPG carriers and other vessels.

EFFECTIVE DATE: March 23, 1988.

FOR FURTHER INFORMATION CONTACT: LTJG T. McK. Sparks, (804) 441-3290.

SUPPLEMENTARY INFORMATION: On December 14, 1987, the Coast Guard published a Notice of Proposed Rulemaking in the *Federal Register* for these regulations (52 FR 47413). Interested persons were requested to submit comments. No comments were received.

Drafting Information

The drafters of these regulations are LTJG T. McK. Sparks, Project Officer, Port Operations Department, Coast Guard Marine Safety Office Hampton Roads and CDR R.J. Reining, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion

No changes have been made to the proposed rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on federal regulations and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This proposal should not have any economic impact on the affected industry, therefore a full regulatory evaluation is unnecessary. If there is to be any adverse affect caused by these changes, it has not been identified.

The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, and 160.5.

2. Section 165.506 is added to read as follows:

§ 165.506 Chesapeake Bay, Hampton Roads, Elizabeth River Southern Branch Liquefied Petroleum Gas Carrier Safety Zone.

(a) The waters within 250 feet from the port and starboard sides and 300 yards from the bow and stern of a vessel that is carrying liquefied petroleum gas in bulk as cargo are a safety zone while

the vessel transits the Chesapeake Bay and Elizabeth River between Thimble Shoal Lighted Buoy #3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River.

(b) Except as provided in paragraph (c) of this section, the general safety zone regulations in § 165.23 apply to this safety zone. Permission to enter the safety zone may be obtained from the Captain of the Port or a designated representative, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or the Coast Guard patrol commander.

(c) A vessel that is moored at a marina, wharf, or pier or is at anchor may remain in the safety zone while a vessel carrying liquefied petroleum gas passes its location if the vessel remains at its moorage or anchorage during the period when its location is within the safety zone.

(d) A vessel that has had liquefied petroleum gas in a tank is carrying the liquefied petroleum gas in bulk as cargo for the purposes of paragraph (a) of this section, unless the tank has been gas freed since the liquefied petroleum gas was last carried as cargo.

(e) The Captain of the Port, Hampton Roads will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the scheduled arrival and departure of a liquefied petroleum gas carrier.

Dated: February 9, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.

[FR Doc. 88-3692 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule provides amendments to the natural resource damage assessment regulations codified at 43 CFR Part 11. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil or a release of a hazardous substance, and compensable under either the

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, also known as Superfund, or under the Clean Water Act (CWA). The regulations contain procedures for two types of assessments: standard, simplified "type A" procedures; and alternative "type B" procedures to be used in individual cases. These regulations were published in two segments. The rule published on August 1, 1986 (51 FR 27674), contained the overall assessment process and the specific type B procedures. The rule published on March 20, 1987 (52 FR 9042), contained type A procedures.

The natural resource damage assessment regulations are provided for the use of Federal and State officials and Indian tribes authorized by CERCLA to assert damage claims for injuries to natural resources. These procedures provide a framework to assist those officials in performing natural resource damage assessments for use in court actions or administrative proceedings when seeking compensation for injuries to natural resources.

This final rule is necessitated by the Superfund Amendments and Reauthorization Act of 1986 (SARA), passed by Congress and signed by the President on October 17, 1986. This final rule modifies the 43 CFR Part 11 regulations to conform with changes enacted by SARA that, among others: extend the rebuttable presumption to assessments performed by State trustees; provide for the recovery of prejudgment interest on damage awards; provide for a new statute of limitations for certain claims; withdraw payment of claims formerly brought under EPA's Natural Resource Claims Procedures; require notification of trustees of discharges or releases so that the trustee can determine the potential for injury to natural resources of concern to the trustee; establish new responsibilities for Indian tribes; require Federal trustees to retain sums recovered, without a further appropriations process, for use only to restore, replace, or acquire the equivalent resources; and require State trustees to use sums recovered only to restore, replace, or acquire the equivalent resources.

DATE: The effective date of this final rule is March 23, 1988.

ADDRESS: Office of Environmental Project Review, Room 4239, Department of the Interior, 1801 C St. NW., Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington (202) 343-1301.

SUPPLEMENTARY INFORMATION:

I. Background

General Comments

Pursuant to section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, and Executive Order 12316, August 14, 1981 (46 FR 42237) [incorporated in and superseded by Executive Order 12580, January 23, 1987, 52 FR 2923], the Department of the Interior (the Department) published final natural resource damage assessment regulations on August 1, 1986 (51 FR 27674), and March 20, 1987 (52 FR 9042). The regulations published at 51 FR 27674 contain the overall natural resource damage assessment process and specific procedures for conducting type B assessments in individual cases. The regulations published at 52 FR 9042 contain standard procedures for conducting simplified type A assessments in coastal and marine environments. In the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, October 17, 1986, Congress amended several sections of CERCLA directly related to issues of concern in the regulations. On April 17, 1987 (at 52 FR 12886), the Department proposed amendments to the natural resource damage assessment regulations to conform with those 1986 amendments to CERCLA. Comments on the proposed rule were requested by May 18, 1987. The comment period was extended on May 28, 1987 (52 FR 19896), to June 17, 1987.

Key Provisions

A. Rebuttable Presumption

The regulations published on August 1, 1986, provided that a rebuttable presumption attached only to assessments performed by Federal trustees. SARA amended section 107(f) of CERCLA to specifically allow a rebuttable presumption to attach to natural resource damage assessments of State trustees, as well as Federal trustees, performed in accordance with the natural resource damage assessment regulations codified at 43 CFR Part 11. To implement this change, the rule has been amended to provide that assessments performed by State trustees in accordance with the codified regulations shall have the force and effect of a rebuttable presumption.

B. Definitions

Certain definitions found in § 11.14 of the rule have been amended to conform with changes to CERCLA provided by SARA. In particular, the definitions of "trustee" and "authorized official" have

been revised to include Indian tribes. Also, the definition of "rebuttable presumption" has been revised to include State trustees. Finally, a definition of "Indian tribe," as defined by section 101(36) of CERCLA, has been added to the rule.

C. Prejudgment Interest

The final rule has been amended to include interest on the amounts recoverable as damages, as provided in section 107(a) of CERCLA, as amended. The rate of interest on the outstanding amount of the claim is the same rate as that specified for interest on investments of the Hazardous Substance Superfund (the Fund). This prejudgment interest shall accrue from the later of the date that payment of a specified amount is demanded in writing, or the date of the expenditure concerned.

D. Prohibition on Double Recovery

SARA amended section 107(f)(1) of CERCLA to provide a specific statutory prohibition on double recovery of damages, that is, damages or costs cannot be recovered twice for the same discharge or release and injured natural resource. Section 11.15(e) of the rule has been amended to make it clear that there is no double recovery of damages or of assessment costs.

E. Statute of Limitations

SARA amended sections 112 and 113 of CERCLA to revise the statute of limitations provisions in certain cases. Sections 112(d) and 113(g), subject to certain limitations, provide respectively that a claim or action for natural resource damages must be presented or commenced within three years after the later of the date of the discovery of the loss and its connection with the release in question, or the date on which final regulations are promulgated under section 301(c). Section 126(d) of CERCLA provides for a statute of limitations that may apply to actions taken by Indian tribes. The rule has been amended to take note of these statute of limitations provisions. The timing of damage assessments also relates to any remedial action that may be planned or in progress.

F. Claims Against the Fund

Section 517 of SARA prohibited expenditures from the Fund for natural resource damage claims. Therefore, EPA has withdrawn the Natural Resource Claims Procedures in a final rule published on September 8, 1987 (at 52 FR 33812). This rule has been amended to remove and reserve § 11.16, "Claims Against the Hazardous Substance Response Trust Fund," delete § 11.92(f),

"Hazardous Substance Response Trust Fund Claims," and to delete other references to the claims procedures, as appropriate.

G. Notice to Trustees

Section 104(b)(2) of CERCLA, as amended, requires notification to the natural resource trustee of discharges or releases so that the trustee may determine the potential for injury to resources of concern to the trustee, and so that the assessments, investigations, and planning concerning those discharges or releases can be carried out in a coordinated manner. The rule has been amended to include this statutory requirement of CERCLA and to specify that trustees should respond as appropriate and provide necessary coordination in a timely manner.

H. Statutory Exclusions

The rule has been amended to include two new statutory exclusions to liability found in section 107(f) of CERCLA, as amended. Under the first exclusion, recovery of damages is prohibited where the injury to natural resources of an Indian tribe occurred pursuant to a Federal permit or license, and the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. Under the second exclusion, recovery of response costs or damages resulting from a release or threatened release of recycled oil from service station dealers who are not owners or operators of vessels or hazardous waste disposal facilities is precluded under certain conditions.

I. Indian Tribes

Because of new language added by SARA to CERCLA, Indian tribes are to receive substantially the same treatment as that given to the States. Therefore, the rule has been revised to provide that an Indian tribe, in certain circumstances, may perform an assessment and bring a claim for damages determined by the assessment. However, as discussed in Section II of this preamble, CERCLA did not provide that a rebuttable presumption attaches to assessments performed by Indian tribes.

J. Appropriations Process

Section 107(f) of CERCLA, as amended by SARA, provides that sums recovered for natural resource damages shall be retained by the trustee, without further appropriations, for use only to restore, replace, or acquire the equivalent of such natural resources. It should be noted, however, that § 11.82(d)(2)(iv) of the rule retains the

provision that the acquisition of land for Federal management should be used only when such acquisition is the sole feasible restoration or replacement alternative. The provisions requiring the use of the appropriation process for funds to acquire new lands where such acquisition is found to be necessary have been deleted from the rule.

K. Sixty-day Notice

New language in section 113(g) of CERCLA provides that, with respect to any facility listed on the National Priorities List, any Federal facility identified under section 120 of CERCLA, or any vessel or facility at which a remedial action is otherwise scheduled, no action for damages may be commenced prior to sixty days after the authorized official provides to EPA, as delegated by the President, and the potentially responsible party a notice of intent to file suit. The rule has been amended to reflect this provision.

L. Use of Sums Recovered as Damages

The rule retains the requirement that all sums awarded as damages under CERCLA be used for the purposes of restoration, replacement, or acquisition of equivalent resources. SARA amended the language of section 107(f)(1) of CERCLA to make this requirement explicit.

M. References to the NCP

EPA is currently in the process of revising the NCP to conform with the SARA amendments. As a result, reordering and renumbering of various sections of the NCP are anticipated. In order to avoid confusion, this rule has been revised to delete specific section citations to the NCP in sections of the rule previously unchanged (§§ 11.14 (a), (cc), (ii), and (11); 11.17(a); 11.23(f), 11.31(c)(3), and 11.41(c)(4) and (6)). These deletions are not of a substantive nature, and do not affect the rule itself. These changes are being made to avoid having this rule cite section numbers of the NCP that are slated for change.

II. Responses to Comments

General

Six comments were received on the March 20, 1987, proposed rule. Three of these submissions were requests for an extension of time in which to comment. The comment period was extended on May 28, 1987 (at 52 FR 19896), for another thirty days. However, no further comments were received. The three substantive comments concerning the proposed rule dealt with most of the thirteen major points discussed in the preamble to the proposed rule. As a

result of the review of these comments, the language of the rule concerning Indian tribes as trustees, the statute of limitations, and the statutory exclusions to liability has been revised. The comments received on the issue of notification to trustees indicated the need for greater clarity, therefore, that language has been revised. The Department appreciates the time and effort evident in the comments received on the proposed rule. A discussion of the issues raised by the comments and changes made to the proposed rule in response to comments are explained in the section-by-section discussion that follows. In addition, some minor changes of a non-substantive nature have been made to ensure clarity of language, to correct errors, and to conform with proper Code of Federal Regulations usage.

Section-by-section Comments

Section 11.11

Comment: One comment agreed that SARA did not grant the rebuttable presumption to Indian tribes, but noted that the Department suggested in the preamble to the final type B rule that assessments performed jointly by Federal and State trustees could qualify for the rebuttable presumption. This comment stated that the same case could be made with assessments jointly prepared by Indian tribes and Federal trustees or reviewed by Federal trustees.

Response: The Department agrees. Federal trustees and Indian tribes can work closely together in assessments, and such assessments would qualify for a rebuttable presumption.

Section 11.14 Definitions.

Section 11.14(d) "Authorized official"

Comment: One comment noted that the use of the term "a designated official of an Indian tribe" in the definition of "authorized official" requires a specific action by an Indian tribe that is not supported by statute and that raises the question of the authority to act in the absence of such designation. The comment suggested that a more appropriate wording would be "the governing body or a designated official of an Indian tribe."

Response: The Department agrees that some confusion may arise from the wording of the proposed rule. However, having one person act on behalf of a Federal or State trustee or an Indian tribe as an "authorized official" is necessary for an orderly assessment. Tribal governments shall decide who will act on behalf of the tribe; a statutory designation is not necessary. To avoid confusion, the phrase

"designated official of an Indian tribe" has been changed to "an official designated by an Indian tribe."

Section 11.14(rr) "Trustee"

Comment: One comment stated that there is no basis for the proposed distinction between Federal and State trustees and Indian tribes in the definition of the term "trustee." This comment stated that Indian tribes should be treated as trustees of natural resources and that they are trustees of natural resources within their domain. The comment pointed out that the definition of "trustee" in the proposed rule specifically refers to the authority of Federal and State agencies to prosecute claims for damages. The comment stated that, under SARA, tribes are granted this same authority. This comment stated that the Department should amend the definition of trustee to specifically include Indian tribes and substitute the term "natural resource trustees" for "Federal and State trustees and Indian tribes" where it is applicable throughout the rule, and in particular in § 11.20(a) (2) and (3) of the rule.

Response: The purpose of the term "trustee" in this rule is to clarify who may apply the rule to commence an action or bring a claim for natural resource damages. The use of the term in the rule does not confer any special status, rights, or privileges beyond that stated purpose. The definition of "trustee" has been revised, however, to clarify the conditions under which Indian tribes may apply the rule for conducting natural resource damage assessments, consistent with the amendments to CERCLA. Also, other sections of the rule have been revised, where appropriate, to reflect this change. The Department agrees that the term "natural resource trustee" does provide additional clarification to distinguish the actions of a Federal or State agency or Indian tribe proceeding under this rule from those actions taken under other rules or statutes. The Department has added the phrase to the definition of "trustee" and has used the phrase wherever possible throughout the rule. However, although SARA did amend the language granting a rebuttable presumption to damage assessments performed by State trustees, Indian tribes were not included in that language. Therefore, although Indian tribes are treated substantially the same as States in the assessment process, the assessments performed solely by Indian tribes would not receive a rebuttable presumption.

Section 11.15 Actions against the responsible party for damages.

Comment: One comment stated that the Department should revise the rule to bring it into accord with the measure of damages defined by SARA. This comment noted that SARA clarified that natural resource damages shall, at a minimum, include the costs of replacing, restoring, or acquiring equivalent resources, plus certain other damages, citing sections 107(d) and 122(j) of CERCLA.

Response: The Department disagrees. The issue of the measure of damages under section 107(f) of CERCLA was discussed in the preamble to the final type B rule (August 1, 1986, at 51 FR 27704-05). Briefly, a reasonable interpretation of the language of CERCLA, SARA, and the legislative history of each is that the methods for measuring damages should not be limited to restoration or replacement, but may also include other methodologies (i.e., diminution of use values). Furthermore, the general common law measure of damages is the lesser of restoration or replacement costs and diminution of use values. In the absence of clear legislative language, the measure of damages used in the natural resource damage assessment rule is that of the general common law.

Comment: Another comment suggested that the Department incorporate into the final rule the SARA provisions addressing covenants not to sue and the ability to settle natural resource damage actions arising under the liability provisions of section 107(a) of CERCLA. This comment pointed out that section 122(j)(2) of CERCLA now provides such statutory authority in instances where the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources injured by a discharge or release.

Response: The Department disagrees. The Department does not consider that the provisions of section 122(j) of CERCLA are within the scope of these natural resource damage assessment regulations. The rule provides an optional assessment process for use by natural resource trustees for determining damages for injury to natural resources, and does not apply to the full range of natural resource trustee responsibilities. The rule must be used in order for assessments performed by Federal and State natural resource trustees to be given the force and effect of a rebuttable presumption in a judicial or administrative proceeding. Section 122

of CERCLA, as amended by SARA, authorizes agreements, or settlements, to expedite effective remedial actions and to minimize litigation. Section 122(j) requires notification of the appropriate natural resource trustee of negotiations concerning such settlements where there may be injuries to natural resources, and encourages the natural resource trustee to participate. The use of the rule and the use of the settlement provisions of section 122(j), including agreements for covenants not to sue, are not necessarily mutually exclusive; however, a natural resource trustee is not required to conduct a natural resource damage assessment pursuant to this rule to effectively participate in a settlement negotiation.

Comment: One comment suggested that the Department provide for early involvement of the potentially responsible party in the assessment process. This comment was concerned with the possible unjust imposition of prejudgment interest in certain situations. The comment noted that, while SARA added to section 107(a) of CERCLA the provision for prejudgment interest on all costs or damages for which a potentially responsible party may be liable, the implementation of this authority could cause problems in practice, principally with regard to emergency restorations. The comment stated that, if the trustee makes a written demand for payment when emergency actions have resulted in expenditures, the potentially responsible party would be obligated for interest on the sum demanded until payment is made. The comment pointed out that such a situation might lead to abuse if the potentially responsible party had no prior notice of the emergency action and, therefore, little time to evaluate the administrative record regarding that action before offering payment. The comment suggested that such problems could be prevented by providing early notice to the potentially responsible party in the event that emergency action is under consideration or while the action is being conducted.

Response: The Department notes that the rule already encompasses the provisions for early involvement by potentially responsible parties. Furthermore, this final rule, at § 11.15(a)(4), states that the interest begins to accrue "from the later of: The date payment of a specified amount is demanded in writing, or the date of the expenditure concerned" (emphasis added). The written demand provision in the rule is found at § 11.91, which states that the demand in writing is presented "[a]t the conclusion of the

assessment." Therefore, the interest on amounts expended in emergency actions will generally begin to accrue from the time of the written demand, since, by their nature, the emergency actions will be taken early in the assessment process, not at its conclusion.

Section 11.15 also states that damages are to be recovered "[i]n an action filed pursuant to section 107(f) of CERCLA or section 311(f) (4) or (5) of the CWA." It does not state that the emergency costs are to be sought at the time of the emergency actions. Any known potentially responsible parties will be contacted before the trustee acts in the emergency situation. As to giving notice to the potentially responsible party of necessary emergency actions, the rule states at § 11.21 that the trustee is to determine whether the potentially responsible party, if his identity is known, is taking or will take any response actions to abate the situation. Only when the trustee determines that no actions are being or will be taken does the trustee act to abate the emergency situation.

Comment: One comment stated that it supported the prohibition against double recovery found in § 11.15(d) of the rule. The comment stated that this prohibition is also germane in situations where a State might seek to use section 107(a) of CERCLA to recover what amounts to injuries to private resources. The comment pointed out that, when private parties thereafter seek reimbursement for the injuries, then a "double recovery" of damages would occur. The comment suggested that the Department should reiterate in the final rule that such private resources are not within the scope of CERCLA.

Response: The Department agrees that the natural resources covered by CERCLA are "public" resources. Congress defined the term "natural resources" strictly in terms of those resources of "the United States * * *, any State or local government, or any foreign government" (for a further discussion see the preamble to the final type B rule of August 1, 1986, at 51 FR 27696). Although SARA revised this definition to include resources of Indian tribes, no change was made to suggest that private natural resources would be included within the provisions of CERCLA. Therefore, no further statement is necessary in the rule.

Comment: One comment suggested that a reference to the statute of limitations for Indian tribes should be included in § 11.15(e) of the rule. Furthermore, the comment stated that the preamble should discuss the additional time that is to be afforded

Indian tribes should the Department of the Interior, as the trustee for the Indian tribes, give written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe, or if the Department fails to present a claim or commence an action within the time limitations specified in the statute.

Response: The Department agrees that the rule should include a reference to the language of section 126(d) of CERCLA and has amended the rule. The revised language of § 11.15(e) incorporates the fact that, under certain circumstances, the different statute of limitations may apply to actions available to Indian tribes. As a general rule, the tribes and the Department will be working together from the onset of any decision process that might lead to an action to recover damages. Since it is expected that the Department and the tribes will be working together on decisions regarding actions to recover damages, it is anticipated that these decisions will be mutual.

Section 11.20 Notification and detection.

Comment: One comment noted that § 11.20 of the rule does not specifically include Indian tribes in the notification of releases. The comment suggested that § 11.20(a)(1) be revised to call for prompt notification to "natural resource trustees" of potential damages to natural resources. The comment noted that, if the definition of "trustee" is revised to include Indian tribes as "natural resource trustees," then Indian tribes would be included in the notification provision.

Response: The Department agrees with the intent of the comment, that is, that Indian tribes should be notified of potential injuries to their natural resources. However, § 11.20(a)(1) follows the stated language of section 104(b)(2) of CERCLA. Notification is not generated by this rule (for a further discussion, see the preamble to the August 1, 1986, final rule, 51 FR at 27699). Therefore, no revision has been made.

Comment: One comment noted that SARA added new language to CERCLA, at section 107(f)(2) (A) and (B), which states that State and Federal trustees "shall" assess damages for injury to, destruction of, or loss of natural resources for the purposes of CERCLA and section 311 of the Clean Water Act. The comment interpreted this language to mean that the assessment of natural resource damages is now required by trustees as a non-discretionary duty. The comment then suggested that the

Department should modify the rule, to notify trustees of this duty.

Response: The Department disagrees that the rule should be modified to include a notification statement, as suggested by the comment. The natural resource damage assessment rule is optional and applies only in those instances where a trustee chooses to use the process contained in the rule to conduct an assessment to obtain a rebuttable presumption. Trustees may well choose to use other assessment procedures to determine damages. This rule applies to how natural resource damage assessments may be performed, not to the overall responsibilities of a natural resource trustee under CERCLA. Therefore, there is no need to modify the rule.

Section 11.24 Preassessment screen—information on the site; and section 11.71(g)(5) Quantification phase—service reduction quantification.

Comment: One comment noted that the rule, in §§ 11.24(b)(1)(v) and 11.71(g)(5), referring to the statutory exclusions from liability, states that "a service station dealer acting as any person described in section 107(a) (3) or (4) of CERCLA" is exempt from liability for natural resource damages. This comment suggested that the Department should reflect the language of the Act, rather than introduce the new, ambiguous phrase "acting as." The comment stated that this new phrase could be construed to exempt from liability certain service station dealers who treat, dispose of, or transport hazardous substances, but who arguably cause a release. The comment noted that the result would be inconsistent with the statute.

Response: The Department agrees. To remove the possibility of such confusion, the phrase "acting as any person" has been deleted from both cited sections of the final rule.

Section 11.32 Assessment Plan—development.

Comment: One comment noted that § 11.32(a)(1)(ii)(D) of the rule cites section 111(c)(3) of CERCLA authorizing natural resource claims against the Fund. This comment pointed out that the correct citation should be to section 111(a)(3) of CERCLA.

Response: Section 11.32(a)(1) of the rule pertains to the coordination of natural resource trustees in instances of coexisting or contiguous natural resources or instances of concurrent jurisdiction. Guidance is provided in this section to aid in determining a lead authorized official. Section 11.32(a)(1)(ii)(D) provided such guidance

in instances of presenting a claim against the Fund pursuant to the Natural Resource Claims Procedures promulgated by EPA. EPA, in a final rule published on September 8, 1987 (at 52 FR 33812), has withdrawn those procedures. This rule has been amended to replace § 11.32(a)(1)(ii)(D).

Comment: One comment stated that SARA, at section 107(f)(2) (A) and (B), clarified that trustees, not potentially responsible parties, are to conduct the assessments. Therefore, the comment suggested that the rule is not valid where it allows a potentially responsible party to do "all or part of an assessment."

Response: The Department disagrees. The rule is for use by natural resource trustees to assess damages. It is the responsibility of the authorized official of the Federal and State agency designated as trustee to develop the Assessment Plan (see § 11.30(a)). Section 11.32(d) of the rule only provides a discretionary option to allow potentially responsible parties, or others, to undertake the assessment activities where they are competent to do so. All discretionary decisions regarding the conduct of the assessment are made only by the authorized official, and the assessment activities shall be conducted only at the discretion and under the direction, guidance, and monitoring of the authorized official. Also, Quality Assurance/Quality Control procedures will ensure the integrity of the assessment. Finally, the decision on the part of the authorized official to allow the potentially responsible party to conduct any part of the assessment is to be documented in the Assessment Plan, which is subject to public review. This discretionary latitude provided in the rule is consistent with other discretionary latitudes provided by SARA. For example, section 104(a) of CERCLA, as amended, provides that, when a response action can be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, such person may carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122.

Section 11.91 Post-assessment phase—demand.

Comment: One comment supported the inclusion, in § 11.91(d) of the rule, that the authorized official must allow at least 60 days, with reasonable extensions, before filing suit against the potentially responsible party to provide that party an opportunity to

acknowledge and respond to the official's concerns.

Response: The Department acknowledges the comment and reaffirms its decision to retain the notice period in the process. Also, the language indicating when the notice period is mandatory has been clarified in this final rule.

Section 11.92 Post-assessment phase—restoration account.

Comment: One comment noted that the Department was correct in its provisions that the appropriations process is not required for a trustee to acquire land as a means of restoration or replacement of injured natural resources. This comment pointed out that it strongly supports the statement in the preamble to the proposed rule that this revision does not alter the requirement that land acquisition occur only when it is "the sole feasible restoration or replacement alternative."

Response: The Department agrees. There has been no revision in this requirement.

Comment: One comment affirmed the Department's opinion that Congress did not change the requirement that all sums recovered as a damage award by a natural resource trustee must be used to restore or replace the injured resource.

Response: The Department acknowledges the comment. No revision is necessary to this requirement.

Comment: One comment pointed out that the expenditure of recovered funds must be for natural resource damage restoration, replacement, or for acquisition of equivalent resources, but that such expenditures need not comply with § 11.93 of the rule. This comment suggested that the rule must be modified to allow the trustee to spend the money recovered for all purposes enumerated under section 107(f) of CERCLA, consistent with the applicable restrictions in section 111(i) of CERCLA. The comment noted that the proposed rule, at § 11.92(c), states that all recovered sums may be spent only in accordance with a restoration plan meeting the requirements of section 111(i) of CERCLA and that certain requirements in §§ 11.81, 11.82, and 11.83 shall apply to such restoration plans. The comment also stated the trustee apparently would have to comply with at least portions of the rule to spend any money recovered in a CERCLA or CWA case. The comment pointed out that such a restriction would go beyond the authority of the Department. The comment stated that CERCLA's only limitations on how these funds obtained for natural resource

damages are to be spent are found in sections 107(f) and 111(i) of the Act. The comment suggested that, since the use of the rule is discretionary, there should be no implication in § 11.92(c) of the rule that the rule can impose requirements on the expenditure of those funds beyond those in the statute.

Response: The Department disagrees. SARA specifically amended section 107(f)(1) of CERCLA to require that the sums recovered be used "only to restore, replace, or acquire the equivalent of such natural resources." The restriction in the rule on the use of funds recovered for the purposes of restoration, replacement, or acquisition of equivalent resources was to ensure that the sums recovered would actually be used to address the injured resources. This goal is to be carried out through the use of a formal restoration plan meeting the requirements of section 111 of CERCLA.

The natural resource damage assessment rule may be used in those instances in which a trustee needs to assign a dollar value to the injuries to natural resources resulting from a discharge or release. If a natural resource damage assessment is conducted pursuant to this rule, then the provisions of the rule pertain to the resultant assessment. The rule does not apply to every action or claim pursued under the broad statutory provisions of CERCLA and the Clean Water Act. Nor does the rule impose restrictions on the use of natural resource damages beyond those in section 107(f) of CERCLA.

Authorship

The primary authors of this rule are David Rosenberger, U.S. Fish and Wildlife Service, Linda Burlington, Office of Environmental Project Review, and Willie Taylor, Office of Policy Analysis, all with the Department of the Interior.

National Environmental Policy Act, Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Department of the Interior has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) has been prepared.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. In addition, the estimate of the potential economic effects of this rule is well below \$100 million annually. As the rule applies to natural resource trustees it is not expected to have an effect on a substantial number of small entities. The information collection requirement contained in § 11.41(c) has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084-0025.

List of Subjects in 43 CFR Part 11

Continental shelf, Environmental protection, Fish, Forests and forest products, Grazing land, Indian lands, Hazardous substances, Mineral resources, National forest, National parks, Natural resources, Oil pollution, Public lands, Wildlife, Wildlife refuges.

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986, and for the reasons set out in the preamble, Title 43, Subtitle A of the Code of Federal Regulations is amended as set forth below.

Dated: January 30, 1988.

Rick Ventura,
Assistant Secretary, Policy, Budget and Administration.

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for 43 CFR Part 11 is revised to read as follows:

Authority: 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.10 is revised to read as follows:

§ 11.10 Scope and applicability.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9601 *et seq.*, and the Clean Water Act (CWA), 33 U.S.C. 1251-1376, provide that natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance covered under CERCLA or the CWA and may seek to recover those damages. This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part

300, for the identification, investigation, study, and response to a discharge of oil or release of a hazardous substance, and it provides a procedure by which a natural resource trustee can determine compensation for injuries to natural resources that have not been nor are expected to be addressed by response actions conducted pursuant to the NCP. The assessment procedures set forth in this part are not mandatory. However, they must be used by Federal or State natural resource trustees in order to obtain the rebuttable presumption contained in section 107(f)(2)(C) of CERCLA. This part applies to assessments initiated after the effective date of this final rule.

3. Section 11.11 is revised to read as follows:

§ 11.11 Purpose.

The purpose of this part is to provide standardized and cost-effective procedures for assessing natural resource damages. The results of an assessment performed by a Federal or State natural resource trustee according to these procedures shall be accorded the evidentiary status of a rebuttable presumption as provided in section 107(f)(2)(C) of CERCLA.

4. Section 11.14 is amended by revising paragraphs (a), (d), (g), (l), (r), (w), (z), (cc), (ff), (ii), (ll), and (rr); and by adding a new paragraph (uu), to read as follows:

§ 11.14 Definitions.

(a) "Acquisition of the equivalent" or "replacement" means the substitution for an injured resource with a resource that provides the same or substantially similar services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(d) "Authorized official" means the Federal or State official to whom is delegated the authority to act on behalf of the Federal or State agency designated as trustee, or an official designated by an Indian tribe, pursuant to section 126(d) of CERCLA, to perform a natural resource damage assessment. As used in this part, authorized official is equivalent to the phrase "authorized official or lead authorized official," as appropriate.

(g) "CERCLA" means the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, as amended.

(l) "Damages" means the amount of money sought by the natural resource trustee as compensation for injury, destruction, or loss of natural resources as set forth in section 107(a) or 111(b) of CERCLA.

(r) "Fund" means the Hazardous Substance Superfund established by section 517 of the Superfund Amendments and Reauthorization Act of 1986.

(w) "Lead authorized official" means a Federal or State official authorized to act on behalf of all affected Federal or State agencies acting as trustees where there are multiple agencies, or an official designated by multiple tribes where there are multiple tribes, affected because of coexisting or contiguous natural resources or concurrent jurisdiction.

(z) "Natural resources" or "resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976), any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. These natural resources have been categorized into the following five groups: Surface water resources, ground water resources, air resources, geologic resources, and biological resources.

(cc) "On-Scene Coordinator" or "OSC" means the On-Scene Coordinator as defined in the NCP.

(ff) "Rebuttable presumption" means the procedural device provided by section 107(f)(2)(C) of CERCLA describing the evidentiary weight that must be given to any determination or assessment of damages in any administrative or judicial proceeding under CERCLA or section 311 of the CWA made by a Federal or State natural resource trustee in accordance with the rule provided in this part.

(ii) "Replacement" or "acquisition of the equivalent" means the substitution for an injured resource with a resource that provides the same or substantially similar services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(ll) "Restoration" or "rehabilitation" means actions undertaken to return an injured resource to its baseline condition, as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided, when such actions are in addition to response actions completed or anticipated, and when such actions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(rr) "Trustee" or "natural resource trustee" means any Federal natural resources management agency designated in the NCP and any State agency designated by the Governor of each State, pursuant to section 107(f)(2)(B) of CERCLA, that may prosecute claims for damages under section 107(f) or 111(b) of CERCLA; or an Indian tribe, that may commence an action under section 126(d) of CERCLA.

(uu) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

5. Section 11.15 is amended by revising (a) introductory text and (c), by removing the period at the end of (a)(3)(ii) and adding the phrase "; and", and by adding new (a)(4), (d), and (e) to read as follows:

§ 11.15 Actions against the responsible party for damages.

(a) In an action filed pursuant to section 107(f) or 126(d) of CERCLA, or sections 311(f) (4) and (5) of the CWA, a natural resource trustee who has performed an assessment in accordance with this rule may recover:

(4) Interest on the amounts recoverable as set forth in section 107(a) of CERCLA. The rate of interest on the

outstanding amount of the claim shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. Such interest shall accrue from the later of: the date payment of a specified amount is demanded in writing, or the date of the expenditure concerned;

(c) Where an assessment determines that there is, in fact, no injury, as defined in § 11.62 of this part, the natural resource trustee may not recover assessment costs.

(d) There shall be no double recovery under this rule for damages or for assessment costs, that is, damages or assessment costs may only be recovered once, for the same discharge or release and natural resource, as set forth in section 107(f)(1) of CERCLA.

(e) Actions for damages and assessment costs shall comply with the statute of limitations set forth in section 113(g), or, where applicable, section 126(d) of CERCLA.

§ 11.16 [Removed and Reserved]

6. Section 11.16 is removed and reserved.

7. Section 11.17 is amended by revising (a) to read as follows:

§ 11.17 Compliance with applicable laws and standards.

(a) *Worker health and safety.* All worker health and safety considerations specified in the NCP shall be observed, except that requirements applying to response actions shall be taken to apply to the assessment process.

Subpart B—Preassessment Screen

8. Section 11.20 is revised to read as follows:

§ 11.20 Notification and detection.

(a) *Notification.* (1) Section 104(b)(2) of CERCLA requires prompt notification of Federal and State natural resource trustees of potential damages to natural resources under investigation and requires coordination of the assessments, investigations, and planning under Section 104 of CERCLA with such trustees.

(2) The NCP provides for the OSC or lead agency to notify the natural resource trustee when natural resources have been or are likely to be injured by a discharge of oil or a release of a hazardous substance being investigated under the NCP.

(3) Natural resource trustees, upon such notification described in

paragraphs (a) (1) and (2) of this section, shall take such actions, as may be consistent with the NCP.

(b) *Previously unreported discharges or releases.* If a natural resource trustee identifies or is informed of apparent injuries to natural resources that appear to be a result of a previously unidentified or unreported discharge of oil or release of a hazardous substance, he should first make reasonable efforts to determine whether a discharge or release has taken place. In the case of a discharge or release not yet reported or being investigated under the NCP, the natural resource trustee shall report that discharge or release to the appropriate authority as designated in the NCP.

(c) *Identification of co-trustees.* The natural resource trustee should assist the OSC or lead agency, as needed, in identifying other natural resource trustees whose resources may be affected as a result of shared responsibility for the resources and who should be notified.

9. Section 11.21 is amended by revising (a) (1), (b), and (c) to read as follows:

§ 11.21 Emergency restorations.

(a) *Reporting requirements and definition.* (1) In the event of a natural resource emergency, the natural resource trustee shall contact the National Response Center (800/424-8802) to report the actual or threatened discharge or release and to request that an immediate response action be taken.

(b) *Emergency actions.* If no immediate response actions are taken at the site of the discharge or release by the EPA or the U.S. Coast Guard within the time that the natural resource trustee determines is reasonably necessary, or if such actions are insufficient, the natural resource trustee should exercise any existing authority he may have to take on-site response actions. The natural resource trustee shall determine whether the potentially responsible party, if his identity is known, is taking or will take any response action. If no on-site response actions are taken, the natural resource trustee may undertake limited off-site restoration action consistent with its existing authority to the extent necessary to prevent or reduce the immediate migration of the oil or hazardous substance onto or into the resource for which the Federal or State agency or Indian tribe may assert trusteeship.

(c) *Limitations on emergency actions.* The natural resource trustee may undertake only those actions necessary to abate the emergency situation, consistent with its existing authority.

The normal procedures provided in this part must be followed before any additional restoration actions other than those necessary to abate the emergency situation are undertaken. The burden of proving that emergency restoration was required and that restoration costs were reasonable and necessary based on information available at the time rests with the natural resource trustee.

10. Section 11.23 is amended by revising (b), (e) introductory text, (e)(2), (f) (1), (2), and (4), and (g)(2) to read as follows:

§ 11.23 Preassessment screen—general.

(b) *Purpose.* The purpose of the preassessment screen is to provide a rapid review of readily available information that focuses on resources for which the Federal or State agency or Indian tribe may assert trusteeship under section 107(f) or section 126(d) of CERCLA. This review should ensure that there is a reasonable probability of making a successful claim before monies and efforts are expended in carrying out an assessment.

(e) *Criteria.* Based on information gathered pursuant to the preassessment screen and on information gathered pursuant to the NCP, the authorized official shall make a preliminary determination that all of the following criteria are met before proceeding with an assessment:

(2) Natural resources for which the Federal or State agency or Indian tribe may assert trusteeship under CERCLA have been or are likely to have been adversely affected by the discharge or release;

(f) *Coordination.* (1) In a situation where response activity is planned or underway at a particular site, assessment activity shall be coordinated with the lead agency consistent with the NCP.

(2) Whenever, as part of a response action under the NCP, a preliminary assessment or an OSC Report is to be, or has been, prepared for the site, the authorized official should consult with the lead agency under the NCP, as necessary, and to the extent possible use information or materials gathered for the preliminary assessment or OSC Report, unless doing so would unnecessarily delay the preassessment screen.

(4) If the natural resource trustee already has a process similar to the preassessment screen, and the

requirements of the preassessment screen can be satisfied by that process, the processes may be combined to avoid duplication.

(g) *Preassessment phase costs.* * * *

(2) The reasonable and necessary costs for these categories shall be limited to those costs incurred by the authorized official for, and specifically allocable to, site-specific efforts taken during the preassessment phase for assessment of damages to natural resources for which the agency or Indian tribe is acting as trustee. Such costs shall be supported by appropriate records and documentation and shall not reflect regular activities performed by the agency or Indian tribe in management of the natural resource. Activities undertaken as part of the preassessment phase shall be taken in a manner that is cost-effective, as that phrase is used in this part.

11. Section 11.24 is amended by revising (b)(1)(i), by removing the period at the end of (b)(1)(iv) and adding the phrase "; or", by adding new paragraph (b)(1)(v), and by revising (b)(2) to read as follows:

§ 11.24 Preassessment screen—information on the site.

(b) * * *
(1) * * *

(i) Resulting from the discharge or release were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environmental analysis, that the decision to grant the permit or license authorizes such commitment of natural resources, and that the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe; or

(v) Resulting from the release or threatened release of recycled oil from a service station dealer described in section 107(a)(3) or (4) of CERCLA if such recycled oil is not mixed with any other hazardous substance and is stored, treated, transported or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

(2) An assessment under this part shall not be continued for potential injuries meeting one or more of the

criteria described in paragraph (b)(1) of this section, which are exceptions to liability provided in sections 107(f), (i), and (j) and 114(c) of CERCLA.

Subpart C—Assessment Plan Phase

12. Section 11.30 is amended by revising (c)(2) to read as follows:

§ 11.30 Assessment plan—general.

(c) *Assessment plan phase costs.* * * *

(2) The reasonable and necessary costs for these categories shall be limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, site specific efforts taken in the development of an Assessment Plan for a resource for which the agency or Indian tribe is acting as trustee. Such costs shall be supported by appropriate records and documentation, and shall not reflect regular activities performed by the agency or tribe in management of the natural resource. Activities undertaken as part of the Assessment Plan phase shall be taken in a manner that is cost-effective, as that phrase is used in this part.

13. Section 11.31 is amended by revising (a)(4), (c) introductory text, and (c)(3) to read as follows:

§ 11.31 Assessment Plan—content.

(a) *General content and level of detail.*

(4) The Assessment Plan shall contain procedures and schedules for sharing data, split samples, and results of analyses, when requested, with any identified potentially responsible parties and other natural resource trustees.

(c) *Specific requirements for type B assessments.* The Assessment Plan shall include documentation of the authorized official's decision as to whether to proceed with a type A or a type B assessment. This determination shall be based upon the guidance provided in § 11.33(a) of this part.

(3) A Quality Assurance Plan that satisfies the requirements listed in the NCP and applicable EPA guidance for quality control and quality assurance plans; and

14. Section 11.32 is amended by revising (a) introductory text, (a)(1), (c), and (e), to read as follows:

§ 11.32 Assessment Plan—development.

(a) *Pre-development requirements.* The authorized official shall fulfill the

following requirements before developing an Assessment Plan.

(1) *Coordination.* (i) If the authorized official's responsibility is shared with other natural resource trustees as a result of coexisting or contiguous natural resources or concurrent jurisdiction, the authorized official shall ensure that all other known affected natural resource trustees are notified that an Assessment Plan is being developed. This notification shall include the results of the Preassessment Screen Determination.

(ii) Authorized officials from different agencies or Indian tribes are encouraged to cooperate and coordinate any assessments that involve coexisting or contiguous natural resources or concurrent jurisdiction. They may arrange to divide responsibility for implementing the assessment in any manner that is agreed to by all of the affected natural resource trustees with the following conditions:

(A) A lead authorized official shall be designated to administer the assessment. The lead authorized official shall act as coordinator and contact regarding all aspects of the assessment and shall act as final arbitrator of disputes if consensus among the authorized officials cannot be reached regarding the development, implementation, or any other aspect of the Assessment Plan. The lead authorized official shall be designated by mutual agreement of all the natural resource trustees. If consensus cannot be reached as to the designation of the lead authorized official, the lead authorized official shall be designated in accordance with paragraphs (a)(1)(ii) (B), (C), or (D) of this section:

(B) When the natural resources being assessed are located on lands or waters subject to the administrative jurisdiction of a Federal agency, a designated official of the Federal agency shall act as the lead authorized official.

(C) When the natural resources being assessed, pursuant to section 126(d) of CERCLA, are located on lands or waters of an Indian tribe, an official designated by the Indian tribe shall act as the lead authorized official.

(D) For all other natural resources for which the State may assert trusteeship, a designated official of the State agency shall act as the lead authorized official.

(iii) If there is a reasonable basis for dividing the assessment, the natural resource trustee may act independently and pursue separate assessments, actions, or claims so long as the claims do not overlap. In these instances, the natural resource trustees shall

coordinate their efforts, particularly those concerning the sharing of data and the development of the Assessment Plans.

(c) *Public involvement in the assessment plan.* (1) The Assessment Plan shall be made available for review by any identified potentially responsible parties, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate, before the performance of any methodologies contained therein.

(2) Any comments concerning the Assessment Plan received from identified potentially responsible parties, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public, together with responses to those comments, shall be included as part of the Report of Assessment, described in § 11.90 of this part.

(e) *Plan modification.* (1) The Assessment Plan may be modified at any stage of the assessment as new information becomes available.

(2)(i) Any modification to the Assessment Plan that in the judgment of the authorized official is significant shall be made available for review by any identified potentially responsible party, any other affected natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate, before tasks called for in the modified plan are begun.

(ii) Any modification to the Assessment Plan that in the judgment of the authorized official is not significant shall be made available for review by any identified potentially responsible party, any other affected natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public, but the implementation of such modification need not be delayed as a result of such review.

Subpart D—Type A Assessments

15. Section 11.40 is amended by revising (c) to read as follows:

§ 11.40 Type A assessments—general.

(c) *Type A assessment costs.* The reasonable and necessary costs incurred in conducting assessments under this Subpart shall be limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, incident-specific efforts taken in the assessment of damages for natural resources for which the agency or Indian tribe is acting as trustee. Such costs shall be supported by appropriate records and documentation, and shall not reflect regular activities performed by the agency or the Indian tribe in management of the natural resource. Activities undertaken as part of the damage assessment shall be taken in a manner that is cost-effective, as that phrase is used in this Part.

16. Section 11.41 is amended by revising (c)(4) and (c)(6)(ii) to read as follows:

§ 11.41 Coastal and marine environments.

(c) *Coastal and marine environments—assessment plan.*

(4) *Time and location.* The time and location of the discharge or release shall be established consistent with the NCP for the discovery and notification of a discharge or release.

(6) *Results of cleanup actions.*

(ii) Cleanup actions include such actions as the physical removal of the oil or hazardous substance from the coastal or marine environment and the application of chemical agents, dispersants, surface collecting agents, burning agents, or other such agents authorized in the NCP for use on oil discharges. The use of chemical agents, burning agents, or other such agents shall not be considered a discharge or release for the purposes of this Subpart.

Subpart E—Type B Assessments

17. Section 11.60 is amended by revising (d)(2) to read as follows:

§ 11.60 Type B assessments—general.

(d) *Type B assessment costs.*

(2) The reasonable and necessary costs for these categories shall be limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, site-specific efforts taken in the assessment of damages for a natural resource for which the agency or Indian tribe is acting as trustee. Such costs shall be supported by appropriate records and

documentation, and shall not reflect regular activities performed by the agency or the Indian tribe in management of the natural resource. Activities undertaken as part of the damage assessment phase shall be taken in a manner that is cost-effective, as that phrase is used in this part.

18. Section 11.71 is amended by revising (g) introductory text, and (g)(1), by removing the period at the end of (g)(4) and adding the phrase “; or”, and by adding new paragraph (g)(5) to read as follows:

§ 11.71 Quantification phase—service reduction quantification.

(g) *Statutory exclusions.* In quantifying the effects of the injury, the following statutory exclusions shall be considered, as provided in sections 107 (f), (i), and (j) and 114(c) of CERCLA, that exclude compensation for damages to natural resources that were a result of:

(1) An irreversible and irretrievable commitment of natural resources identified in an environmental impact statement or other comparable environmental analysis, and the decision to grant the permit or license authorizes such a commitment, and the facility was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that license or permit was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe; or

(5) Resulting from the release or threatened release of recycled oil from a service station dealer as described in section 107(a) (3) or (4) of CERCLA if such recycled oil is not mixed with any other hazardous substance and is stored, treated, transported or otherwise managed in compliance with regulations or standards promulgated pursuant to Section 3014 of the Solid Waste Disposal Act and other applicable authorities.

19. Section 11.72 is amended by revising (c)(5) to read as follows:

§ 11.72 Quantification phase—baseline services determination.

(c) *Historical data.*

(5) Studies conducted or sponsored by natural resource trustees for the resource in question;

20. Section 11.82 is amended by removing (d)(2)(iv)(B) and redesignating (d)(2)(iv)(A) as (d)(2)(iv), and by revising (e)(1) and (e)(2) to read as follows:

§ 11.82 Damage determination phase—restoration methodology plan.

(e) *Plan development.* (1) In developing the Restoration Methodology Plan, the guidance provided in § 11.81 of this part shall be followed.

(2)(i) The Restoration Methodology Plan shall be made available for review by any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate, before the authorized official's final decision on selection of the alternative.

(ii) Comments received from any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, or any other interested members of the public, together with responses to those comments shall be included as part of the Report of Assessment, described in § 11.90 of this part.

21. Section 11.83 is amended by revising (b) to read as follows:

§ 11.83 Damage determination phase—use value methodologies.

(b) *Use values.* (1) For the purposes of this part, use values are the value to the public of recreational or other public uses of the resource, as measured by changes in consumer surplus, any fees or other payments collectable by the government or Indian tribe for a private party's use of the natural resource, and any economic rent accruing to a private party because the government or Indian tribe does not charge a fee or price for the use of the resource.

(2) Estimation of option and existence values shall be used only if the authorized official determines that no use values can be determined.

(3) In instances where the natural resource trustee is the majority operator or controller of a for- or not-for-profit enterprise, and the injury to the natural resource results in a loss to such an enterprise, that portion of the lost net income due the agency from this enterprise resulting directly or indirectly from the injury to the natural resource may be included as a measure of damages under this part.

22. Section 11.84 is amended by revising (i) to read as follows:

§ 11.84 Damage determination phase—implementation guidance.

(i) *Scope of the analysis.* (1) The authorized official must determine the scope of the analysis in order to estimate a diminution of use values.

(2) In assessments where the scope of analysis is Federal, only the diminution of use values to the Nation as a whole should be counted.

(3) In assessments where the scope of analysis is at the State level, only the diminution of use values to the State should be counted.

(4) In assessments where the scope of analysis is at the tribal level, only the diminution of use values to the tribe should be counted.

Subpart F—Post-Assessment Phase

23. Section 11.91 is revised to read as follows:

§ 11.91 Post-assessment phase—demand.

(a) *Requirement and content.* At the conclusion of the assessment the authorized official shall present to the potentially responsible party a demand in writing for a sum certain, representing the damages determined in accordance with the requirements and guidance of § 11.40 or of § 11.80 of this part, and including the reasonable cost of the assessment, and as adjusted, if necessary, by the guidance in § 11.92(b) of this part, delivered in such a manner as will establish the date of receipt. The demand shall adequately identify the Federal or State agency or Indian tribe asserting the claim, the general location and description of the injured resource, the type of discharge or release determined to have resulted in the injuries, and the damages sought from that party.

(b) *Report of assessment.* The demand letter shall include the Report of Assessment as an attachment.

(c) *Rebuttable presumption.* When performed by a Federal or State official in accordance with this part, the natural resource damage assessment and the resulting Damage Determination supported by a complete administrative record of the assessment including the Report of Assessment as described in § 11.90 of this part shall have the force and effect of a rebuttable presumption on behalf of any Federal or State claimant in any judicial or adjudicatory administrative proceeding under CERCLA, or section 311 of the CWA.

(d) *Potentially responsible party response.* The authorized official should allow at least 60 days from receipt of the

demand by the potentially responsible party, with reasonable extensions granted as appropriate, for the potentially responsible party to acknowledge and respond to the demand, prior to filing suit. In cases governed by section 113(g) of CERCLA, the authorized official may include a notice of intent to file suit and must allow at least 60 days from receipt of the demand by the potentially responsible party, with reasonable extensions granted as appropriate, for the potentially responsible party to acknowledge and respond to the demand, prior to filing suit.

24. Section 11.92 is revised to read as follows:

§ 11.92 Post-assessment phase—restoration account.

(a) *Disposition of Recoveries.* (1) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA or sections 311(f)(4) and (5) of the CWA by the Federal government acting as trustee shall be retained by the trustee, without further appropriation, in a separate account in the United States Treasury.

(2) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA, or sections 311(f)(4) and (5) of the CWA by a State government acting as trustee shall either:

(i) Be placed in a separate account in the State treasury; or

(ii) Be placed by the responsible party or parties in an interest bearing account payable in trust to the State agency acting as trustee.

(3) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA or sections 311(f)(4) and (5) of the CWA by an Indian tribe shall either:

(i) Be placed in an account in the tribal treasury; or

(ii) Be placed by the responsible party or parties in an interest bearing account payable in trust to the Indian tribe.

(b) *Adjustments.* (1) In establishing the account pursuant to paragraph (a) of this section, the calculation of the expected present value of the damage amount should be adjusted, as appropriate, whenever monies are to be placed in a non-interest bearing account. This adjustment should correct for the anticipated effects of inflation over the time estimated to complete expenditures for the restoration or replacement.

(2) In order to make the adjustment in paragraph (b)(1) of this section, the authorized official acting as trustee should adjust the damage amount by the rate payable on notes or bonds issued by the United States Treasury with a

maturity date that approximates the length of time estimated to complete expenditures for the restoration or replacement.

(c) *Payments from the account.* Monies that constitute the damage claim amount shall be paid out of the account established pursuant to paragraph (a) of this section only for those actions described in the Restoration Plan required by § 11.93 of this part.

25. Section 11.93 is amended by revising (c) to read as follows:

§ 11.93 Post-assessment phase—restoration plan.

(c) Modifications may be made to the Restoration Plan as become necessary as the restoration proceeds. Significant modifications shall be made available for review by any responsible party, any affected natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of at least 30 days, with reasonable extensions granted as appropriate, before tasks called for in the modified plan are begun.

[FR Doc. 88-3563 Filed 2-19-88; 8:45 am]

BILLING CODE 4310-RG-M

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 64

[Docket No. FEMA 6777]

**List of Communities Eligible for the
Sale of Flood Insurance**

AGENCY: Federal Emergency Management Agency.

ACTION: Final Rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program

(NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas

§ 64.6 List of eligible communities.

in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom

authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

State and location	Community	Effective dates of authorization/cancellation of, sale of Flood Insurance in community	Current effective map date
Tennessee: Dresden, city of Weakley County.....	470240	Jan. 8, 1988, Emerg.....	Dec. 10, 1976.
Indiana: Putman County, unincorporated areas.....	180213	Jan. 8, 1988, Emerg.....	Jan. 3, 1975.
Texas:			
Cross Roads, Town of Denton County.....	481513	Jan. 6, 1988, Emerg.; Jan. 6, 1988, Reg.....	Jan. 6, 1988.
Garfield, Village of Travis County ¹	481608-New	Jan. 29, 1976, Emerg.; Apr. 1, 1982, Reg.....	Do.
Louisiana: *Killian, village of, Livingston Parish.....	220355	Oct. 26, 1977, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Dec. 29, 1987, Rein.	Aug. 1, 1987.
New York: Rockland, town of, Sullivan County.....	360829	July 29, 1975, Emerg.; Dec. 17, 1987, Reg.; Dec. 17, 1987, Susp.; Jan. 5, 1988, Rein.	Dec. 17, 1987.
Iowa: Fairbank, city of, Buchana and Fayette Counties.....	190329	Sept. 21, 1976, Emerg.; Aug. 19, 1986, Reg.; Aug. 19, 1986, Susp.; Jan. 7, 1988, Rein.	Aug. 19, 1986.
North Carolina: Chadbourn, town of, Columbus County.....	370065	July 9, 1975, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; Jan. 7, 1988, Rein.	Sept. 30, 1987.
California: Arvin, city of, Kern County.....	060076	Jan. 13, 1988, Emerg.; Jan. 13, 1988, Reg.....	Aug. 4, 1987.
Minnesota: Winsted, city of, McLeod County.....	270661	Jan. 14, 1988, Emerg.....	Do.
Ohio: Hopedale, village of, Harrison County.....	390887-New	Jan. 14, 1988, Emerg.....	Do.
Indiana: Milford Junction, village of, Kosciusko County, ²	180382	Jan. 14, 1988, Emerg.; Jan. 14, 1988, Reg.....	Feb. 4, 1987.
Montana: Fort Belknap Indian, Reserve, Blaine and Phillips Counties.....	300180	Apr. 25, 1978, Emerg.; Dec. 17, 1987, Reg.; Dec. 17, 1987, Susp.; Jan. 11, 1988, Rein.	Dec. 17, 1987.
New York: Otisco, town of, Onondaga County.....	380589	June 1, 1976, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.; Jan. 14, 1988, Rein.	July 3, 1986.
Georgia: Clayton, city of, Rabun County, ³	130157	July 25, 1975, Emerg.; Aug. 13, 1984, Withdrawn; Jan. 13, 1988, Rein.	Sept. 5, 1984.
North Dakota: Max, city of, McLean County.....	380680-New	Jan. 22, 1988, Emerg.....	Do.
Iowa: Ricketts, city of, Crawford County.....	190100	Jan. 22, 1988, Emerg.....	Nov. 22, 1974.
South Carolina: Seabrook Island, town of, Charleston County, ⁴	450256-New	June 30, 1970, Emerg.; Apr. 23, 1971, Reg.....	Do.
North Dakota: Trenton, township of, Williams County.....	380679	Apr. 29, 1976, Emerg.; Nov. 19, 1987, Reg.; Nov. 19, 1987, Susp.; Jan. 19, 1988, Rein.	Nov. 22, 1974.
Mississippi: Goodman, town of, Holmes County.....	280075	May 22, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.; Jan. 28, 1988, Rein.	June 3, 1986.

¹ The Village of Garfield is a newly incorporated community that was participating in the Regular Program as an unincorporate area of Travis County. The Village has adopted the county's FIRM for floodplain management and insurance purposes.

² The Village of Milford Junction was formerly the City of Milford. The name has been legally changed.

³ The City of Clayton is reinstated into the Regular Program effective January 13, 1988.

⁴ The Town of Seabrook Island is a newly incorporated community that was participating in the Regular Program as an unincorporated areas of Charleston County. The Town has adopted the County's FIRM for floodplain management and insurance purposes.

* Minimal conversions.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region I—Regular Conversions			
Massachusetts: Acton, town of, Middlesex County.....	250176	Jan. 6, 1988, suspension withdrawn.....	Jan. 6, 1988.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region II			
New York: Pamela, town of, Jefferson County	360346	.....do.....	Do.
Region IV			
Georgia: Chattahoochee County, unincorporated areas	130293	.....do.....	Do.
Florida:			
Columbia County, unincorporated areas	120070	.....do.....	Do.
Suwannee County, unincorporated areas	120300	.....do.....	Do.
Region V			
Illinois: Forsyth, village of, Macon County	171017	.....do.....	Do.
Michigan:			
Au Sable, township of, Iosco County	260098	.....do.....	Do.
Hillsdale, city of, Hillsdale County	260086	.....do.....	Do.
Minnesota: Carver County, unincorporated areas	270049	.....do.....	Do.
Ohio: Garfield Heights, city of, Cuyahoga County	390109	.....do.....	Do.
Region IX			
California: Colton, city of, San Bernardino County	060273	.....do.....	Do.
Washington: Asotin, city of, Asotin County	530008	.....do.....	Do.
Region II—Minimal Conversion			
New York: Richmondville, town of, Schoharie County	361197	Jan. 1, 1988, suspension withdrawn	Do.
Region III—Regular Conversions			
Pennsylvania: Chalfont, borough of, Bucks County	420184	Jan. 15, 1988, suspension withdrawn	Jan. 15, 1988.
West Virginia: Greenbrier County, unincorporated areas	540040	.....do.....	Do.
Region IV			
Alabama:			
Eufaula, city of, Barbour County	010011	.....do.....	Do.
Dothan, city of, Houston County	010104	.....do.....	Do.
Georgia: Winder, city of, Barrow County	130234	.....do.....	Do.
North Carolina: Banner Elk, town of, Avery County	370011	.....do.....	Do.
Region V			
Ohio:			
Pike County, unincorporated areas	390450	.....do.....	Jan. 15, 1987.
Piketon, village of, Pike County	390451	.....do.....	Do.
Port Washington, village of, Tuscarawas County	390664	.....do.....	Do.
Waverly, city of, Pike County	390452	.....do.....	Do.
Region VI			
Louisiana:			
Calcasieu Parish, unincorporated areas	220037	.....do.....	Jan. 15, 1988.
Krotz Springs, town of, St. Landry Parish	220170	.....do.....	Do.
Basile, town of, Evangeline Parish	220065	.....do.....	Do.
Region V—Minimal Conversion			
Michigan: Lexington, township of, Sanilac County	260718	.....do.....	Do.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

Issued: February 12, 1988.
[FR Doc. 88-3640 Filed 2-19-88; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and

their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modification base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the

program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 6054(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies

that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Faulkner (FEMA Docket No. 6919).	City of Conway	Aug. 14, 1987, Aug. 21, 1987, <i>Log Cabin Democrat</i> .	The Honorable David G. Kinley, Mayor of the City of Conway, 1201 Oak Street, Conway, AR 72032.	July 27, 1987	050078 C
Florida: Pasco (FEMA Docket No. 6919).	Unincorporated areas	Aug. 27, 1987, Sept. 3, 1987, <i>St. Petersburg Times</i> .	The Honorable John J. Gallagher, County Administrator, Pasco County, Pasco County Government Center, 7530 Little Road, New Port Richey, FL 33553.	Aug. 17, 1987	120230
Louisiana: Orleans Parish (FEMA Docket No. 6916).	City of New Orleans	July 9, 1987, July 16, 1987, <i>The Times-Picayune</i> .	The Honorable Sidney J. Barthelemy, Mayor of the City of New Orleans, 1300 Perdido Street, New Orleans, LA 70112.	July 2, 1987	225203 E
New Jersey: Monmouth (FEMA Docket No. 6916).	Aberdeen, township	Aug. 21, 1987, Aug. 28, 1987, <i>Asbury Park Press</i> .	Mr. Mark Coren, Aberdeen Township Manager, One Aberdeen Square, Aberdeen, NJ 07747.	June 11, 1987	340312
Oklahoma: Tulsa, Osage, and Rogers (FEMA Docket No. 6919).	City of Tulsa	Aug. 24, 1987, Aug. 31, 1987, <i>Tulsa World</i> .	The Honorable Dick Crawford, Mayor of the City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	Aug. 7, 1987	405381
Rhode Island: Washington (FEMA Docket No. 6919).	Town of Charlestown	Oct. 6, 1987, Oct. 13, 1987, <i>The Providence Journal</i> .	The Honorable Curtis A. Shook, Charlestown Town Administrator, P.O. Box 849, Charlestown, RI 02813.	Sept. 1, 1987	445395
Tennessee: Davidson and Sumner (FEMA Docket No. 6919).	City of Goodlettsville	Sept. 23, 1987, Sept. 30, 1987, <i>The Messenger</i> .	The Honorable Bobby Jones, Mayor, City of Goodlettsville, City Hall, 105 South Main Street, Goodlettsville, TN 37072.	Aug. 10, 1987	470287
Texas:					
Denton (FEMA Docket No. 6921).	City of Coppell	Oct. 9, 1987, Oct. 16, 1987, <i>Citizens' Advocate</i> .	The Honorable Lou Duggan, Mayor of the City of Coppell, P.O. Box 478, Coppell, TX 75019.	Sept. 24, 1987	480170
Dallas (FEMA Docket No. 6919).	City of Duncanville	Sept. 3, 1987, Sept. 10, 1987, <i>Duncanville Suburban</i> .	The Honorable Cliff Boyd, Mayor of the City of Duncanville, Dallas County, P.O. Box 280, Duncanville, TX 75138.	Aug. 25, 1987	480173
Tarrant (FEMA Docket No. 6921).	City of Fort Worth	Oct. 9, 1987, Oct. 16, 1987, <i>Fort Worth Star-Telegram</i> .	The Honorable Bob Bolen, Mayor of the City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Oct. 2, 1987	480596
Harris (FEMA Docket No. 6919).	Unincorporated areas	Aug. 2, 1987, Aug. 31, 1987, <i>Houston Post</i> .	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, TX 77002.	Aug. 17, 1987	480287 D
Fort Bend, Harris, and Montgomery Counties (FEMA Docket No. 6921).	City of Houston	Nov. 20, 1987, Nov. 27, 1987, <i>Houston Chronicle</i> .	The Honorable Kathryn J. Whitmire, Mayor of the City of Houston, P.O. Box 1562, Houston, TX 77251.	Nov. 2, 1987	480296
Dallas (FEMA Docket No. 6921).	City of Mesquite	Oct. 16, 1987, Oct. 23, 1987, <i>Mesquite Daily News</i> .	The Honorable George Venner, Sr., Mayor of the City of Mesquite, P.O. Box 137, Mesquite, TX 75149.	Oct. 6, 1987	485490
Tarrant (FEMA Docket No. 6919) City of North Richard Hills.	Sept. 22, 1987	Sept. 29, 1987, <i>Mid-Cities Daily News</i> .	The Honorable Dan Echols, Mayor of the City of North Richland Hills, P.O. Box 18609, North Richland Hills, TX 76180.	Sept. 8, 1987	480607
Tarrant (FEMA Docket No. 6921).	Unincorporated areas	Nov. 9, 1987, Nov. 16, 1987, <i>Fort Worth Star-Telegram</i> .	Mr. Jim Stewart, Director of Public Works for Tarrant County, 100 East Weatherford, Fort Worth, TX 76102.	Oct. 29, 1987	480582

Issued: February 11, 1988.

Harold T. Duryee,

Administrator, Federal Insurance
Administration.

[FR Doc. 88-3639 Filed 2-19-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6924]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency
Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth column

of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the Community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Duval.....	City of Jacksonville.....	Jan. 24, 1988, Jan. 31, 1988, <i>Florida Times Union.</i>	The Honorable Thomas L. Hazouri, Mayor, City of Jacksonville, 220 East Bay Street, 14th Floor, Jacksonville, Florida 32202.	Jan. 19, 1988.....	120077
Hillsborough.....	Unincorporated areas.....	Dec. 23, 1987, Dec. 30, 1987, <i>Tampa Tribune.</i>	The Honorable Larry J. Brown, County Admin- istrator, Hillsborough County, P.O. Box 1110, Tampa, Florida 33601.	Dec. 8, 1987.....	120112
Georgia:					
Fulton and DeKalb.....	City of Atlanta.....	Jan. 29, 1988, Feb. 5, 1988, <i>Atlanta Journal-Constitu- tion.</i>	The Honorable Andrew J. Young, Mayor, City of Atlanta, City Hall, 68 Mitchell Street SW., Atlanta, Georgia 30335.	Jan. 21, 1988.....	135157
Liberty.....	City of Flemington.....	Dec. 18, 1987, Dec. 25, 1987, <i>Coastal Courier.</i>	The Honorable O.C. Martin, Mayor, City of Flemington, Route 1, P.O. Box 23, Hines- ville, Georgia 31313.	Dec. 8, 1987.....	130124
Illinois: Cook.....	Village of Wheeling.....	Oct. 16, 1987, Oct. 23, 1987, <i>The Daily Herald.</i>	The Honorable Thomas Markus Village Man- ager, Village of Wheeling, 255 West Dundee, Wheeling, Illinois 60090.	October 2, 1987.	170173
New York:					
Erie.....	Town of Amherst.....	Dec. 9, 1987, Dec. 16, 1987, <i>Amherst Suburban Bee.</i>	The Honorable John R. Sharpe, Supervisor of the Town of Amherst, 5583 Main Street, Williamsville, New York 14221	Nov. 16, 1987.....	360226 C

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Westchester	City of Yonkers	Jan. 29, 1988, Feb. 5, 1988, <i>The Yonkers Herald Statesman</i> .	Mr. Nicholas De Santis City Manager, Yonkers City Hall, Yonkers, New York 10701.	Jan. 11, 1988	360936
Texas: Tarrant	City of Arlington	Dec. 15, 1987, Dec. 22, 1987, <i>Arlington Daily News</i> .	The Honorable Richard Greene, Mayor of the City of Arlington, P.O. Box 231, Arlington, Texas 76004-0231.	Nov. 25, 1987	485454
Denton	Unincorporated areas	Jan. 28, 1988, Feb 4, 1988, <i>Denton Record—Chronicle</i> .	The Honorable Vic Burgess, Denton County Judge, Denton County Courthouse, 401 West Hickory, Denton, Texas 76201.	Dec. 31, 1987	480774

Issued: February 11, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-3637 Filed 2-19-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 648-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the *Federal Register* for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the

Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD). Modified
ARIZONA	
Graham County (unincorporated areas) FEMA Docket No. 6915	
<i>Frye Creek:</i>	
At the Town of Thatcher western corporate limits	*3,086
Approximately 1,000 feet upstream of Town of Thatcher western corporate limits	*3,104
Approximately 2,000 feet upstream of Town of Thatcher western corporate limits	*3,128
Approximately 3,000 feet upstream of Town of Thatcher western corporate limits	*3,148
Approximately 4,000 feet upstream of Town of Thatcher western corporate limits	*3,177
Approximately 4,600 feet upstream of Town of Thatcher western corporate limits (limit of detailed study)	*3,191
<i>Frye Creek Tributary:</i>	
At the Town of Thatcher southern corporate limits	*3,090
Approximately 1,000 feet upstream of Town of Thatcher southern corporate limits	*3,103
Approximately 2,000 feet upstream of Town of Thatcher southern corporate limits	*3,115
Approximately 3,000 feet upstream of Town of Thatcher southern corporate limits	*3,132
Approximately 3,600 feet upstream of Town of Thatcher southern corporate limits (limit of detailed study)	*3,141
<i>School District Wash:</i>	
Approximately 4,200 feet upstream of Frye Creek Dam (downstream limit of detailed study)	*3,002
Approximately 6,400 feet upstream of Frye Creek Dam	*3,027
At Golf Course Road	*3,048
Approximately 2,000 feet upstream of Golf Course Road	*3,072
Approximately 4,000 feet upstream of Golf Course Road	*3,096
Approximately 5,900 feet upstream of Golf Course Road (limit of detailed study)	*3,123
<i>Spring Canyon:</i>	
At the Town of Thatcher western corporate limits	*3,005
Confluence of Frye Creek	*3,013
Confluence of Spring Canyon Tributary	*3,028
Approximately 2,000 feet upstream of confluence of Spring Canyon	*3,049
Approximately 4,000 feet upstream of confluence of Spring Canyon	*3,074
Approximately 6,400 feet upstream of confluence of Spring Canyon	*3,110
Approximately 8,800 feet upstream of confluence of Spring Canyon Tributary	*3,146
<i>Spring Canyon Tributary:</i>	
Confluence with Spring Canyon	*3,027
Approximately 2,900 feet upstream of confluence with Spring Canyon	*3,040
Approximately 4,000 feet upstream of confluence with Spring Canyon	*3,060
Approximately 6,000 feet upstream of confluence with Spring Canyon	*3,085
Approximately 8,000 feet upstream of confluence with Spring Canyon	*3,118
Approximately 10,000 feet upstream of confluence with Spring Canyon	*3,161

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD). Modified
Approximately 11,100 feet upstream of confluence with Spring Canyon (limit of detailed study).....	*3,192
Maps are available for inspection at the County Courthouse, 800 Main Street, Safford, Arizona.	
ARKANSAS	
Conway (city), Faulkner County (FEMA Docket No. 6918)	
<i>Little Creek:</i>	
Approximately 160 feet downstream of confluence with Little Creek Tributary No. 1.....	*280
Approximately 60 feet downstream of Mockingbird Lane.....	*284
Approximately 1,650 feet downstream of U.S. Highway 64.....	*289
Approximately 320 feet downstream of U.S. Highway 64.....	*292
Maps available for inspection at the City Hall, 1201 Oak Street, Conway, Arkansas.	
North Little Rock (city), Pulaski County (FEMA Docket No. 6918)	
<i>Fairman Ditch:</i>	
Approximately 301 feet downstream of Emily Street.....	*248
Approximately .1 mile upstream of Emily Street.....	*250
<i>Glenview Ditch:</i>	
Approximately .20 mile downstream of Highway 161.....	*248
Approximately .12 mile upstream of Highway 161.....	*250
Maps available for inspection at the Planning Division, 1206 Sycamore, North Little Rock, Arkansas.	
CALIFORNIA	
Milpitas (city), Santa Clara County (FEMA Docket No. 6915)	
<i>Upper Penitencia Creek Overflow:</i>	
From a point approximately 5,100 feet north of Redwood Avenue to a point approximately 100 feet north of Redwood Avenue between Nimitz Freeway to the west and lower Penitencia Creek to the east.....	*12
At Chestnut Avenue.....	*14
At Serra Way.....	*17
Approximately 100 feet south of Sylvia Avenue.....	*20
From a point approximately 200 feet south of Sylvia Avenue to a point approximately 150 feet north of Capital Avenue between Nimitz Freeway to the west and lower Penitencia Creek to the east.....	#2
From a point approximately 150 feet north of Capital Avenue to Lower Penitencia Creek.....	#1
From lower Penitencia Creek to the southern corporate limits between the Southern Pacific Railroad and the Union Pacific Railroad.....	#1
<i>San Francisco Bay:</i> At shoreline.....	*9
<i>Scott Creek Overflow:</i> Along Union Pacific Railroad on eastern side, between northern corporate limits and Dixon Landing Road.....	*17
Maps are available for inspection at 455 East Calaveras Boulevard, Milpitas, California.	
IDAHO	
Benewah County (unincorporated areas), (FEMA Docket No. 6915)	
<i>St. Joe River:</i>	
Approximately 8.8 miles downstream of U.S. Highway 95A Bridge.....	*2,136
Approximately 4.9 miles downstream of U.S. Highway 95A Bridge.....	*2,136
Approximately 3.4 miles downstream of U.S. Highway 95A Bridge.....	*2,137
Approximately 2.7 miles downstream of U.S. Highway 95A Bridge.....	*2,138
Approximately 0.4 mile downstream of U.S. Highway 95A Bridge.....	*2,139

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD). Modified
Maps are available for inspection at the Building Inspector's Office, Benewah County Courthouse, St. Maries, Idaho 83861.	
INDIANA	
Indianapolis (city), Marion County (FEMA Docket No. 6915)	
<i>State Ditch:</i>	
At mouth.....	*672
About 400 feet upstream of Bradbury Avenue.....	*702
<i>Searley Creek:</i>	
At confluence with State Ditch.....	*693
About 0.66 mile upstream of Lynhurst Drive.....	*732
<i>Mars Ditch-Draxel Run:</i>	
At confluence with State Ditch.....	*697
Just upstream of Lynhurst Drive.....	*724
About 1,100 feet upstream of Lynhurst Drive.....	*732
<i>Howland Ditch:</i>	
Just upstream of Allison Road.....	*760
About 0.84 mile upstream of 82nd Street.....	*806
<i>Noeld Ditch:</i>	
At confluence with Eagle Creek.....	*692
Just downstream of Mickley Avenue.....	*752
<i>East Fork White Lick Creek:</i>	
About 0.67 mile downstream of U.S. Route 40.....	*736
Just downstream of Raceway Road.....	*805
<i>Pleasant Run Creek:</i>	
About 0.37 mile downstream of State Route 37.....	*666
Just downstream of County Line Road.....	*678
Maps available for inspection at 2501 City County Building, Indianapolis, Indiana.	
IOWA	
Des Moines (city), Polk County (FEMA Docket No. 6918)	
<i>Yeader Creek:</i>	
At mouth.....	*818
About 1,200 feet downstream of Southwest 9th Street.....	*861
About 1,100 feet downstream of Southwest 9th Street.....	*866
Just downstream of Southwest 9th Street.....	*868
Just upstream of Southwest 9th Street.....	*873
Just downstream of Southwest 18th Street.....	*889
Just upstream of Southwest 18th Street.....	*895
800 feet upstream of Southwest 18th Street.....	*897
Maps available for inspection at the City Hall, East First and Locust Streets, Des Moines, Iowa.	
MAINE	
Kennebunkport (town), York County (FEMA Docket No. 6907)	
<i>Atlantic Ocean:</i> Lake of the Woods Area (North of Walkers Point).....	
	*12
Maps available for inspection at the Town Office, Elm Street, Kennebunkport, Maine.	
MARYLAND	
Frederick (city), Frederick County (FEMA Docket No. 6915)	
<i>Monocacy River Tributary No. 8:</i>	
Approximately 300 feet downstream of Fairview Avenue.....	*313
Downstream side of Fairview Avenue.....	*321
Upstream side of Fairview Avenue.....	*322
Approximately 650 feet upstream of Fairview Avenue.....	*333
*Frederick City Datum	
Maps available for inspection at the City Hall, 101 N. Court Street, Frederick, Maryland.	
MASSACHUSETTS	
Ludlow (town), Hampden County (FEMA Docket No. 6915)	
<i>Chicopee River:</i>	
390 feet upstream of Miller Street.....	*228
Approximately 500 feet upstream of Miller Street.....	*229

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD). Modified
Maps available for inspection at 488 Chapin Street, Ludlow, Massachusetts.	
INDIANA	
Wilbraham (town), Hampden County (FEMA Docket No. 6915)	
<i>Chicopee River:</i>	
Approximately 380 feet upstream of Cottage Avenue.....	*229
Approximately 500 feet upstream of Cottage Avenue.....	*229
Maps available for inspection at the Town Office Building, 240 Springfield Street, Wilbraham, Massachusetts.	
MISSOURI	
Hayti (city), Pemiscot County (FEMA Docket No. 6918)	
<i>Main Ditch No. 6:</i>	
Just downstream of Burlington Northern railroad.....	*265
About 300 feet upstream of State Highway 412.....	*265
Maps available for inspection at the City Hall, P.O. Box X, Hayti, Missouri.	
MISSOURI	
West Plains (city), Howell County (FEMA Docket No. 6918)	
<i>Burton Branch:</i>	
Just downstream of U.S. Highway 63 Bypass.....	*1,004
About 800 feet upstream of Harrison Road.....	*1,022
<i>Muston Creek:</i>	
About 0.54 mile downstream of U.S. Highway 160.....	*996
Just upstream of U.S. Highway 160.....	*1,013
Maps available for inspection at 1910 Holiday Lane, West Plains, Missouri.	
NEW JERSEY	
Dumont (borough), Bergen County (FEMA Docket No. 6915)	
<i>Hirschfeld Brook:</i>	
Approximately 600 feet downstream of Lafayette Avenue.....	*19
Approximately 230 feet downstream of West Madison Avenue.....	*35
<i>Hirschfeld Brook Tributary:</i>	
Downstream corporate limits.....	*88
Upstream side of Rucereto Avenue.....	*115
Maps available for inspection at 50 Washington Avenue, Dumont, New Jersey.	
NEW JERSEY	
Paramus (borough), Bergen County (FEMA Docket No. 6918)	
<i>Saddle River:</i>	
Approximately 1,750 feet downstream of Linwood Avenue.....	*73
Approximately 1,580 feet downstream of Linwood Avenue.....	*74
Approximately 580 feet downstream of Linwood Avenue.....	*76
Maps available for inspection at the Township Hall, Jockish Square, Paramus, New Jersey.	
NEW YORK	
Newark (village), Wayne County (FEMA Docket No. 6918)	
<i>Ganargua Creek:</i>	
At State Route 98.....	*416
Approximately 150 feet upstream of CONRAIL.....	*418
Maps available for inspection at the Village Office, 100 East Miller Street, Newark, New York.	
NEW YORK	
Palmira (village), Wayne County (FEMA Docket No. 6918)	
<i>Red Creek West:</i> Entire length affecting community.....	
	*429

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD), Modified	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD), Modified	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD), Modified
Maps available for inspection at the Village Office, 144 East Main Street, Palmyra, New York.		Approximately 27 mile upstream of confluence with Flow Path No. 11	*4,469	Approximately .83 mile upstream of confluence of Flow Path No. 13A	*4,060
OKLAHOMA		Approximately .57 mile upstream of confluence with Flow Path No. 11	*4,526	At divergence from Flow Path No. 49	*4,126
Catoosa (city), Rogers County (FEMA Docket No. 6915)		<i>Flow Path No. 12:</i>		<i>Flow Path No. 53:</i>	
<i>Bird Creek:</i>		At confluence with Flow Path No. 11	*3,942	Approximately .47 mile upstream of confluence with Flow Path No. 13	*3,965
Most downstream corporate limit	*572	Approximately 2.18 miles upstream of confluence with Flow Path No. 11	*4,019	Approximately 1.99 miles upstream of confluence with Flow Path No. 13	*4,019
Approximately 630 feet upstream of Burlington Northern Railroad	*575	<i>Flow Path No. 13A:</i>		<i>Flow Path No. 54:</i>	
<i>Spunky Creek: Confluence with Verdigris River</i>	*571	Approximately 600 feet upstream of confluence with Flow Path No. 13	*3,997	At confluence with Flow Path No. 11	*3,996
Maps available for inspection at the City Hall, P.O. Box 190, Catoosa, Oklahoma.		At State Route 110	*4,098	Approximately 2.01 miles upstream of State Route 2529	*4,123
SOUTH CAROLINA		Approximately .57 mile upstream of State Route 110	*4,173	<i>Flow Path No. 55:</i>	
Charleston County (unincorporated areas) (FEMA Docket No. 6918)		Approximately 1.01 miles upstream of State Route 110	*4,248	At County boundary	*4,023
<i>Atlantic Ocean:</i>		Approximately 1.33 miles upstream of State Route 110	*4,323	Approximately .57 mile upstream of confluence of Flow Path No. 55A	*4,410
At the intersection of Stone Post Road and Wyndham Road	*12	Approximately .53 mile downstream of confluence of Flow Path No. 13B	*4,398	<i>Flow Path No. 55A:</i>	
At the intersection of Cedar Hill Drive and Honeysuckle Lane	*12	Approximately 930 feet downstream of confluence with Flow Path No. 13B	*4,473	At confluence with Flow Path No. 55	*4,345
About 100 feet east of the intersection of Stonerfield Drive and Creekside Drive	*13	At confluence of Flow Path No. 13B	*4,527	Approximately .76 mile upstream of confluence with Flow Path No. 55	*4,448
At the intersection of Welch Road and Sea Air Drive	*12	Approximately .19 mile upstream of confluence of Flow Path No. 13B	*4,569	<i>Flow Path No. 56:</i>	
About 500 feet south of the intersection of Jeffords Street and Avenue A	*12	<i>Flow Path No. 13B:</i>		At confluence with Flow Path No. 55	*4,026
At the intersection of Carol Street and Pawpaw Street	*11	At confluence with Flow Path No. 13A	*4,527	At State Route 110	*4,108
Just north of the intersection of Furman Drive and Harvard Avenue	*8	Approximately .38 mile upstream of confluence with Flow Path No. 13A	*4,567	Approximately .81 mile upstream of State Route 110	*4,199
Just north of the intersection of James Bay Road and Old Charleston Road	*11	<i>Flow Path No. 49:</i>		<i>Flow Path No. 56A:</i>	
Just northeast of County Route 20 and Old Charleston Road	*10	At confluence with Flow Path No. 13A	*4,010	At confluence with Flow Path No. 56	*4,094
Maps available for inspection at the County Courthouse, 2 Courthouse Square, Charleston, South Carolina.		At confluence of Flow Path No. 49A	*4,039	At State Route 110	*4,115
TENNESSEE		Approximately 37 mile downstream of divergence of Flow Path No. 52	*4,096	Approximately .76 mile upstream of State Route 110	*4,199
Franklin (city), Williamson County (FEMA Docket No. 6918)		At confluence of Flow Path No. 49B	*4,154	Maps available for inspection at the Two Civic Center Plaza, El Paso, Texas.	
<i>Spencer Creek:</i>		Approximately .43 mile upstream of confluence of Flow Path No. 49B	*4,215	Garland (city), Dallas County (FEMA Docket No. 6922)	
Just downstream of Franklin Road	*631	Approximately 85 mile upstream of confluence of Flow Path No. 49B	*4,275	<i>Long Branch:</i>	
Just upstream of Franklin Road	*635	Approximately 1.23 miles upstream of confluence of Flow Path No. 49B	*4,340	At Loop 635	*558
Just downstream of CSX railroad	*635	Approximately 1.52 miles upstream of confluence of Flow Path No. 49B	*4,400	Approximately 26 mile upstream of Groves Road	*562
Just upstream of CSX railroad	*644	Approximately 1.80 miles upstream of confluence of Flow Path No. 49B	*4,460	Maps available for inspection at 200 North 5th, City Hall Building, 3rd Floor, Engineering Department, Garland, Texas.	
About 1.7 miles upstream of CSX railroad	*663	Approximately 2.08 miles upstream of confluence of Flow Path No. 49B	*4,521	Grand Prairie (city), Dallas, Tarrant, and Ellis Counties (FEMA Docket No. 6918)	
<i>Dry Branch:</i>		<i>Flow Path No. 49A:</i>		<i>Fish Creek:</i>	
At mouth	*657	At confluence with Flow Path No. 49	*4,039	Approximately 1.39 miles upstream of Dallas/Tarrant County line	*522
Just downstream of CSX railroad	*676	Approximately .75 mile upstream of confluence with Flow Path No. 49	*4,097	Approximately 1.92 miles upstream of Dallas/Tarrant County line	*532
Just upstream of CSX railroad	*684	<i>Flow Path No. 49B:</i>		Approximately 2 mile downstream of State Highway 360	*537
Just downstream of Malory Station Road	*692	At confluence with Flow Path No. 49	*4,154	Maps available for inspection at the Department of Public Works, 317 College Street, Grand Prairie, Texas.	
Maps available for inspection at the Harpetch Square Mail, Franklin, Tennessee 37064.		At confluence of Flow Path No. 49C	*4,279	WISCONSIN	
TEXAS		Approximately .48 mile upstream of confluence of Flow Path No. 49C	*4,354	Hales Corners (village), Milwaukee County (FEMA Docket No. 6918)	
Comal County (unincorporated areas) (FEMA Docket No. 6918)		Approximately .80 mile upstream of confluence of Flow Path No. 49C	*4,429	<i>Whitnall Park Creek:</i>	
<i>Guadalupe River (Upper Reach):</i>		Approximately 1.05 miles upstream of confluence of Flow Path No. 49C	*4,504	About 550 feet upstream of West Forest Home Avenue	*769
Approximately 1,970 feet upstream of U.S. Route 281	*1,014	Approximately 1.21 miles upstream of confluence of Flow Path No. 49C	*4,554	Just upstream of West Janesville Road	*781
Approximately 5,090 feet upstream of U.S. Route 281	*1,018	Approximately 1.33 miles upstream of confluence of Flow Path No. 49C	*4,599	Just downstream of the confluence of Upper Kelly Lake	*809
Maps available for inspection at the Comal County Courthouse, New Braunfels, Texas.		<i>Flow Path No. 49C:</i>		Upper Kelly Lake: Entire shoreline	*809
El Paso (city), El Paso County (FEMA Docket No. 6918)		At confluence with Flow Path No. 49B	*4,279	Maps available for inspection at the Village of Hales Corners, 5635 Now Berlin Road, Hales Corners, Wisconsin.	
<i>Flow Path No. 11:</i>		Approximately .57 mile upstream of confluence with Flow Path No. 49B	*4,381	New Berlin (city), Waukesha County (FEMA Docket No. 6918)	
Approximately 1,540 feet upstream of confluence with Flow Path #13	*3,930	Approximately 1.14 miles upstream of confluence with Flow Path No. 49B	*4,520	<i>Upper Kelly Lake Tributary:</i>	
At confluence of Flow Path No. 54	*3,996	<i>Flow Path No. 50:</i>		Just upstream of the confluence of Upper Kelly Lake	*899
At State Route 110	*4,110	At confluence with Flow Path No. 13A	*4,018	Just downstream of St. Mary's Drive	*809
Approximately .57 mile upstream of confluence with Flow Path No. 11A	*4,524	Approximately .71 mile upstream of confluence with Flow Path No. 13A	*4,089	Upper Kelly Lake: Entire shoreline	*809
<i>Flow Path No. 11A:</i>		<i>Flow Path No. 51:</i>		Maps available for inspection at the New Berlin Planning Department, 3805 South Casper Drive, New Berlin, Wisconsin.	
At confluence with Flow Path No. 11	*4,414	At confluence with Flow Path No. 13A	*4,011		
		At confluence with Flow Path No. 51A	*4,045		
		Approximately .57 mile upstream of confluence of Flow Path No. 51A	*4,098		
		<i>Flow Path No. 51A:</i>			
		At confluence with Flow Path No. 51	*4,045		
		Approximately 29 mile upstream of confluence with Flow Path No. 51	*4,072		
		Approximately .57 mile upstream of confluence with Flow Path No. 51	*4,099		
		<i>Flow Path No. 52:</i>			
		At confluence of Flow Path No. 13A	*4,007		

Issued: February 11, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-3636 Filed 2-19-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment of List of Office Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: February 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director, (202) 634-1535.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Editorial amendment of list of Office of Management and Budget approved information collection requirements contained in Part 0 of the Commission's Rules

Adopted: February 1, 1988.

Released: February 10, 1988.

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this

section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, it is ordered, that § 0.408 of the rules is Amended effective on the date of publication in the Federal Register.

6. Persons having questions on this matter should contact Terry Johnson at (202) 634-1535.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

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

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

§ 0.408 [Amended]

2. In 47 CFR 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding OMB control numbers:

Rule section No.	OMB control No.	Rule section No.	OMB control No.
31.01-2(d) (1)-(3)	3060-0235	31.3-32(c)	3060-0235
31.01-9	3060-0235	31.231(b)	3060-0235
31.02-80(a)	3060-0235	31.326(b) and (c)	3060-0235
31.02-83	3060-0235	31.327(c) and (d)	3060-0235
31.1-16	3060-0235	31.6-64	3060-0235
31.100.3(a)	3060-0235	31.609	3060-0235
31.100.4(1)	3060-0235	31.611	3060-0235
31.100.4(3)	3060-0235	31.614	3060-0235
31.138(c)	3060-0235	31.672(d)	3060-0235
31.2-21(e)	3060-0235	Part 67	3060-0233
31.2-26	3060-0235	87.97	3060-0198

3. In 47 CFR 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control numbers:

Rule section No.	OMB control No.	Rule section No.	OMB control No.
1.1404	3060-0392	Part 36	3060-0233
1.1408	3060-0392	43.21	3060-0395
15.623	3060-0372	43.22	3060-0395
21.910	3060-0396	73.54	3060-0393
Part 32	3060-3070		

[FR Doc. 88-3645 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-128; RM-5675]

Radio Broadcasting Services; Blackduck, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 252A to Blackduck, Minnesota, in response to a petition filed by Roger Paskvan. The allocation could provide Blackduck with its first FM broadcast service. Canadian concurrence has been obtained since Blackduck is within 320 kilometers of the common United States-Canadian border. With this action, this proceeding is terminated.

DATES: Effective March 28, 1988. The window period for filing applications will open on March 29, 1988, and close on April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-128, adopted January 16, 1988, and released February 28, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under

Minnesota, by adding Channel 252A to Blackduck.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-3646 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-261; RM-5719]

Radio Broadcasting Services; Taylorsville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 240C2 to Taylorsville, Mississippi, as that community's first wide coverage area service, in response to a petition filed by Blakeney Communications, Inc. We have also authorized the modification of Station WBBN(FM)'s license to specify operation on Channel 240C2 in lieu of Channel 240A. With the action, this proceeding is terminated.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-261, adopted January 14, 1988, and released February 10, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi is amended at Taylorsville by removing Channel 240A and adding Channel 240C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-3652 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-192; RM-5513, RM-6082]

Radio Broadcasting Services; Hoffman and Hamlet, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of York David Anthony, allocates Channel 282A to Hamlet, North Carolina, as the community's first local FM service. Petitioner withdrew his earlier interest in the allocation at Hoffman. Channel 282A can be allocated to Hamlet with a site restriction of 8.3 kilometers (5.2 miles) southeast to avoid a short-spacing to Stations WSOC-FM, Channel 279C, and WEZC, Channel 284C, at Charlotte, North Carolina, and to accommodate the pending application of Station WKTC(FM), Tarboro, North Carolina (ARN-870901B). With this action, this proceeding is terminated.

DATES: Effective March 28, 1988. The window period for filing applications will open on March 29, 1988, and close on April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-192, adopted January 22, 1988, and released February 11, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for North Carolina is amended by adding Hamlet, Channel 282A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-3653 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-174; RM-5465]

Radio Broadcasting Services; Glenwood Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, in response to a petition filed by Colorado West Broadcasting, Inc., licensee of Station KMTS-FM (Channel 224A), Glenwood Springs, CO, substitutes FM Channel 255C2 for Channel 224A and modifies its Class A license to reflect operation on the higher-powered channel. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-174, adopted January 14, 1988, and released February 10, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Colorado by deleting Channel 224A and adding

Channel 255C2 for the entry of
Glenwood Springs.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 88-3649 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-233; RM-5841]

Radio Broadcasting Services; Jupiter and Melbourne, FL

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This document substitutes
Channel 296C1 for Channel 296A at
Melbourne, Florida and modifies the
license for Station WVTI at the request
of Silicon East Communications, to
provide a first wide coverage area
station. In addition this action
substitutes Channel 258A for Channel
296A at Jupiter, Florida for Station
WKSJ-FM. With this action, this
proceeding is terminated.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT:
Montrose H. Tyree, Mass Media Bureau,
(202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a
summary of the Commission's Report
and Order, MM Docket No. 87-233,
adopted January 6, 1988, and released
February 10, 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 contractors,
International Transcription Service,
(202) 857-3800, 2100 M Street NW., Suite
140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM
Allotments, is amended under Florida
by adding Channel 296C1 and removing
Channel 296A at Melbourne, and by
adding Channel 258A and removing
Channel 296A at Jupiter.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 88-3650 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-322; RM-5826]

Radio Broadcasting Services; Atoka, OK

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This document, at the request
of Ballard Broadcasting of Oklahoma,
Inc., substitutes Channel 276C2 for
Channel 276A at Atoka, Oklahoma, and
modifies its license for Station KHKC-
FM to specify operation on the higher
powered channel. Channel 276C2 can be
allocated to Atoka in compliance with
the Commission's minimum distance
separation requirements with a site
restriction of 1.9 kilometers (1.2 miles)
southwest to avoid a short-spacing to
Station KTFX, Channel 277C, Tulsa,
Oklahoma. With this action, this
proceeding is terminated.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT:
Leslie K. Shapiro, Mass Media Bureau,
(202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a
summary of the Commission's Report
and Order, MM Docket No. 87-322,
adopted January 22, 1988, and released
February 11, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of
Allotments for Atoka, Oklahoma, is
amended by adding Channel 276C2 and
deleting Channel 276A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 88-3654 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-319; RM-5755]

Radio Broadcasting Services; Watertown, SD

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This document, at the request
of Lake Region Broadcasting Company,
allocates Channel 225C1 to Watertown,
South Dakota, as the community's third
local FM services. Channel 225C1 can be
allocated to Watertown in compliance
with the Commission's minimum
distance separation requirements
without the imposition of a site
restriction. With this action, this
proceeding is terminated.

DATES: Effective March 28, 1988. The
window period for filing applications
will open on March 29, 1988, and close
on April 28, 1988.

FOR FURTHER INFORMATION CONTACT:
Leslie K. Shapiro, Mass Media Bureau,
(202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a
summary of the Commission's Report
and Order, MM Docket No. 87-319,
adopted January 22, 1988, and released
February 11, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of
Allotments for Watertown, South
Dakota, is amended by adding Channel
225C1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-3655 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-325; RM-5412]

Radio Broadcasting Services; Waverly, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 286C2 for Channel 285A at Waverly, Tennessee, and modifies the license of Station WVRV(FM) to specify operation on higher class channel, at the request of Mid-Cumberland Communications, Inc. A site restriction of 6.3 kilometers (3.9 miles) southeast of the community is required. The coordinates for the specified site are 36-02-30 and 87-44-56. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-325, adopted January 14, 1988, and released February 11, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended, under

Tennessee, by deleting Channel 285A and adding Channel 286C2 for Waverly.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-3656 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-520; RM-5447, RM-5910]

Radio Broadcasting Services; Coldspring and Cleveland, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246C1 to Cleveland, Texas, as that community's first FM service, at the request of Sam Houston National Broadcasting. A site restriction of 18.4 kilometers (11.4 miles) northeast of the community is required. Initially, at the request of Coshatta Tribal Broadcasting Services, the Commission entertained a proposal for the allotment of Channel 259A to Coldspring, Texas. However, Jasper County Broadcasting Co., Inc., in its counterproposal, suggested Channel 246A in lieu of Channel 259A to Coldspring in order to resolve a conflict with a separate proceeding. Therefore, at the request of Coshatta Tribal Broadcasting Services, this action also dismisses its mutually exclusive petition proposing the allocation of Channel 246A to Coldspring, Texas (RM-5447). With this action, this proceeding is terminated.

DATES: Effective March 28, 1988; the window period for filing applications will open on March 29, 1988, and close on April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-520, adopted January 14, 1988, and released February 11, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended by adding Channel 246C1 to Cleveland, Texas.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-3657 Filed 2-22-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-225; RM-5731]

Radio Broadcasting Services; Vinton, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 291A to Vinton, Virginia, as that community's second FM service, at the request of Joseph P. Durham. The channel can be allotted in compliance with § 73.207 of the Commission's Rules with a site restriction of 4 kilometers (2.5 miles) west of the Vinton. The coordinates used in determining the available site were 37-16-19; 79-56-26. With this action, this proceeding is terminated.

DATES: Effective March 28, 1988. The window period for filing applications will open on March 29, 1988, and close on April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-225,

adopted January 14, 1988, and released February 11, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended under Virginia, by adding Channel 291A to Vinton.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-3658 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 53, No. 34

Monday, February 22, 1988

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86-ANE-39]

Airworthiness Directives; **TEXTRON Lycoming (formerly Avco Lycoming TEXTRON) Model LTS101 Series Turbohaft Engines**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) which requires inspections and maintenance actions to monitor and ensure the satisfactory condition of the engine lubrication system and the integrity of the Number 3 bearing in the rear bearing support housing (RBSH) and the Number 4 bearing in the engine gearbox. The proposed AD would supersede Amendment 39-5787 (52 FR 48187), AD 87-26-10, effective December 23, 1987, by requiring inspections and maintenance action which are less restrictive than those of AD 87-26-10 while ensuring the satisfactory condition of the engine lubrication system and the integrity of the Number 3 and Number 4 bearings. The proposed AD would also provide an alternate procedure for cleaning the RBSH and oil feed ring. The proposed AD is needed to prevent an uncontained failure of the power turbine (PT) disk which could result from failure of the Number 3 or Number 4 bearing.

DATES: Comments must be received on or before March 4, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-ANE-39, 12 New England Executive Park, Burlington, Massachusetts 01803, or

delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86-ANE-39".

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

The applicable service documents may be obtained from **TEXTRON Lycoming, Williamsport Division, LT101 Product Support, 652 Oliver Street, Williamsport, Pennsylvania 17701.**

A copy of the service documents is contained in Rules Docket Number 86-ANE-39, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Robbin Goulet, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7089.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. Due to the potential economic relief that the proposed AD may provide to LTS101 owners and operators, a 10-day comment period is being used to accelerate the process.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested

persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-39". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to supersede Amendment 39-5787 (52 FR 48187 December 21, 1987), AD 87-26-10, which requires inspections and maintenance actions to monitor and ensure the satisfactory condition of the engine lubrication system and the integrity of the Number 3 and Number 4 bearings.

There have been two contained PT disk failures on LTS101-750 series engines which resulted from failure of the Number 3 bearing. In one case, failure was attributed to progressive deterioration of the bearing, and in the second case, failure was attributed to insufficient lubrication. The LTS101-750 series engine Number 3 bearing assembly and lubrication system type design is similar to those in all LTS101 series model engines. There have been several additional cases of Number 3 bearing failures due to similar failure modes in which the PT disk was retained.

In addition, there have been two uncontained PT disk failures on LTS101-650 series engines which resulted from failure of the Number 4 bearing. The investigations aimed at identifying the cause of the number 4 bearing failures are continuing. The LTS101-650 series Number 4 bearing and power pinion gear assembly type design is similar to those in all LTS101 series model engines. There have been several additional Number 4 bearing failure cases in which the PT disk was retained.

Two of the four uncontained disk failures were each preceded by several debris monitor cockpit indication light illuminations due to metal contamination. In one of the four cases, the light was not illuminated due to a breakage in the indication light system wiring. In another case, the light was not illuminated due to an excessive buildup of carbon on the debris monitor. The Number 4 bearing failure can result in loss of or erratic PT speed (Np)

indication, in addition to the debris monitor indication light illumination. The Np signal was lost prior to both of the uncontained failures attributed to Number 4 bearing failures. In all four cases, fragments from the failed disks damaged the other engine, resulting in loss of power. In three of the four cases, fragments served the tail rotor drive shaft resulting in loss of tail rotor control.

Since issuance of AD 87-26-10, the FAA has determined that a significant number of engines have unnecessarily been disassembled and that an acceptable procedure following illumination of the RBSH or the airframe mounted full flow scavenge debris monitor chip light is now available to determine when a disassembly is required. The procedure is predicated on data which substantiates that prior to a bearing failure, certain types of debris are liberated which are detectable and that the frequency of detection and quantity of debris increases as a bearing fails. A key element of the procedure is material identification of the debris in addition to visual inspection of the debris. The procedure requires an engine disassembly following illumination of either of the above chip lights only under certain conditions, whereas AD 87-26-10 requires the engine to be disassembled following illumination of either of the above chip lights under most conditions.

In addition, the FAA has determined that there is an acceptable alternate method for cleaning the RBSH and the oil feed ring of carbon buildup. This alternate cleaning method consists of: (1) Placing the RBSH in a heated furnace and blowing out the carbon ash; (2) cleaning the oil feed ring by immersing and flushing it; and (3) oil flow bench testing the RBSH with the ring installed.

Performance of this alternate cleaning procedure, in lieu of the original procedure for both the RBSH and the oil feed ring, removes the requirement of paragraph (h) of AD 87-26-10 for post-build engine run-up and clogging inspection of the Number 2 and Number 3 bearing oil jets. Deposits, which could be present in the feed lines due to insufficient cleaning and dislodged once oil flow is introduced, have been eliminated by the alternate cleaning procedure which requires an oil flow bench test following cleaning.

It has been determined that the relaxed procedures provided in this proposed AD maintain an acceptable level of safety without the need for frequent engine disassemblies and inspections.

Since this condition is likely to exist or develop on other engines of the same

type design, the proposed amendment would require: (1) Maintenance action upon illumination of the debris monitor cockpit indication light that is wired to the RBSH scavenge debris monitor and/or the airframe mounted full flow scavenge debris monitor; (2) a functional check of the full flow and RBSH, if so configured, scavenge debris monitor indication light system(s) each day of operation; (3) a one-time oil pump pressure output check; (4) repetitive oil acidity checks under certain conditions; (5) a one-time inspection of the front face of the Number 4 bearing a cage for cracking or metal release; (6) a 50-hour repetitive visual inspection of the RBSH scavenge debris monitor, if so configured, otherwise an inspection of the full flow scavenge debris monitor for metal contamination; and (7) maintenance action following engine assembly, under certain conditions, and change in engine oil type, downward adjustment of the oil pump output pressure, and/or exceedance of the appropriate engine maintenance manual limit for the clogging inspection of the Number 2 and Number 3 bearing oil jets.

Conclusion: The FAA has determined that this proposed regulation is relaxatory and is not considered to be major under Executive Order 12291. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety, Incorporation by Reference.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 87-26-10, Amendment 39-5787 (52 FR 48187), as follows:

Textron Lycoming (formerly Avco Lycoming, **TEXTRON**): Applies to **TEXTRON** Lycoming Model LTS101 series turboshaft engines.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained failure of the power turbine (PT) disk, which could result from failure of the Number 3 or Number 4 bearings, accomplish the following:

(a) Visually inspect all chip detectors, rate the amount and type of debris, and determine the category and type of chip light event in accordance with **TEXTRON** Lycoming Service Bulletin (SB) LT 101-77-30-0104, dated January 15, 1988, prior to further flight, whenever the debris monitor cockpit indicator light that is wired to the rear bearing support housing (RBSH) and/or the airframe mounted full flow scavenge debris monitor is illuminated, and proceed in accordance with the requirements of the Accomplishment Instructions, paragraph II.E., of **TEXTRON** Lycoming SB LT 101-77-30-0104, dated January 15, 1988.

(b) Check, each day of operation, the continuity of the RBSH scavenge debris monitor, if so configured, and the full flow scavenge debris monitor cockpit indication light system(s) by removing the monitor(s), shorting the magnetic contacts, and ensuring that the cockpit indication light(s) illuminates. If the light does not illuminate, correct the condition prior to further flight.

Notes.—(1) Refer to the appropriate aircraft maintenance manual for corrective action.

(2) FAA approved RBSH and full flow scavenge debris monitor indication light systems which permit the continuity to be checked from the aircraft cockpit, coupled with other appropriate checks, may be approved as an equivalent means of compliance to this paragraph by the Manager, Engine Certification Office, New England Region.

(c) Check the engine oil pump output within 50 hours in service after receipt of priority letter AD 87-10-10, issued May 15, 1987, or priority letter AD 86-22-08, issued October 30, 1986, otherwise within 50 hours in service after December 23, 1987, and immediately following an oil pump change and whenever oil pressure adjustment is required, as set forth below. If an engine oil pump output pressure check has been accomplished in accordance with the requirements of priority letter AD 87-10-10-R1, issued June 16, 1987, or priority letter AD 86-22-08 and documentation does not exist verifying that the pump was set at a value within the revised range given in the table herein, accomplished this check, as set forth below, within 50 hours in service after December 23, 1987.

(c)(1) Install a tee fitting in the line connecting the oil pressure transmitter to the engine oil pump, and install a direct reading wet pressure gauge (any gauge ranging from 0-125 up to 200 psig, calibrated to ± 2.0

percent at 100 psig) and an orifice of 0.025 inches in the line between the tee fitting and the wet pressure gauge.

CAUTION: Ensure that the orifice is installed in the line between the tee fitting and the wet pressure gauge and not in the oil pressure supply line to the engine.

(c)(2) Start the engine and warm the oil to 150 degrees Fahrenheit minimum. Increase the gas producer speed (Ng) to 95 percent. Stabilize at this Ng for at least one minute.

(c)(3) Adjust the engine oil pressure, in accordance with the table given below, by removing the lockwire from the slotted oil pressure adjustment slug on the right side of the oil pump and filter housing assembly, and turning the slug clockwise to increase pressure or counterclockwise to decrease pressure (one turn equals approximately 15 psig). If, prior to the above adjustment, the engine oil pump pressure indicated 70 psig or less for the LTS101-750 series engines, or 58 psig or less for the LTS101-600 and -650 series engines, prior to further flight, disassemble the RBSH assembly and inspect the Number 2 and Number 3 bearings and associated components.

Engine model	Specified range (psig)
LTS101-600A-2/-650B-1/-650B-1A/ 650C-2/-650C-3/-650C-3A/-750B- 1/-750C-1	80-100
LTS101-600A-3/-750A-1/-750A-3/- 750B-2	90-100

Note.—Refer to the appropriate engine maintenance manual instructions.

(c)(4) Verify that the aircraft oil pressure indicator indicates in the green arc when the oil pump is properly adjusted. If, upon completion of the check, the aircraft pressure gauge does not indicate in the green arc, the aircraft indicating system must be checked and corrected.

Note.—Refer to the appropriate aircraft maintenance manual instructions.

(c)(5) Remove the wet gauge, orifice, and tee fitting, and reconnect the oil pressure transmitter.

(c)(6) Ensure that the slotted oil pressure adjustment slug is lockwired after the proper adjustment.

Note.—Accomplishment of the oil pump output pressure check at new production engine acceptance testing or at engine installation by the engine or aircraft manufacturer, respectively, is considered an equivalent means of compliance with the requirement of the above paragraph for the initial check within 50 hours in service for engines with no time in service upon receipt of priority letter AD 87-10-10 or priority letter AD 86-22-08, otherwise as of December 23, 1987.

(d) Conduct an oil acidity check in accordance with the procedure given in the appropriate engine maintenance manual, Chapter 71-00-00, as follows:

(d)(1) Check the oil acidity within 25 hours in service after receipt of priority letter AD 87-10-10 or priority letter AD 86-22-08, otherwise within 25 hours in service after December 23, 1987, or within 50 hours in

service since the last oil change, whichever occurs later, and repeat at intervals not to exceed 25 hours in service until the oil pump filter and engine oil are changed.

(d)(2) Thereafter, perform an initial oil acidity check within 50 hours in service after the oil pump filter and engine oil are changed, and repeat at intervals not to exceed 25 hours in service until the oil pump filter and engine oil are changed.

(d)(3) If the oil acidity check limit, as specified in the appropriate engine maintenance manual, Chapter 71-00-00, is exceeded, prior to further flight, flush the engine lubrication system (including airframe-supplied oil cooler, tank, lines, etc.) and change the oil pump filter and engine oil.

Notes.—(1) Refer to the appropriate engine maintenance manual instructions.

(2) Information regarding the availability of approved acidity test kits may be obtained by contacting TEXTRON Lycoming, LT101 Product Support.

(e) Visually inspect the Number 4 power pinion gear roller bearing for cage cracks or metal release within 25 hours in service after receipt of priority letter AD 87-12-11, issued June 16, 1987, otherwise within 25 hours in service after December 23, 1987, by removing the Np indicator cover from the front of the gearbox.

(e)(1) If the cage is cracked or any metal is evident in the bearing area, prior to further flight, disassemble the gearbox to correct the condition.

(e)(2) If no cracking or metal release is noted, reinstall the Np indicator cover.

Notes.—(1) Removal and installation of the Np indicator cover should be accomplished in accordance with the appropriate engine maintenance manual and Avco Lycoming TEXTRON Maintenance Alert Notice, MA-LTS-101-72-00-0015, Revision 1, dated September 5, 1986.

(2) Inspection of the Number 4 bearing at new production engine assembly by the engine manufacturer is considered an equivalent means of compliance with the above requirement for engines with no time in service upon receipt of priority letter AD 87-12-11, otherwise as of December 23, 1987.

(f) Visually inspect the RBSH scavenge debris monitor, if so configured, otherwise inspect the full flow scavenge debris monitor within 50 hours in service after December 23, 1987, and thereafter, at intervals not to exceed 50 hours in service since last inspection, for metal contamination. If metal debris of sufficient quantity to illuminate the debris monitor cockpit indication light is evident on the respective debris monitor, prior to further flight, accomplish the requirements of paragraph (a) above pertaining to debris monitor light illumination.

Note.—Individual chips, flakes, slivers, nuggets of metal, or fuzz accumulation of sufficient dimension to bridge the magnetic contacts and illuminate the debris monitor cockpit indication light, though it has not done so prior to this repetitive inspection, are also cause for rejection. Metal of insufficient quantity to illuminate the debris monitor cockpit indication light is acceptable and

may be cleaned from the debris monitor upon completion of this repetitive inspection.

(g) Following assembly of an engine in which the PT module was built-up with a used RBSH and/or a used oil feed ring, conduct a post-build engine run-up and inspect the RBSH assembly in accordance with step 1.7 of Avco Lycoming TEXTRON Commercial Service Letter (CSL) 047, dated October 10, 1986, prior to return to service. If a clogging inspection value of 2.5 psig is exceeded, clean and inspect the RBSH and oil feed ring in accordance with steps 1.1 through 1.7 of Avco Lycoming TEXTRON CSL 047, dated October 10, 1986, or in accordance with SB LT 101-72-40-0103, dated January 15, 1988. Compliance with the requirements of TEXTRON Lycoming SB LT 101-72-40-0103, dated January 15, 1988, is considered an equivalent means of compliance to the post-build engine run-up and inspection requirements of this paragraph.

Note.—Accomplishment of a clogging inspection of the Number 2 and Number 3 bearing oil jets, prior to RBSH disassembly, may be advantageous under certain conditions. Refer to the appropriate engine maintenance manual instructions.

(h) If the type of oil is changed, conduct a clogging inspection of the Number 2 and Number 3 bearing oil jets in accordance with the procedures given in the appropriate engine maintenance manual, Chapter 79-30-00 for LTS101-600A-2/-600A-3/-750A-1 engines and Chapter 72-00-00 for the remaining LTS101 engines models, not less than 5 hours and not to exceed 10 hours in service after the oil change. If the clogging inspection limit of 5.0 psig is exceeded, accomplish paragraph (j) below.

(i) If at any time, excluding initial engine oil pump installation, the pump output pressure is or was adjusted downward, prior to further flight, conduct a clogging inspection of the Number 2 and Number 3 bearing oil jets in accordance with the procedure given in the appropriate engine maintenance manual, Chapter 79-30-00 for LTS101-600A-2/-600A-3/-750A-1 engines and Chapter 72-00-00 for the remaining LTS101 engine models. If the clogging inspection limit of 5.0 psig is exceeded, accomplish paragraph (j) below.

(j) If the limit for the clogging inspection of the Number 2 and Number 3 bearing oil jets of 5.0 psig is exceeded during accomplishment of paragraph (h) or (i) above, or during accomplishment of the applicable TEXTRON Lycoming engine maintenance manual periodic clogging inspection requirement, prior to further flight, accomplish the following:

(j)(1) Disassemble the RBSH assembly to correct the cause of clogging, and inspect the Number 2 and Number 3 bearings and associated components.

Note.—Refer to the appropriate engine maintenance manual instructions.

(j)(2) Clean and inspect the RBSH and oil feed ring in accordance with Avco Lycoming TEXTRON CSL 047, dated October 10, 1986, or in accordance with the requirements of TEXTRON Lycoming SB LT 101-72-40-0103, dated January 15, 1988.

Note.—Any time the clogging inspection results of the Number 2 and Number 3 bearing oil jets are recorded to document compliance with paragraph (g), (h), (i), or (j) of this AD. It is recommended that the actual gauge Number 2 value be recorded in the engine logbook.

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

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

(m) Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance schedule specified in this AD.

The FAA will request approval by the Federal Register to incorporate by reference the manufacturer's service documents identified and described in this document.

This amendment supersedes Amendment 39-5787 (52 FR 48187), AD 87-26-10.

Issued in Burlington, Massachusetts, on February 10, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-3660 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-07-AD]

Airworthiness Directives; Cessna Models 177RG and F177RG Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), which would require installation of a control to actuate the fuel strainer (gascolator) quick drain on Cessna Models 177RG and F177RG airplanes. The FAA has determined that these airplanes are not equipped with a quick drain control to remove water from the fuel strainer. The proposed actions would preclude engine power loss caused by undrained water in the fuel strainer.

DATES: Comments must be received on or before April 11, 1988.

ADDRESSES: Cessna Pilots Association Supplemental Type Certificates (STCs) SA2335CE and SA2336CE information may be obtained from Mr. John Frank, Editor Cessna Pilots Association, Wichita Mid-Continent Airport, 2120

Airport Road, P.O. Box 12948, Wichita, Kansas 67277, telephone (316) 946-4777. Air Plains Inc. STCs SA2344CE and SA2345CE information may be obtained from Mr. Kent McIntyre, Vice President, Air Plains, Inc., P.O. Box 541, Wellington, Kansas 67152, telephone (316) 326-8581. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-07-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88-CE-07-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Accident and incident reports on Cessna Models 177RG and F177RG airplanes indicate that water has collected in the fuel strainer (gascolator)

and then passed to the engine in quantities sufficiently large enough to cause power loss. Water may enter the engine fuel system or ice crystals may form from water and restrict fuel from entering the engine fuel system. These occurrences were attributed to the fact that these airplanes were not equipped with quick drain control provisions on the fuel strainer at the time of manufacture. The special preflight procedures required by AD 86-19-11 cannot be performed as intended on Cessna 177RG and F177RG models because these airplanes are not equipped with fuel strainer quick drain controls. Since the condition described herein is likely to exist on other airplanes of the same type design, an AD is being proposed which would require installation of fuel strainer quick drain controls on Cessna Models 177RG and F177RG airplanes. The fuel strainer quick drain control provisions proposed by this NPRM are identical to those installed on other Cessna airplanes that were equipped with fuel strainer quick drain controls at the time of manufacture.

The FAA has determined that approximately 1100 airplanes are affected by this proposal. The projected cost for parts and labor is \$200 per airplane. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to all serial numbers of Models 177RG and F177RG airplanes certificated in any category.

Compliance: Required within the next 75 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent power loss or engine stoppage due to water contamination of the fuel system, accomplish the following:

(a) Modify the airplane fuel system using one of the options in subparagraphs (a)(1), (a)(2), or (a)(3) below:

(1) Install a fuel strainer quick drain control in accordance with STC SA2344CE or SA2345CE.

Note 1.—These STCs are held by Air Plains, Inc., P.O. Box 541, Wellington, Kansas 67152, telephone (316) 326-8581.

(2) Install a fuel strainer quick drain control in accordance with STC SA2335CE or SA2336CE.

Note 2.—These STCs are held by Cessna Pilots Association, Inc., Wichita Mid-Continent Airport, 2120 Airport Road, P.O. Box 12948, Wichita, Kansas 67277, telephone (316) 946-4777.

(3) Install a fuel strainer quick drain control by using equivalent aircraft standard hardware.

Note 3.—The FAA has received reports of corrosion inside the fuel strainer bowl caused by undrained water. A check of the condition of the fuel strainer and bowl can be made during installation of the fuel strainer quick drain control.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used, if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this AD may obtain copies of the document(s) referred to herein upon request to: Cessna Pilots Association Supplemental Type Certificates (STCs) SA2335CE and SA2336CE information may be obtained from Mr. John Frank, Editor Cessna Pilots Association, Wichita Mid-Continent Airport, 2120 Airport Road, P.O. Box 12948, Wichita, Kansas 67277, telephone (316) 946-4777. Air Plains Inc. STCs SA2344CE and SA2345CE information may be obtained from Mr. Kent McIntyre, Vice President, Air Plains, Inc., P.O. Box 541, Wellington, Kansas 67152, telephone (316) 326-8581. These documents may also be examined

at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 10, 1988.

Donald J. Schneider,

Acting Director, Central Region.

[FR Doc. 88-3661 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard**33 CFR Part 117**

[CGD7-87-75]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Florida East Coast Railroad the Coast Guard is considering a change to the regulations governing the Railroad Bridge at Stuart, Florida by requiring that the bridge remain in the closed position and be opened on signal for the passage of vessels between the hours of 10 p.m. and 6 a.m. This proposal is being made to expedite the passage of trains through the area and further reduce the noise from the warning horn which sounds when the bridge is lowered automatically. This change should still provide for the reasonable needs of navigation since there is generally a very low volume of requests for opening of the draw during these evening hours.

DATE: Comments must be received on or before April 7, 1988.

ADDRESS: Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, Room 400, 909 SE 1st Avenue, Miami, Florida 33131-3050. The comments and other material referenced in this notice will be available for inspection and copying on the fourth floor of the Brickell Plaza Federal Building (909 SE 1st Avenue.) Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialists, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of proposed regulations

The bridge, which is normally in the open to navigation position presently operates automatically by lowering for the passage of a train, then raising after the train has passed. Under the proposed regulations, a vessel requesting an opening while the bridge is down would normally result in an immediate opening of the bridge. If a train is crossing the bridge, the vessel would be required to wait until the train has passed. Drawtender logs show that delayed opening would occur about once every other night. Most of the trains run at night and the bridge must now cycle down and back up for the passage of each train. This results in delays for the trains and excessive horn noise caused by the warning blasts as the bridge goes through the cycle. This change should facilitate train movements, reduce horn sounds, and meet the reasonable needs of navigation.

Economic Assessment and certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge openings are infrequent. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g)

2. Section 117.317(c) is revised to read as follows:

§117.317 Okeechobee Waterway.

(c) *Florida East Coast Railroad bridge, mile 7.4 at Stuart.* The draw shall operate as follows.

(1) The draw is automatically operated from 6 a.m. to 10 p.m., and is normally in the fully open position displaying flashing green lights to indicate that vessels may pass.

(2) From 6 a.m. to 10 p.m. when a train approaches the bridge, the lights go to flashing red and a horn sounds 4 blasts, pauses and then repeats 4 blasts. After an 8 minute delay, the draw automatically lowers and locks, provided that scanning equipment reveals nothing under the draw. The draw remains down for a period of 8 minutes, or longer if the approach track circuit is occupied. After the train has cleared, the draw opens and the lights return to flashing green.

(3) Between 10 p.m. and 6 a.m. the draw is manually operated and may remain in the closed position, but must open on signal or as soon thereafter as the approach track circuit is cleared.

Dated: February 5, 1988.

M.J. O'Brien,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 88-3693 Filed 2-19-88; 8:45 am]

BILLING CODE 4919-14-M

33 CFR Part 165

[CGD11-11-88-05]

Security Zone Regulations, San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Justice, Federal Prison System, Federal Correctional Institution, Terminal Island, California has requested the

Coast Guard amend 33 CFR 165. This change will establish a security zone 100 yards wide by 850 yards long on the eastern side of the prison to control entry and egress from this area. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments must be received on or before March 15, 1988.

ADDRESS: Comments should be mailed to Marine Safety Office Los Angeles/Long Beach, 165 North Pico Ave., Long Beach, CA 90802. The comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office, 165 North Pico Ave., Long Beach, CA. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG J.A. Stagliano, Port Safety and Security Division, Marine Safety Office, 165 North Pico Ave., Long Beach, CA (213)499-5580.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD11-11-88-05) and the specific section of the proposal to which their comments apply, and give the reasons for their comments. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received and the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG J.A. Stagliano, project officer for the Captain of the Port and LCDR M.G. Barrier, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The U.S. Department of Justice, Federal Prison System requests that a security zone be established in San Pedro Bay, California. During the last few years the Federal Correctional Institution has moved from a relatively low security facility to the principle jail facility for the Central District of the California Federal court system housing

many maximum security inmates. For this reason, a controlled perimeter is needed to prevent entry and egress. The proposed rules will establish a security zone and facilitate the security needs of the Correctional Institution. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certificate

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Subpart C of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR, 6.04-1, 6.04-6 and 160.5(b).

2. A new section 165.T1170 is added to read as follows:

§ 165.T1170 Security Zone: San Pedro Bay, California.

(a) *Location.* The waters bounded by the following coordinates are a Security Zone: 33-43-46.9N, 118-16-00.0W; 33-43-47.8N, 118-15-55.9W; 33-43-24.3N, 118-15-46.5W; 33-43-23.2N, 118-15-51.0W.

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: February 9, 1988.

R.A. Janeczek,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 88-3695 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 261**

[FRL-3331-9]

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of Proposed Rulemaking; extension of public comment period.

SUMMARY: On January 8, 1988, at 53 FR 519, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking to provide the Agency's interpretation of the opinion of the District of Columbia Circuit Court of Appeals. The court held that the EPA had exceeded its statutory authority by regulating, or claiming authority to regulate, certain recycled hazardous secondary materials. *American Mining Congress v. EPA*, 824 F.2d 1177. The notice also proposed amendments to the rules as required by the court's opinion. In general, the Agency proposed to exclude from regulation certain in-process recycled secondary materials in the petroleum refining industry, and certain other sludges, by-products, and spent materials that are reclaimed as part of continuous, on-going manufacturing processes. The original comment period ended February 22, 1988. The Agency agrees with the request from a commenter, the American Mining Congress, that the comment period should be extended, due to the complexity of the subject and the issues involved. To provide ample opportunity for commenters to submit their comments, the public comment period is hereby extended by 30 days to March 23, 1988.

DATES: EPA will not accept public comments on the proposal until March 23, 1988.

ADDRESSES: The public docket for this rulemaking is located at Room LG-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. The docket number assigned to this notice is F-87-SWRP-FFFFF. Persons who wish to comment on the notice should place the docket number on their comments, and provide an original and 2 copies. The EPA RCRA docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an

appointment by calling (202) 475-9327. A maximum of 50 pages may be copied from any regulatory docket at no cost. Additional copies cost \$0.20 per page.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346 (in Washington, DC, call (202) 382-3000). For information on specific aspects of today's notice, contact Michael Petruska, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 475-8551.

Dated: February 17, 1988.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-3675 Filed 2-19-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 67**

[Docket No. FEMA-6925]

Proposed Flood Elevation Determinations**AGENCY:** Federal Emergency Management Agency.**ACTION:** Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.**FOR FURTHER INFORMATION CONTACT:**

Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202)646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed

determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.
The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	LaPaz County (unincorporated areas).	Tyson Wash.....	Downstream edge of U.S. Highway 60.....	*870	*870
			Downstream edge of Interstate Highway 10 (westbound lane).	*875	*874
			Upstream edge of Interstate Highway 10 (eastbound lane).	*877	*878
			3,590 Feet upstream of Interstate Highway 10 (eastbound lane).	*892	*893
			5,760 feet upstream of Interstate Highway 10 (eastbound lane).	*901	*901
California	City of Hemet, Riverside County.	Salt Creek.....	Approximately 3,800 feet upstream of Fisher Street.	*1511	*1511
			Approximately 90 feet downstream of Cawston Avenue.	*1518	*1519
			Approximately 160 feet upstream of Sanderson Avenue.	*1528	*1523
			Approximately 1,560 feet upstream of Sanderson Avenue.	*1531	*1525
			Approximately 1,200 feet downstream of Lyon Avenue.	*1541	*1536
			Approximately 800 feet downstream of Lyon Avenue.	*1542	*1539
			Just downstream of Lyon Avenue.....	*1547	*1547
Maps available for inspection at the Offices of the Director of Public Works, 450 East Latham Avenue, Hemet, California 92343. Send comments to The Honorable Patricia Herron, Mayor, City of Hemet, 450 East Latham Avenue, Hemet, California 92343.					
	Mendocino County (unincorporated areas).	Baechtel Creek.....	Approximately 120 feet downstream of the Southern Pacific Railroad.	*1364	*1364
Approximately 325 feet downstream of the Southern Pacific Railroad.			*1363	*1364	
Approximately 1,500 feet downstream of the Southern Pacific Railroad.			*1361	*1361	
Maps are available for inspection at the Mendocino County Planning and Building Services Department, 589 Low Gap Road, Ukiah, California. Send comments to the Honorable Norman L. de Vall, Chairman, Mendocino County Board of Supervisors, Mendocino County Courthouse, Room 113, Ukiah, California 95482					
	City of Willits, Mendocino County.	Baechtel Creek.....	Approximately 120 feet downstream of Southern Pacific Railroad.	*1364	*1364
Approximately 325 feet downstream of Southern Pacific Railroad.			*1363	*1364	
Approximately 1,500 feet downstream of Southern Pacific Railroad.			*1361	*1361	
Maps are available for review at City Hall, City Planning Department, 111 East Commercial Street, Willits, California. Send comments to The Honorable Herb H. Giese, Mayor, City of Willits, City Hall, 111 East Commercial Street, Willits, California 95490.					
Colorado	San Miguel County (unincorporated areas).	San Miguel River.....	Approximately 1,980 feet upstream of the confluence of Leopard Creek.	*7290	*7290
			Approximately 2,550 feet upstream of the confluence of Leopard Creek.	*7297	*7295
			Approximately 2,610 feet upstream of the confluence of Leopard Creek.	*7300	*7302
			Approximately 3,170 feet upstream of the confluence of Leopard Creek.	*7302	*7303
			Approximately 3,720 feet upstream of the confluence of Leopard Creek.	*7307	*7307
			Approximately 7,280 feet upstream of the confluence of Leopard Creek.	*7352	*7352
			Approximately 8,050 feet upstream of the confluence of Leopard Creek.	*7359	*7358
			Approximately 8,350 feet upstream of the confluence of Leopard Creek.	*7363	*7365
			Approximately 9,310 feet upstream of the confluence of Leopard Creek.	*7373	*7373
			Approximately 5,330 feet downstream of the confluence of Fall Creek.	*7388	*7388
			Approximately 4,250 feet downstream of the confluence of Fall Creek.	*7397	*7398
			Approximately 3,790 feet downstream of the confluence of Fall Creek.	*7403	*7402
			Approximately 3,360 feet downstream of the confluence of Fall Creek.	*7408	*7410

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		San Miguel River (near Telluride).	Approximately 2,000 feet downstream of the confluence of Fall Creek.	*7420	*7420
			At western corporate boundary of the Town of Telluride.	*8717	*8717
			Approximately 590 feet upstream of western corporate boundary of the Town of Telluride.	*8722	*8726
			Approximately 1,500 feet upstream of western corporate boundary of the Town of Telluride.	*8729	*8728
			At eastern corporate boundary of the Town of Telluride.	*8774	*8774
Maps are available for inspection at the San Miguel County Planning Commissioner's Office, 305 West Colorado Avenue, Telluride, Colorado.					
Send comments to the Honorable Raymond Snyder, Chairman, San Miguel County Board of Commissioners, 305 West Colorado Avenue, County Courthouse, Telluride, Colorado 81435.					
Colorado	Town of Telluride (San Miguel County).	San Miguel River	At western corporate boundary	*8717	*8717
			Approximately 740 feet downstream of the confluence of Cornet Creek.	*8723	*8725
			Approximately 500 feet upstream of the confluence of Cornet Creek.	*8735	*8731
			Approximately 1,130 feet upstream of the confluence of Cornet Creek.	*8740	*8736
			Approximately 80 feet upstream of South Pine Street.	*8751	*8748
			Approximately 240 feet downstream of the Maple Street.	*8757	*8756
			Approximately 1,000 feet upstream of the Maple Street.	*8766	*8764
			At eastern corporate boundary	*8774	*8774
Maps are available for inspection at the Town Hall Annex, 135 South Spruce Street, Telluride, Colorado 81435.					
Send comments to the Honorable Chip Lenihan, Mayor, 135 West Columbia Street, Box 397 Telluride, Colorado 81435.					
Florida	City of Pinellas Park, Pinellas County.	Cross Bayou Canal	Just upstream of Haines Road along Ditch 1	*12	*11
		Ditch 1	Just upstream of CSX railroad	*13	*11
			Just upstream of 55th Street North	None	*14
		Ditch 1-B-5	Just upstream of 82nd Avenue North	None	*16
		Ditch 2A	About 1000 feet upstream of confluence with Ditch 2.	*13	*12
			Just upstream of U.S. Route 19	*15	*13
		Ditch 4	Just upstream of 62nd Avenue North	None	*12
			Just upstream of 62nd Street North	*17	*15
			Just upstream of CSX railroad	None	*17
		Ditch 4A	Northwest corner of the intersection of CSX railroad and 62nd Avenue North.	None	*19
Maps available for inspection at the Engineering Department, 6051 78th Avenue, North, Pinellas Park, Florida 33565.					
Send comments to The Honorable Cecil Bradbury, Mayor, City of Pinellas Park, City Hall, P.O. Box 1100, Pinellas Park, Florida 34664.					
Georgia	City of Rome, Floyd County.	Silver Creek	At confluence	*597	*597
			Just upstream of Crescent Avenue	*601	*600
			About 1.2 miles upstream of U.S. Route 411	*616	*620
		Prentis Branch	At mouth	*611	*609
			Just upstream of Norfolk Southern Railway	*612	*611
Maps available for inspection at the City Clerk's Office, City Auditorium, Rome, Georgia 30167.					
Send comments to The Honorable John Bennett, City Manager, City of Rome, City Hall, Box 1433, Rome, Georgia 30167.					
Minnesota	City of Delano, Wright County.	South Fork Crow River	About 2.4 miles downstream of Bridge Avenue	None	*917
			About 1.8 miles downstream of Bridge Avenue	*919	*919
Maps available for inspection at the City Hall, 205 Bridge Avenue, Delano, Minnesota.					
Send comments to The Honorable Gordon Wetter, Mayor, City of Delano, City Hall, 205 Bridge Avenue, Delano, Minnesota 55328.					
New Mexico	Gallup, city, McKinley County.	Puerco River	Approximately 0.73 mile upstream of Second Street.	None	*6,516
			Approximately 1.10 miles upstream of Second Street.	None	*6,520
Maps available for inspection at the City Hall, 110 West Aztec, Gallup, New Mexico.					
Send comments to The Honorable Edward Munoz, Mayor of the City of Gallup, McKinley County, P.O. Box 1270, Gallup, New Mexico 87301.					
New York	Dover, town, Dutchess County.	Tenmile River	Approximately 250 feet downstream of Reagan's Mill Road.	*342	*341

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 200 feet upstream of Reagan's Mill Road.	*346	*344
			Approximately 1,400 feet upstream of Reagan's Mill Road.	*347	*346
<p>Maps available for inspection at the Town Hall, Dover Plains, New York. Send comments to The Honorable Diane Judson, Supervisor of the Town of Dover, Dutchess County, R.D. #2, P.O. Box 132, Dover Plains, New York 12522.</p>					
	Lenox, town, Madison County.	Canastota Creek.....	Approximately 200 feet upstream of Seneca Turnpike bridge.	*466	*465
<p>Maps available for inspection at the Lenox Town Hall, 205 South Petersboro Street, Canastota, New York. Send comments to The Honorable John S. Patane, Supervisor of the Town of Lenox, Madison County, P.O. Box 129, Canastota, New York 13032.</p>					
Oklahoma.....	Bartlesville, City Washington and Osage Counties.	Caney River.....	Approximately 45 feet upstream of Tuxedo Boulevard.	None	*674
		Rice Creek.....	Approximately 50 feet upstream of downstream corporate limits.	None	*678
			Approximately 60 feet upstream of U.S. Highway 75/Washington Boulevard.	None	*694
			Approximately 3,400 feet upstream of U.S. Highway 75/Washington Boulevard.	None	*707
		Rice Creek Tributary.....	Approximately 20 feet upstream of downstream corporate limits.	None	*668
			At Silver Lake Road.....	None	*668
		Eliza Creek.....	Approximately 25 feet downstream of downstream corporate limits.	None	*689
			Approximately 25 feet downstream of upstream corporate limits.	None	*704
		Butler Creek.....	Approximately 85 feet downstream of upstream corporate limits.	None	*677
			Approximately 30 feet upstream of downstream corporate limits.	None	*678
			Approximately 40 feet downstream of most upstream corporate limits.	None	*680
<p>Maps available for inspection at the City Hall, 6th Street and Dewey Avenue, Bartlesville, Oklahoma. Send comments to The Honorable Arch Robbins, Mayor of the City of Bartlesville, Washington and Osage Counties, P.O. Box 699, Bartlesville, Oklahoma 74005.</p>					
Oregon.....	Clackamas County (unincorporated areas).	Johnson Creek.....	Immediately downstream of 282nd Avenue.....	None	444*
			Immediately upstream of 282nd Avenue.....	None	447*
			Approximately 655 feet downstream of Orient Drive.	None	494*
			Approximately 300 feet upstream of Orient Drive....	None	504*
			Approximately 900 feet downstream of Pleasant Home Drive.	None	528*
			Approximately 50 feet downstream of Pleasant Home Drive.	None	538*
<p>Maps are available for review at Clackamas County Department of Transportation and Development, 902 Abernethy Street, Oregon City, Oregon. Send comments to the Honorable Ed Lindquist, Chairman, Clackamas County Board of Commissioners, 906 Main Street, Oregon City, Oregon 97045.</p>					
Tennessee.....	City of Graysville, Rhea County.	Salce Creek.....	Just upstream of Dayton Avenue.....	*734	*734
			About 1,850 feet upstream of Dayton Avenue.....	*736	*738
<p>Maps available for inspection at the City Hall, Graysville, Tennessee. Send comments to The Honorable Richard Post, Mayor, City of Graysville, City Hall, P.O. Box 373, Graysville, Tennessee 37338.</p>					
Texas.....	Junction, city, Kimble County.	North Llano River.....	Approximately 1,200 feet downstream of U.S. Routes 83, 290, and 377.	None	*1,710
			Approximately 0.2 mile upstream of U.S. Routes 83, 290, and 377.	None	*1,715
<p>Maps available for inspection at the City Hall, 102 N. 5th, Junction, Texas. Send comments to The Honorable William K. Blackburn, Mayor of the City of Junction, Kimble County, P.O. Box 446, Junction, Texas 76849.</p>					
	North Richland Hills, city, Tarrant County.	Stream CB-1.....	Approximately 25 feet upstream of Fox Hollow Road.	*635	*631
			Approximately 450 feet upstream of St. Louis Southwestern Railroad bridge.	*636	*634
			Approximately 50 feet downstream of Chapman Drive.	*650	*647
			Approximately 270 feet upstream of Chapman Drive.	*652	*651
			At downstream side of Briardale Drive.....	None	*665

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 7301 N.E. Loop 820, North Richland Hills, Texas. Send comments to The Honorable Dan Echols, Mayor of the City of North Richland Hills, Tarrant County, P.O. Box 18609, North Richland Hills, Texas 76180.					
	San Antonio, city, Bexar County.	Huebner Creek.....	At confluence with Leon Creek.....	*760	*761
			Approximately 2,100 feet upstream of confluence of Leon Creek.	*764	*763
			Approximately 340 feet upstream of Whitby Road...	*869	*868
			Approximately 2,000 feet upstream of Whitby Road.	*878	*877
		Huebner Creek Tributary A.....	Approximately 600 feet downstream of Eckert Boulevard.	*846	*847
			Approximately 900 feet upstream of Eckert Boulevard.	*861	*862
		Tributary B Huebner Creek.....	Approximately 750 feet upstream of Oakland Road.	*883	*882
			Approximately 2,350 feet upstream of Oakland Road.	*898	*897
		San Antonio River.....	Approximately 200 feet upstream of South East Military Drive (Loop 13).	*551	*549
			Approximately 1,000 feet upstream of East Pyron Road.	*555	*554
		State Hospital Creek.....	At confluence with San Antonio River.....	*551	*550
		Leon Creek.....	Approximately 250 feet downstream of Babcock Road.	*917	*916
			At West Prue Road.....	*892	*891
		Southwest Research Creek.....	At the corporate limit boundary, approximately 700 feet upstream of U.S. Route 410.	None	*758
		Beitel Creek.....	Approximately .91 mile upstream of U.S. Route 410.	*725	*724
			Approximately 3,800 feet upstream of U.S. Route 410.	*722	*721
Maps available for inspection at the Department of Public Works, Drainage Engineering Section, 14 West Commerce Street, 7th Floor, San Antonio, Texas. Send comments to The Honorable Henry Cisneros, Mayor of the City of San Antonio, Bexar County, P.O. Box 9066, San Antonio, Texas 78285.					
Texas.....	Waco, city, McLennan County.	Brazos River.....	Approximately 5,600 feet downstream of Lake Brazos Dam.	*385	*383
			At Lake Shore Drive.....	*398	*395
			Upstream corporate limits.....	*404	*403
		Bosque River.....	Confluence with Brazos River.....	*394	*392
			Approximately 500 feet upstream of F.M. 1637.....	*398	*402
		Bosque River Tributary.....	Confluence with Bosque River.....	*394	*399
			Approximately 3,100 feet upstream of confluence with Bosque River.	*398	*399
		Wilson Creek.....	Confluence with Brazos River.....	*393	*390
			Approximately 2,025 feet upstream of confluence with Brazos River.	*393	*392
		Delano Avenue Ditch.....	Confluence with Brazos River.....	*392	*390
			Approximately 1,300 feet upstream of confluence with Brazos River.	*394	*393
		Barron's Branch.....	Confluence with Brazos River.....	*390	*389
		Marlin's Branch.....	Confluence with Brazos River.....	*388	*387
		Waco Creek.....	Confluence with Brazos River.....	*388	*387
		Diversion Ditch.....	Confluence with Brazos River.....	*397	*394
			Approximately 400 feet upstream of confluence with Brazos River.	*397	*396
Maps available for inspection at the Waco City Hall, Engineering Department Office, Third and Austin, Waco, Texas. Send comments to The Honorable Lanelle McNamara, Mayor of the City of Waco, McLennan County, 500 Republic Bank Tower, Waco, Texas 76701.					
Texas.....	Watauga, city, Tarrant County.	Singing Hills Creek.....	Approximately 1,320 feet upstream of Mackneal Trail.	*592	*591
			Approximately 170 feet upstream of Watauga-Smithfield Road.	*598	*599
Maps available for inspection at 7101 Whitley Road, Watauga, Texas. Send comments to The Honorable Virgil Anthony, Mayor of the City of Watauga, Tarrant County, 7101 Whitley Road, Watauga, Texas 76148.					
Virginia.....	Alexandria, City, Independent City.	South Lucky Run.....	Approximately 150 feet upstream of earthen dam...	*167	*169
			Approximately 400 feet upstream of earthen dam...	*170	*169
Maps available for inspection at the City Hall, Alexandria, Virginia. Send comments to the Honorable James P. Moran, Jr., Mayor of the City of Alexandria, P.O. Box 178, Alexandria, Virginia 22313.					
Virginia.....	Colonial Heights, City, Independent City.	Old Town Creek.....	800 feet upstream of U.S. Route 1-301.....	*55	*54

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,300 feet upstream of U.S. Route 1-301.	*55	*54
Maps available for inspection at the Planning and Community Development Office, 1507 Boulevard, Colonial Heights, Virginia. Send comments to the Honorable James B. McNeer, Mayor of the City of Colonial Heights, 1507 Boulevard, Colonial Heights, Virginia 23834.					
Virginia.....	Grundy, Town, Buchanan County.	Levisa Branch.....	Approximately 1.0 mile downstream of Coal Tipple Bridge.	*1,024	*1,025
			At downstream side of Coal Tipple Bridge.....	*1,043	*1,039
			At confluence of Slate Creek.....	*1,054	*1,051
			At downstream side of State Route 615 (Hoot Owl Road).	*1,067	*1,066
			Approximately 0.7 mile upstream of State Route 615.	*1,074	*1,074
			Approximately 1.2 miles upstream of State Route 615.	*1,081	*1,082
		Slate Creek.....	At confluence with Levisa Fork.....	*1,054	*1,051

Maps available for inspection at the Town Building, Grundy, Virginia.

Send comments to The Honorable W. Miller Richardson, Mayor of the Town of Grundy, Buchanan County, P.O. Box 711, Grundy, Virginia 24614.

Virginia.....	Staunton, City, Independent City.	Lewis Creek.....	At downstream corporate limits.....	None	*1,257
			At upstream corporate limits.....	None	*1,468
		Greenville Avenue Tributary.....	Approximately 300 feet upstream of Bessie Welles School Drive.	None	*1,418
			At upper limit of detailed study.....	None	*1,471
		Peyton Creek.....	Approximately 680 feet downstream of Donaghe Street.	None	*1,432
			Approximately 1,900 feet upstream of Surrey Road.	None	*1,530
		Buttermilk Spring Run.....	Approximately 170 feet upstream of Haile Street....	None	*1,418
			Approximately 980 feet upstream of CSX Transport Railroad.	None	*1,542
		Springhill Branch.....	Approximately 100 feet upstream of confluence with Peyton Creek.	None	*1,442
			Approximately 4,000 feet upstream of confluence with Peyton Creek.	None	*1,491
		West Beverley Tributary.....	Approximately 20 feet upstream of confluence with Peyton Creek.	None	*1,444
			Approximately 2,800 feet upstream of confluence with Peyton Creek.	None	*1,479

Maps are available for inspection at the Inspection Engineering Division, 113 East Beverley, Staunton, Virginia.

Send comments to the Honorable John A. Clem III, Mayor of the City of Staunton, City Hall, P.O. Box 58, Staunton, Virginia 24401.

Wisconsin.....	City of Sheboygan, Sheboygan County.	Fisherman's Creek.....	Just upstream of South 12th Street.....	None	*593
			About 420 feet upstream of Washington Avenue....	None	*639
		Pigeon River.....	About 400 feet downstream of Mill Road.....	None	*592
			About 0.86 Mile upstream of Calumet Drive.....	None	*610

Maps available for inspection at the City Hall, Planning Department, 828 Center Avenue, Sheboygan, Wisconsin.

Send comments to the Honorable Richard Scheider, Mayor, City of Sheboygan, City Hall, 828 Center Avenue, Sheboygan, Wisconsin 53081.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

Issued: February 11, 1988.

[FR Doc. 88-3638 Filed 2-19-88; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 42, 44, 45, 170 and 174

[CGD 76-080]

Hopper Dredge Working Freeboard,
Load Line and Stability Requirements

AGENCY: Coast Guard, DOT.

ACTION: Supplementary notice of proposed rulemaking; Reopening and extension of comment period.

SUMMARY: The U.S. Coast Guard is extending the comment period on its supplemental notice of proposed rulemaking published December 14, 1987 (52 FR 47422) concerning load line and stability regulations which would allow self-propelled hopper dredges to obtain a working freeboard. This extension was requested by the law firm, Keller and Heckman, Washington, DC, on behalf of the Stuyvesant Dredging Company, in order to adequately analyze the technical details of this proposed rulemaking. The request is

being granted to encourage this type of public input to the rulemaking.

DATES: Comments must be submitted on or before March 23, 1988.

ADDRESSES: Comments should be submitted to the Commandant (G-CMC/21) (CGD 76-080), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday, except Federal holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G-CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1477. The Draft

Evaluation may also be inspected or copied at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT: LCDR James McCarthy, Naval Architecture Branch, Room 1308, U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-2988. Normal office hours are 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Dated: February 11, 1988.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-3694 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-537, RM-6039]

Television Broadcasting Services; Kingston and Oneonta, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; extension of time.

SUMMARY: By *Notice of Proposed Rule Making*, 52 FR 48131, December 18, 1987, the Commission proposed to delete Channel *42 from Oneonta, New York, and reallocate it to Kingston, New York, as the community's first local noncommercial educational service. At the request of WMHT Educational Telecommunications Corporation and WSKG Public Telecommunications Council, the Commission extends the filing deadline for comments and reply comments.

DATES: Comments must be filed on or before March 2, 1988, and reply comments on or before March 17, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven C. Schaffen, Esq., Schwartz, Woods and Miller, Suite 206, The Palladium, 1325 18th Street, NW., Washington, DC 20036 (Counsel to WMHT Educational Telecommunications Corporation).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order Extending Time for Filing Comments and Reply Comments, MM Docket No.

87-537, adopted January 29, 1988, and released February 11, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.
Federal Communications Commission.
Alex D. Felker,
Chief, Mass Media Bureau.
[FR Doc. 88-3648 Filed 2-19-88; 8:45 am]
BILLING CODE 6712-01-M

VETERANS' ADMINISTRATION

48 CFR Parts 807 and 852

Acquisition Regulations Relating to Cost Comparison

AGENCY: Veterans' Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans' Administration (VA) is issuing a proposed revision to the Veterans' Administration Acquisition Regulation (VAAR) to implement the Office of Management and Budget (OMB) Circular A-76, which requires that a cost comparison be utilized in determining whether required services will be performed by Federal employees or by a contractor. This proposed regulation will provide the means for enhancing the VA implementation of the requirements of OMB Circular A-76. This regulation is being published as a proposed rule in order to solicit public comment on the proposed acquisition-related guidance in conducting A-76 cost comparisons.

DATES: Written comments must be submitted no later than March 23, 1988. Comments will be available for public inspection until April 4, 1988. The final regulation will be effective upon approval.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections to the Administrator of Veterans Affairs (271A), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only at the Veterans Services Unit, room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Chief, Policy Division, Office of Procurement and Supply, (202) 233-2334.

SUPPLEMENTARY INFORMATION:

I. Background

OMB Circular A-76 requires that a cost comparison be utilized in determining whether required services will be performed by Federal employees or by a contractor.

The acquisition process is used to determine the respective costs of Government and contract performance. There are several unique features of the A-76 acquisition process which are implemented in this proposed rule.

OMB Circular A-76 requires that a contractor awarded a contract as the result of an A-76 solicitation will provide Federal employees displaced as a result of the contract the right of first refusal for job openings. This proposed rule provides the means for implementing this requirement.

Transmittal No. 4 to OMB Circular A-76 provides for the subtraction of a bidder's/offeree's contribution to Social Security (except Medicare) and thrift or profit sharing plans from the bid/offer price for cost comparison purposes. The proposed rule provides a means for obtaining this projected price and a means for its verification.

The VA has provided for the use, when fully justified against salient factors, of a requirement that two responsible and responsive bidders or offerors respond to an A-76 solicitation for commercial operation to be considered. This requirement would only be used under limited circumstances where the need for a second commercial source could be justified. Appropriate criteria for this assessment are included.

38 U.S.C. 5010 prescribes different criteria to be used in A-76 cost comparisons for VA medical facility functions. Bidders/offerors are alerted to this fact.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this proposed rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this proposed rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions will only apply to A-76 solicitations.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these proposed regulations.

List of Subjects in 48 CFR Parts 807 and 852

Government procurement.

Approved: February 12, 1988.

Thomas K. Turnage,
Administrator.

In 48 CFR Chapter 8, Part 807 and sections 852.207-70, 852.207-71, 852.207-72, and 852.207-73, are proposed to be added as set forth below:

1. Part 807 is added to read as follows:

PART 807—ACQUISITION PLANNING

Subpart 807.3—Contractor Versus Government Performance

- Sec.
- 807.300 Scope of subpart.
 - 807.302 General.
 - 807.304 Procedures.
 - 807.304-72 Requirement for second commercial source for A-76 solicitations.
 - 807.304-73 Bid opening/receipt of proposals.
 - 807.304-75 Bid acceptance.
 - 807.304-76 Contract effective date.
 - 807.304-77 Right of first refusal.
 - 807.370 Bidder/offeror cost of Social Security and thrift/profit sharing plan contributions.
 - 807.370-1 General.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 807.3—Contractor Versus Government Performance

807.300 Scope of subpart.

This subpart prescribes basic procedures and principles to be followed in performing the contracting

aspect of the OMB Circular A-76 cost comparison process.

807.302 General.

(a) Pursuant to 38 U.S.C. 5010(c)(2), all A-76 cost comparisons of commercial and/or industrial activities performed by the VA Department of Medicine and Surgery (DM&S) at VA medical facilities will be based upon comparative cost of the first five years of contract performance. Consequently, such cost comparisons will specify contractual commitments for one year plus four one-year renewal options (see FAR 17.2). (Other VA departments and staff offices may use contractual commitments for a minimum of one year with two one-year renewal options or a maximum of one year with four one-year renewal options.) Furthermore, 38 U.S.C. 5010(c)(4) prescribes a cost comparison methodology which differs from that contained in OMB Circular A-76. In order that bidders/offerors are made aware of the cost comparison methodology which will be applied, the provision in 852.207-72, Cost Comparison Criteria—VA Medical Facilities, will be included in solicitations for cost comparisons of VA DM&S activities which are currently performed at VA medical facilities by VA employees.

807.304 Procedures.

807.304-72 Requirement for second commercial sources for A-76 solicitations.

(a) The general policy of the VA is to proceed with A-76 cost comparison if one or more responsive and responsible bidder/offerors respond to an A-76 solicitation. However, if justified and approved in accordance with this section, an A-76 solicitation may require that two responsive and responsible bidders/offerors respond to the solicitation and will use the appropriate provision specified in 852.207-71. If the requirement for two bidders is approved and used, the cost comparison process will be terminated and the solicitation cancelled unless two bids/offers are received.

(b) The justification for use of a second commercial source requirement shall address each of the following criteria:

(1) Criticality of the activity under study to the mission of the facility and the degree of adverse impact on facility from disruption in services.

(2) Amount of resources needed (facility and capital investment, time frame, and costs attributed to obtaining adequate staff) to convert the service back to in-house operation.

(3) The availability and feasibility of obtaining the service from other VA facilities or other Government facilities.

(4) Evaluation of anticipated bidder's/offeror's essential qualification characteristics.

(5) Availability of other commercial sources in close geographic proximity to the facility.

(c) Requests to use the provisions specified in 852.207-71 will be prepared by the director (or head of the requesting element for activities consisting of less than 10 FTEE) of the facility in which the commercial activity presently exists. The request will, at a minimum, address the criteria in paragraph (b) of this section and will be forwarded for approval as follows:

(i) For A-76 solicitations comparing in-house activities consisting of less than 10 FTEE, approval is delegated to the facility director.

(ii) For A-76 solicitations comparing in-house activities consisting of 10 FTEE or more, approval will be made by the respective department head or staff office director, or their designee.

(d) A copy of each approval granted pursuant to paragraphs (b) and (c) of this section will be forwarded to Director, Office of Program Analysis and Evaluation (07), through the respective department head or staff office director, within five working days of such approval.

807.304-73 Bid opening/receipt of proposals.

The date established for bid opening or receipt of proposals will normally be 90 days after sending the request for publication to the Commerce Business Daily (CBD) (65 days after issuing the solicitation).

807.304-75 Bid acceptance.

Bid acceptance shall be 90 days from bid opening/receipt of proposals in order to accommodate the time necessary to evaluate bids/offers, finalize the cost comparison and process any appeals. Contracting officers will insert "90 days" in FAR clause 52.214-15.

807.304-76 Contract effective date.

(a) A transition from in-house performance to contract requires a period of time from contract award to beginning of contract performance (contract effective date). This time is necessary to allow for personnel adjustments, e.g., right of first refusal process, and to allow a reasonable period for the contractor to make necessary resource reallocations. The contract effective date should be

carefully considered in conjunction with the A-76 Task Group and must be specified in the solicitation.

(b) Although outplacement planning to minimize the effect of any necessary reduction in force should be initiated in advance of bid opening/receipt of proposals as prescribed by Office of Personnel and Labor Relations, there are also employee and labor organization reduction-in-force notice requirements which must be satisfied.

(c) When bargaining unit employees will be affected, facility officials also should review and comply with any employee or labor organization notice requirements in applicable negotiated agreements.

807.304-77 Right of first refusal.

(a) In addition to the Right of First Refusal clause specified in FAR 52.207-3, the contracting officer will include the clause "Report of Employment Under Commercial Activities" in 852.207-70. This clause is primarily intended to verify that the contractor is meeting its obligation to provide adversely affected Federal workers the first opportunity for employment openings, for which they qualify, created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. In order to implement the clause, the contracting officer (or Contracting Officer's Technical Representative (COTR)) must first obtain a list from the servicing personnel office of Federal employees, including their Social Security numbers, who will be adversely affected as a result of the anticipated contract. The list should be requested as soon as a preliminary determination is made to contract out a function subject to A-76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

807.370 Bidder/offeree cost of Social Security and thrift-profit sharing plan contributions.

807.370-1 General.

(a) Pursuant to Transmittal Memorandum No. 4 to OMB Circular A-76, and Section 307, Pub. L. 99-335, for cost comparison purposes only, (see paragraph (c)) the projected amount of the low responsive, responsible bidder's/offeree's bid/offer price which is attributable to the bidder's/offeree's contributions to Social Security (except the Medicare portion) and the bidder's/offeree's contribution to thrift/profit sharing plans will be a deduction from the bid/offer price.

(b) The amounts which represent the bidder's/offerees' contributions to Social

Security (except the Medicare portion) and the thrift/profit sharing plans must be received with their respective bids/offers in order to be considered in the cost comparison process. (See paragraph (a) in 852.204-73.)

(c) The low responsive and responsible commercial bid/offer will be determined on the respective bid/offer prices only.

(d) If the bidder's/offeree's projected contributions will change the outcome of the cost comparison (i.e., an activity that would have remained in-house without the computation of the bidder's/offeree's contributions deduction but would be converted to contract with the computation) the contracting officer shall request documentation verifying that cost. The contracting officer will not request such documentation of other than the lowest responsible and responsive and responsible bidder/offeree and only if the computation of the contribution will change the outcome of the study.

(e) The provision in 852.207-73 will be included in all A-76 cost comparison solicitations.

PART 852—[AMENDED]

2. The authority citation for Part 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

3. In Subpart 852.2, sections 852.203-70, 852.203-71, 852.203-72, and 852.203-73 are added to read as follows:

852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-75, the following clause will be included in A-76 cost comparison solicitations:

Report of Employment Under Commercial Activities (March 1987)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract of which they are qualified.

(b) *Definitions.* (1) An "adversely affected Federal employee" is:

(i) Any Federal employee who is assigned to the Government commercial activity, or

(ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.

(2) "Employment openings" are position vacancies created by this contract which the contractor is unable to fill with personnel in the contractor's employ at the time of the contract award, including positions within a 50 mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) The "contract start date" is the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal employees identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are not qualified adversely affected Federal employees on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than five working days after contract award the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits.

(ii) Sufficient job application forms adversely affected Federal employees.

(2) By the contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening.

(ii) The date the offer was made.

(iii) A brief description of the position.

(iv) The date of acceptance of the offer and the effective date of employment.

(v) The date of rejection of the offer, if applicable the salary and benefits contained in the rejected offer, and

(vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within five working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 working days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job applications forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(3) For a period up to 90 days after contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal employees reflecting employees recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualification determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an

employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relation to other statutes, regulations and employment policies.* The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

(h) *Penalty for Noncompliance.* Failure of the contractor to comply with any provision of this clause may be grounds for termination for default.

(End of Clause)

852.207-71 Notice of cost comparison.

When authorized in accordance with 807.304-72, the FAR provision 52.207-1, Notice of Cost Comparison (Sealed-Bid) or 52.207-2, Notice of Cost Comparison (Negotiated), whichever is appropriate, will be supplemented with the following provision for the circumstances prescribed.

(a) When only COCO bids or only GOCO bids will be accepted:

Notice of Cost Comparison (1988)

(a) Reference is made to the provision "Notice of Cost Comparison (Sealed-Bid) or (Negotiated)," FAR 52.207-1 (or 52.207-2).

(b) Bidders (offerors) are placed on notice that no contract will be awarded, irrespective of cost comparison results, unless *two or more responsive and responsible bidders* (offerors) respond to this solicitation. (End of Provision)

(b) If GOCO and COCO bids/offers will be considered, the following supplemental provision will be used:

Notice of Cost Comparison—Supplement (1988)

(a) Reference is made to the provision "Notice of Cost Comparison (Sealed-Bid) or (Negotiated)," FAR 52.207-1 (or 52.207-2).

(b) Bidders (offerors) are placed on notice that this solicitation allows contractors to bid (offer) on the basis of Contractor-owned, Contractor-operated (COCO) and/or Government-owned, Government-operated (GOCO) basis. However, a COCO method of performance will only be considered if two or more responsive and responsible firms bid (offer) on a COCO basis.

(End of Provision)

852.207-72 Cost comparison criteria—VA medical facilities.

As prescribed in 807.302(a), the following provision will be included in the solicitation for cost comparison of DM&S activities currently performed at VA medical centers by VA employees.

Cost Comparison Criteria—VA Medical Facilities (1988)

Bidder/offers are placed on notice that the cost comparison calculations will conform to the criteria prescribed in Title 38, United States Code, Section 5010. In accordance with Section 5010(c)(21), a contract award will not be made unless the total cost of performance over the first five years of such performance (including the cost to the Government of conducting the study) is lower by 15 percent or more than the cost of performance by Federal employees. (End of Provision)

852.207-73 Cost of Social Security and thrift/profit sharing plans.

The following provision will be included in all A-76 solicitations:

Cost of Social Security (Except Medicare) and Thrift/Profit Sharing Plan Contributions

(a) For purposes of *cost comparison only* the bidder/offers may indicate his/her contributions to Social Security (except Medicare) and thrift/profit sharing plans that would be attributable to a contract awarded under this solicitation. Those costs will be included as set forth below for the initial contract and each option year as specified in the solicitation. The low responsive and responsible bidder/offers will have its contribution costs, as calculated herein, deducted from its bid/offers as prescribed in the OMB Circular A-76, Cost Comparison Handbook. If the bid/offers does not include these costs, no deductions will be allowed.

(b) The contributions must be based only on estimated labor hours and labor dollars which would be appropriately allocable to performance of the services contemplated by this solicitation. Any thrift/profit sharing plan contribution estimates must be based upon a current thrift/profit sharing plan, or a written commitment for a future thrift/profit sharing plan or amendment thereto.

(c) For purposes of this provision a "thrift/profit sharing" is defined as: A deferred compensation arrangement in which an employee can contribute after-tax compensation to an individual account maintained in his/her behalf which may also receive matching employer contributions at some specified rate up to a maximum. A "thrift/profit sharing" includes a profit sharing plan as defined by 26 CFR 1.401-1(b)(1)(ii) and a stock bonus plan as defined by 26 CFR 1.401-1(b)(1)(iii). A thrift/profit

sharing plan is not a "pension plan" as defined in 26 CFR 1.401-1(b)(1)(i).

(d) Upon request of the contracting officer, the bidder/offers agrees within five working days to provide all necessary documentation verifying the basis for and reasonableness of the costs including but not limited to labor hour worksheets used to estimate the Social Security contribution, identified to the bid/offers, and certified copies of current and formally committed thrift/profit sharing plans. Failure to provide the requested information will not render the bid/offers nonresponsive. However, failure to furnish the requested information is grounds to reject in whole or part these costs for cost comparison purposes.

(e) Disagreements between the bidder/offers and the contracting officer regarding the costs of these contributions which cannot be resolved by the bidder/offers and contracting officer will be resolved through the VA A-76 appeals process established pursuant to OMB Circular A-76 and 48 CFR 7.307.

(f) *Bidder/offers Social Security and thrift profit sharing plan contributions by year.* The bidder's/offers's costs for Social Security and thrift/profit sharing plan contributions will not be used in the Government's determination of either responsiveness or responsibility. Bidder/offers shall insert these costs which are part of the bid/offers as follows:

Year	Social Security contribution (excluding Medicare)	Thrift/profit sharing plan contribution
1	\$	\$
2
3
4
5
Total	\$	\$

(g) The successful commercial bid/offers will be determined on the basis of the bid/offers price only, and a determination that the low bidder/offers is responsive and responsible. The bid/offers will then be compared with the Government bid/offers, with the appropriate deduction of the bidder's/offers's contributions to Social Security (except the Medicare portion) and to thrift/profit sharing plans, in accordance with this provision.

(h) The bidder/offers hereby certifies to the accuracy of these claimed costs, and to the authenticity and accuracy of any documentation required to be submitted.

SIGNATURE _____

Date _____

(End of Provision)

[FR Doc. 88-3628 Filed 2-19-88; 8:45 am]

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Notices

Federal Register

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Monday, February 22, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one of its Privacy Act Systems of Records maintained by the Farmers Home Administration (FmHA), titled USDA/FmHA-1, "Applicant/Borrower or Grantee File, USDA/FmHA." This action is necessary in order to: (1) Provide for the implementation of the provisions of 31 U.S.C. 3720A, the authority under which Federal agencies refer delinquent debts to the Department of the Treasury for collection by offset against tax refunds owed to named persons; (2) refer information regarding indebtedness to the Defense Manpower Data Center (DMDC), Department of Defense, and to the United States Postal Service (USPS) for use in computer matches to assist in collection of debts by salary offset and other permissible means as provided by the Debt Collection Act of 1982 (Pub. L. No. 97-365); and (3) permit release of commercial information to lending institutions for the purpose of allowing potential creditors to determine if they would consider financing loans to be guaranteed by the Farmers Home Administration.

Implementation of tax refund offset and salary offset initiatives is essential for effective Federal debt collection and the integrity of Federal programs. The intended effect of this notice is to provide FmHA with the means for effective money management and debt collection by amending the appropriate sections of the system notice to allow

FmHA to discover whether federal salaries or tax refunds are available for payment of delinquent debts.

EFFECTIVE DATE: This notice will be adopted without further publication in the *Federal Register* on March 23, 1988, unless modified by a subsequent notice to incorporate comments received from the public.

FOR FURTHER INFORMATION CONTACT:

Virgle L. Cunningham, Jr., Freedom of Information Officer, Administrative Services Division, Farmers Home Administration, USDA, Room 6865, South Building, Washington, DC 20250, telephone (202) 382-9638.

SUPPLEMENTARY INFORMATION: USDA hereby amends its System of Records, USDA/FMHA-1, by amending the "routine uses of records maintained in the system, including categories of users and the purposes of such uses" to permit (1) referral of information regarding indebtedness to the Department of the Treasury for collection by offset against tax refunds owed to named persons under the authority established in 31 U.S.C. 3720A; (2) referral of information to Defense Manpower Data Center, Department of Defense, and the United States Postal Service for use in computer matches to assist in collection of indebtedness by salary offset and other permissible means, and (3) release of information to lending institutions for the purpose of allowing potential commercial creditors determine if they will consider financing loans guaranteed by the Farmers Home Administration.

The provisions of 31 U.S.C. 3720A establish a tax refund offset program by which an agency can request that tax refunds of persons indebted to it be reduced by the amount of the debt with the amount offset being paid instead to the creditor agency. The Department of Agriculture is participating in this program.

Because prior collection efforts have failed, it has been determined that a listing of those individuals who continue to owe past-due legally enforceable debts to the Department of Agriculture will be referred to the Department of the Treasury for offset of the debt against any tax refund due.

FmHA, along with other Federal agencies, plans to participate in computer matching programs utilizing the system of records entitled USDA/FmHA-1 "Applicant/Borrower or

Grantee File, USDA/FmHA." Information from this system will be matched, using computers, against Federal agency payroll files to identify delinquent debtors who are current or former Federal employees.

The Debt Collection Act of 1972 (Pub. L. No. 97-365) authorizes an offset of a Federal employee's salary to satisfy debts owed to the Government. The computer matches to be conducted by DMDC and USPS will assist FmHA in collecting debts owed to it by Federal employees. The proposed routine uses are compatible with the purpose of USDA/FmHA-1 to maintain information on individuals indebted to FmHA to ensure efficient collection of those debts.

In accordance with requirements of the Debt Collection Act, the creditor agency, FmHA, USDA, will notify the debtor of his/her due process rights with respect to the debt and give the individual the opportunity to resolve the claim through repayment of the debt on an installment basis before salary offset is initiated.

The computer matches will be conducted in accordance with OMB's revised Supplemental Guidelines for Conducting Computer Matching Programs (47 FR 21656, May 19, 1982). The USDA has signed an agreement with each of the matching agencies requiring that the information disclosed by USDA under this computer matching program be used only for making computer matches and compiling statistical data about the results of any match. The parties have agreed to safeguard the information provided from unauthorized disclosure.

Additionally, through this action FmHA will clarify its authority to provide names, addresses, and financial information on selected loan applicants to lending institutions to facilitate the financing of loan accounts guaranteed by FmHA.

Accordingly, USDA adds the following three routine uses to the FmHA System of Records, "Applicant/Borrower or Grantee File, USDA/FmHA" published in 50 FR 25727, June 21, 1985, as amended by: 52 FR 2247, January 21, 1987, and 52 FR 44458, November 19, 1987.

USDA/FmHA-1

SYSTEM NAME:

Applicant/Borrower or Grantee File,
USDA/FmHA.

ROUTINE USES OF RECORDS MAINTAINED IN
THE SYSTEM, INCLUDING CATEGORIES OF
USERS AND THE PURPOSES OF SUCH USES:

Referral of legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS) to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made, in accordance with the IRS regulations at 26 CFR 301.6402-6T, Offset of Past Due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the Farmers Home Administration in order to collect debts under the provisions of the Debt Collection Act of 1982 (Pub. L. No. 97-365) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

Referral to lending institutions, when FmHA determines such referral is appropriate for allowing potential commercial creditors to determine if they would consider financing loans guaranteed by the Farmers Home Administration.

Signed at Washington, D.C., on February 9, 1988.

Peter C. Myers,

Acting Secretary.

[FR Doc. 88-3607 Filed 2-19-88; 8:45 am]

BILLING CODE 3410-07-M

Soil Conservation Service

Hydric Soils of the United States

AGENCY: Soil Conservation Service,
USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to 7 CFR 12.31(a)(3)(i), the Soil Conservation Service, United States Department of Agriculture gives notice of a change in the Hydric Soils of the United States and notice of availability of the second edition of the Hydric Soils of the United States.

FOR FURTHER INFORMATION CONTACT:

Richard W. Arnold, Director, Soil Survey Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, telephone (202) 382-1819.

SUPPLEMENTARY INFORMATION: The second edition of the Hydric Soils of the United States, dated December 1987, contains an updated list of hydric soils in the United States and minor changes in the definition of hydric soil and in the hydric soil criteria.

The National Technical Committee for Hydric Soils met in December, 1986, and made minor changes in the definition, criteria, and glossary of terms for hydric soils. These revisions are only for clarity and do not affect the national list of hydric soils.

The national list of hydric soils is changed as additional soil series are recognized and defined or because properties of existing soil series are updated based on additional data. The list of hydric soils is computer generated using the hydric soil criteria and properties of the soils listed in the Soil Interpretations Record, which is maintained for each soil series in the United States. Data in the Soil Interpretations Record is on computer file and data related to a particular state may be reviewed by contacting the Soil Conservation Service state conservationist in the appropriate state. The address for the appropriate state conservationist may be obtained from any local office of the Soil Conservation Service.

Copies of the second edition of the Hydric Soils of the United States are available from Richard W. Arnold at the above listed address.

Richard W. Arnold,

Director, Soil Survey Division.

Date: February 8, 1988.

[FR Doc. 88-3622 Filed 2-19-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Motor Freight Transportation and Warehousing Survey; Determination

In accordance with Title 13, United States Code, sections 131, 182, 224, and 225, we have determined the Census Bureau needs to collect data covering annual operating revenues and expenses for the for-hire trucking and warehousing industries to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs.

This annual survey is a continuation of similar motor freight transportation and warehousing surveys conducted since 1985.

The Census Bureau will require a selected sample of trucking and warehousing firms in the United States (with payroll size determining the probability of selection) to report in the 1987 Motor Freight Transportation and Warehousing Survey. The sample will provide, with measurable reliability, national level statistics on operating revenues and expenses for these industries.

We will furnish report forms to the firms covered by this survey and will require their submission within 20 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

We have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: February 16, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-3679 Filed 2-19-88; 8:45 am]

BILLING CODE 3510-07-M

Foreign Trade Zones Board

[Docket No. 46-87]

Foreign-Trade Zone 125—South Bend, IN; Application for Subzone Allied Steel Auto Body Parts Plant, Extension of Comment Period

The comment period for the above case, involving a special-purpose subzone for the steel auto body parts manufacturing plant of Allied Products Corporation in South Bend, Indiana (53 FR 45, Jan. 4, 1988), is extended to March 31, 1988, to allow interested parties additional time to comment on the proposal.

Comments are invited in writing during this period. Submissions shall include five copies. Materials submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room 1529, Washington, DC 20230.

Dated: February 16, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-3708 Filed 2-19-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-704]

Postponement of Final Antidumping Duty Determination; Brass Sheet and Strip From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from Nippon Mining Co., Ltd. (NMC) and Sambo Copper Alloy Co., Ltd. (Sambo) in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)(A)).

Based on these requests, we are postponing our final determination as to whether sales of brass sheet and strip from Japan have occurred at less than fair value until not later than June 15, 1988. We are also postponing our public hearing from March 15, 1988, until May 12, 1988.

EFFECTIVE DATE: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Ready (202-377-2613) or Paul H. Tambakis (202-377-4136), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On February 1, 1988, we published a preliminary determination of sales at less than fair value with respect to this merchandise (53 FR 2771). This notice stated that if the investigation proceeded normally, we would make our final determination by April 11, 1988.

On February 4, 1988, MNC requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. On February 8, 1988, Sambo also requested the Department for a postponement of the final determination. These respondents account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than June 15, 1988.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on May 12, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Acting Assistant Secretary for Import Administration by May 5, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

February 17, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-3710 Filed 2-19-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-701]

Preliminary Negative Countervailing Duty Determination; Carbon Steel Wire Rod From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore or carbon steel wire rod (wire rod) as described in the "Scope of Investigation" section of this notice. If this investigation proceeds

normally, we will make a final determination by May 2, 1988.

EFFECTIVE DATE: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Carole Showers or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3217 or 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Singapore of wire rod.

Case History

Since the Notice of Initiation in the Federal Register (52 FR 44197, November 18, 1987), the following events have occurred. On November 24, 1987, we presented a questionnaire to the Government of Singapore in Washington, DC concerning petitioners' allegations. On December 24, 1987, we received a response from the Government of Singapore and a response from National Iron and Steel Mills, Ltd. (NISM), Kloeckner Singapore Pte., Ltd., and Mitsui & Co., Ltd. On January 21, 1988, we delivered a supplemental/deficiency questionnaire to the government and the respondent companies, and received a response on February 4, 1988.

On December 17, 1987, the petitioners filed a request that the preliminary determination be postponed for 17 days. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determination to no later than February 1, 1988 (53 FR 47, January 4, 1988). On January 4, 1988, petitioners requested that we further postpone the preliminary determination by an additional 14 days. Accordingly, we extended the period for the preliminary determination to February 16, 1988 (53 FR 942, January 14, 1988).

Scope of Investigation

For the purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, not over 0.74 inch in diameter, tempered or not, treated or not, treated, not manufactured or partly manufactured, and valued over or under

4 cents per pound. Wire rod is currently classified under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the *Tariff Schedules of the United States Annotated* and under items 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, and 7213.50.00 of the Harmonized System.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in Singapore of wire rod during the review period:

A. Export Tax Incentives

1. *Parts IV, IVA, and VIB of the Economic Expansion Incentives Act of 1967.* Parts IV, IVA, and VIB of the Economic Expansion Incentives Act of 1967 provide tax exemptions for: (a) Export profits above a predetermined base, (b) approved export trading companies, and (c) capital investment in export warehouses.

According to the responses, none of the respondent companies claimed benefits under these programs on the tax return filed during the review period.

2. *Double Deduction of Export Promotion Expenses.* Sections 14B and 14C of the Income Tax Act provide a double deduction for: (a) Approved overseas and domestic market trade fair expenses, (b) overseas trade office maintenance, (c) approved publications and advertising, and (d) foreign market development and trade missions. According to the responses, none of the respondent companies claimed benefits under these programs on the tax return filed during the review period.

B. Other Tax Incentives

1. *Parts II, III, V, and VI of the Economic Expansion Incentives Act of 1967.* Parts II, III, V, and VI of the Economic Expansion Incentives Act of 1967 provide tax exemptions for: (a) Income generated from the sale of approved pioneer status products, (b) income from increased production due to a new capital expenditure, (c) interest on approved foreign sourced loans for production equipment purchases, and (d) taxes on royalties, license, and technical assistance fees paid to non-residents. According to the responses, none of the respondent companies claimed benefits under these programs on the tax return filed during the review period.

2. *Initial and Annual Allowance for Industrial Buildings.* Section 16 of the Income Tax Act allows an initial depreciation allowance of 25 percent of the cost of any industrial building and a three percent annual allowance thereafter on the remaining cost. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

3. *Accelerated Depreciation Allowance for Plant and Machinery.* Section 19A of the Income Tax Act provides an accelerated depreciation allowance over a three year period for all plant and machinery capital expenditures. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

C. Research and Development Incentives

1. *Parts III, IX, and X of the Economic Expansion Incentives Act of 1967.* Parts III, IX, and X of the Economic Expansion Incentives Act of 1967 allow additional tax exemptions for abatements of, or allowances for, research and development (R&D) expenditures. Part III permits companies involved in R&D activities to apply for pioneer service company status. Part IX provides an exemption from or abatement of

withholding taxes of approved foreign-sourced R&D contributions. Part X provides an investment allowance to any company incurring a capital expenditure on production equipment for an R&D project. According to the responses, none of the respondent companies claimed benefits under these programs on the tax return filed during the review period.

2. *Double Deduction for Research and Development.* Under section 14E of the Income Tax Act, manufacturing companies can take a double tax deduction for approved R&D expenditures. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

3. *Writing-Down Allowance for Approved Know-How and Patent Rights.* Section 19B of the Income Tax Act provides a writing-down allowance for approved know-how, patent rights, and manufacturing licenses expenditures. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

4. *Singapore Science Council.* Under its Research and Development Assistance Scheme, the Singapore Science Council supplies funds to private companies and public institutions participating in approved R&D projects. These projects should include technological and national significance, development of R&D infrastructure, personnel training, research cooperation, and commercial applications. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

D. Government Financial Assistance

1. *Monetary Authority of Singapore Rediscount Facility.* The Monetary Authority of Singapore, through its Rediscount Facility, permits banks to rediscount qualified short-term pre-export and export bills of exchange for locally manufactured products. According to the responses, none of the respondent companies claimed or received benefits under this program during the review period.

2. *Singapore Economic Development Board Programs.* The Singapore Economic Development Board administers three programs available for approved company activities. The Capital Assistance Scheme provides long-term, fixed-rate loans at less than commercial rates, and loan guarantees to companies investing in new

production activities. The Production Development Assistance Scheme supplies matching grants for technical improvements in products or processes to companies with at least 30 percent Singaporean ownership. The New Initiatives in New Technology Program provides grants to cover employee training and manpower development costs in fields of new technology. According to the responses, none of the respondent companies have participated in these programs.

II. Program Preliminarily Determined Not To Exist

We preliminarily determine that the following program does not exist:

Development Bank of Singapore Working Capital Loan Fund

Petitioners allege that the Development Bank of Singapore (DBS) operates a "Working Capital Loan Fund." According to the response, the DBS does not operate such a fund.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on April 6, 1988, at 2:00 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the *Federal Register*.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by March 30, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 355.34, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 16, 1988.

[FR Doc. 88-3707 Filed 2-19-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Semi-Finished Steel Slabs; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, with respect to certain low carbon semi-finished steel slabs.

DATE: Comments must be submitted no later than March 3, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTAL INFORMATION: Article 8 of the U.S.-EC Arrangement, the U.S.-Brazil Arrangement, the U.S.-Korea Arrangement, and the U.S.-Mexico Understanding provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), and additional tonnage shall be allowed for such product or products.

We have received a short-supply request for low carbon (AISI grades

1006, 1008, and 1010) semi-finished steel slabs, ranging from 6 to 6.750 inches in thickness and from 35 to 53 inches in width, for use in producing hot-rolled and cold-rolled sheet and strip, and galvanized sheet and strip.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 3, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 17, 1988.

[FR Doc. 88-3709 Filed 2-19-88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Reestablishment of the Air Force Reserve Officer Training Corps Advisory Committee

AGENCY: DOD.

ACTION: Reestablishment of the Air Force Reserve Officer Training Corps Advisory Committee.

SUMMARY: Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act, notice is hereby given that the Air Force Reserve Officer Training Corps (AFROTC) Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law and has been reestablished.

The committee reviews the programs, policies, and objectives of the Air Force Reserve Officer Training Corps and makes recommendations to the Commander, Air Training Command regarding improvements and adherence to prescribed laws and national policies. The committee serves the public interest by seeking to improve the AFROTC program and the quality of its product—

commissioned officers in the United States Air Force.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 16, 1988.

[FR Doc. 88-3670 Filed 1-19-88; 8:45 am]

BILLING CODE 3810-01-M

National Advisory Panel on the Education of Handicapped Dependents; Meeting

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense, DOD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice also describes the functions of the Panel. Notice of this meeting is required under the National Advisory Committee Act. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the Office of Dependents, Schools (ODS) special education coordinator.

DATE: March 22, 1988, 9 a.m. to 4 p.m.; March 23, 1988, 9 a.m. to 4 p.m.; March 24, 1988, 9 a.m. to 4 p.m.; March 25, 1988, 9 a.m. to 4 p.m.

ADDRESS: (Compri) Hotels, 2700 Eisenhower Avenue, Alexandria, Virginia 22314 (703/329-2323).

FOR FURTHER INFORMATION CONTACT: Ms. Trudy Paul, Special Education Coordinator, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331-1100 (202/325-7810).

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under section 613 of the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401, Pub. L. 94-142). The Panel is directed to: (1) Review information regarding improvements in services provided to handicapped students in DoDDS; (2) receive and consider the views of various parent, student, handicapped individuals, and professional groups; (3) review the findings of fact and decision of each impartial due process hearing; (4) assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (5) make recommendations, based on program and operational information, for changes in the budget, organization, and general management of the special education program, and in policy and

procedure; (6) comment publicly on rules or standards regarding the education of handicapped children; and (7) submit an annual report of its activities and suggestions to the Director, DoDDS by July 31 of each year. The Panel will review the following areas: new special education legislation, related services, personnel development, program development, administration, and budget.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 12, 1988.

[FR Doc. 88-3671 Filed 2-19-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

ACTION: 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: Air Force Academy Candidate Activities Record; USAFA Form 147; and OMB Control Number 0701-0063.

Type of Request: Extension.

Annual Burden Hours: 5,170.

Annual Responses: 10,340.

Needs and Uses: The Air Force uses USAFA Form 147 to collect information about the high school activities of applicants for admission to the Air Force Academy. Applicants supply information about their athletic and nonathletic school activities and high school officials verify the information. The Air Force Academy uses the information in selecting appointees to the Academy.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

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: Ms. 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 16, 1988.

[FR Doc. 88-3672 Filed 2-19-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: 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: Report of Dental Correction; AFROTC Form 10; and OMB Control No. 0701-0099.

Type of Request: Extension.

Annual Burden Hours: 584.

Annual Responses: 3,500.

Needs and Uses: Applicants for admission to the AFROTC program use AFROTC Form 10 to show they have corrected any identified dental defects to ensure they meet required Air Force dental standards. The dentist who performed the required dental work completes the form. The Air Force reviews the information to make sure the cadet meets the physical commissioning standards required by Air Force regulations.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

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: Ms. 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 16, 1988.

[FR Doc. 88-3673 Filed 2-19-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

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

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

Dates of Meeting: 10-11 March 1988.

Times of Meeting: 0900-1700, 10
March 1988. 0800-1500, 11 March 1988.

Place: Pentagon, Washington, DC.

Agenda: the Army Science Board's Ad Hoc Subgroup on Ballistic Missile Defense (Follow-on) will meet for classified briefings and discussions reviewing matters that are an integral part of or are related to the issue of the study effort; i.e., terminal defense, TRADOC concept of operation, midcourse discrimination, and BM/C3. The Subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-3619 Filed 2-19-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP86-240-001]

Columbia Gas Transmission Corp.; Petition for Declaratory Order

February 17, 1988.

Take notice that on February 4, 1988, Columbia Gas Transmission Corporation (Petitioner), 1700 MacCorkle Avenue, SE., Charleston,

West Virginia 25314, filed a Petition for Declaratory Order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 285.207, that the contract reductions which certain of its customers exercised pursuant to then-effective § 284.10(c) of the Commission's Regulations are null and void, in accordance with the express contract terms between Columbia and those customers.

Specifically, Petitioner states that after it accepted a blanket certificate under Order No. 436,¹ ten of its customers exercised the contract demand (CD) reduction rights granted under § 284.10(c) of that Order to reduce their contract demand levels with Petitioner, which reductions purportedly became effective October 8, 1986. The revised Service Agreements between Columbia and nine of these customers contain the following pertinent language:

This agreement is contingent upon the outcome of all appeals of Order No. 436, *et seq.* issued by the Commission. In the event any of the Commission's Regulations promulgated by such orders are modified or set aside on appeal or by the Commission on remand, the parties agree to execute a superseding Service Agreement, retroactive if necessary, to reflect the order of the Court or Commission; provided, that in the event Section 284.10 of the Commission's Regulations is set aside, this Service Agreement shall be null and void, and the aforesaid Service Agreements dated [prior to October 8, 1986] shall remain in full force and effect.²

On June 23, 1987, the Court in *AGD* set aside the CD reduction provisions in § 284.10(c). In Order No. 500,³ the Commission eliminated the CD reduction provisions.

Petitioner believes that the granting of this Petition for Declaratory Order is necessary to enforce the express written terms of its contracts with the ten customers. Moreover, Petitioner states

that voiding of the CD reductions previously exercised is certainly appropriate for its system because: (1) Its customers have already had the unilateral right to reduce their contractual levels by up to 15 percent, the same percentage for first CD reduction rights under then-effective § 284.10(c), by virtue of Article VII of the PGA Settlement approved in *Columbia Gas Transmission Corporation*, 31 FERC ¶ 61,307 (1985); and (2) by Order issued in *Columbia Gas Transmission Corporation*, 37 FERC ¶ 61,068 (1986), the *Columbia Gas Transmission Corporation*, 37 FERC ¶ 61,068 (1986), the Commission held that Columbia could not adjust its demand rates to reflect the CD reductions until April 1, 1987, thereby causing Petitioner to absorb approximately \$2.3 million due to the exercise of the CD reduction provisions.

Petitioner states that it is willing to voluntarily renegotiate CD levels with its customers, and in particular, if this declaratory order were granted, it would grant the CD reductions requested by the ten customers, effective April 1, 1987, so that it would not be forced to absorb the \$2.3 million associated with the unilateral exercise of CD reductions as of October 8, 1986.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 9, 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 384.214 or 385.211). 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 to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3686 Filed 2-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-6-000]

Crosstex Pipeline Co.; Application for Adjustment

Issued February 17, 1988.

On January 29, 1988, Crosstex Pipeline Company (Crosstex), a Texas intrastate pipeline, filed with the Commission an application for adjustment pursuant to

¹ Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol, Order No. 436, [Regulations Preambles 1982-1985] FERC Statutes and Regulations ¶ 30,665 (1985), *modified*, Order No. 436-A, [Regulations Preambles 1982-1985] FERC Statutes and Regulations ¶ 30,675 (1985), *modified further*, Order No. 436-B, III FERC Statutes and Regulations, ¶ 30,688 (1986), *reh'g denied*, Order No. 436-C, Regulations 34 FERC ¶ 61,404 (1986), *reh'g denied*, Order No. 436-D, 34 FERC ¶ 61,405 (1986) *reconsideration denied*, Order No. 435-E, 34 FERC ¶ 61,403 (1986), *vacated and remanded sub nom. Associated Gas Distributors v. FERC*, 824 F. 2d 981 (D.C. Cir. 1987) (AGD).

² A portion of the quoted language in the Service Agreement with National Fuel Gas Supply Corporation was stricken, but the Service Agreement provides that if § 284.10 of the Commission's Regulations is set aside, the parties will execute a superseding Service Agreement.

³ Interim Rule and Statement of Policy, Docket No. RM87-34-000, 40 FERC ¶ 61,172 (1987).

section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Crosstex requests that it be permitted under § 284.123(b)(1)(ii) of the Commission's regulations to charge, for transportation service provided to interstate pipelines under section 311 of the NGPA, its rate for intrastate service on file with the Texas Railroad Commission (TRC). Crosstex requests that the adjustment apply to section 311 services already rendered as well as to section 311 services to be rendered in the future. Crosstex states that this adjustment is necessary to remove major uncertainties associated with its performance of section 311 transportation on behalf of interstate pipelines in Texas and will protect interstate ratepayers because the rates charged will be based on a fair and equitable cost-based determination by the TRC. Crosstex states that it will file for a section 311(a) determination from the TRC upon issuance of the requested adjustment.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to

intervene with the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3687 Filed 2-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C187-89-002, et al.]

EnTrade Corp., et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment¹

February 17, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

abandonment a previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 1, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and Date Filed	Applicant	Requested term of extension
C187-89-002, Feb. 3, 1988	EnTrade Corporation, ² 2400 First National Tower, 101 South Fifth Street, Louisville, KY 40202.	Unlimited.
C187-307-001, Feb. 3, 1988	MidCon Marketing Corp., 701 E. 22nd Street, P.O. Box 1208, Lombard, IL 60148	3 years.
C187-396-001, Feb. 3, 1988	Tejas Power Corporation, 10694 Haddington, Suite 115, Houston, TX 77043	3 years.
C187-429-001, Feb. 5, 1988	Vesta Energy Company, 2301 Fourth National Bank Building, 15 West Sixth Street, Tulsa, OK 74119.	2 years.
C187-578-001, Feb. 8, 1988	Continental Natural Gas, Inc., 4500 South Garnett, #800, P.O. Box 470700, Tulsa, OK 74147.	3 years.
C187-621-001, Feb. 1, 1988	Mountain Industrial Gas Company, P.O. Box 1087, Colorado Springs, CO 80944	3 years.
C187-702-002, Feb. 3, 1988	Kogas, Inc., P.O. Box 2256, Wichita, KS 67201	2 years.
C187-738-002, Feb. 2, 1988	Williams Gas Marketing Company, ² P.O. Box 3102, Tulsa, OK 74101	3 years.
C187-854-001, Feb. 3, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221-2819.	3 years.

² Applicant also requests authorization to include sales by others to or through Applicant as agent.

[FR Doc. 88-3688 Filed 2-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1773 Utah]

Moon Lake Electric Association, Inc.; Intent To File an Application for a New License

February 18, 1988.

Take notice that on January 12, 1988, Moon Lake Electric Association, Inc. the existing licensee for the Yellowstone Hydro Project No. 1773, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 807, as amended by

section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495, has filed a notice of intent to file an application for a new license. The original license for Project No. 1773 was issued effective March 31, 1943, and expires on March 31, 1993.

The Project is located within Duchesne County, Utah. Property occupied consists of United States property within the Ashley National Forest, lands within the Uintah and Ouray Indian Reservation, and private property. The Project, as licensed, includes a diversion dam and reservoir on the Yellowstone River, pipe line and

penstock from the dam to a powerhouse, tailrace, transmission line, and associated facilities. The hydro-electric facilities consist of three (3) turbine-generators, each rated at 300 kW for a total installed capacity of 900 kW, and appurtenances. For further information concerning this project please contact the licensee at P.O. Box 278, 188 West 200 North, Roosevelt, Utah 84066, telephone (801) 722-2448.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the

existing license. All applications for license for this project must be filed by March 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3689 Filed 2-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-291-000]

Sun Gas Transmission Limited Partnership; Notice of Application

February 17, 1988.

Take notice that on February 5, 1988, Sun Gas Transmission Limited Partnership, for itself and its Managing General Partner, Sun Gas Transmission Company, Inc., and an unincorporated division, Sun Gas Marketing (SGT), P.O. Box 2880, Dallas TX 75221-2880, filed an application with the Federal Energy Regulatory Commission (Commission) requesting a three-year Blanket Certificate of Public Convenience and Necessity with Pregranted Abandonment authorizing sales for resale of released and abandoned gas in interstate commerce, and sales for resale in interstate commerce of contractually uncommitted gas produced from the Outer Continental Shelf (OCS).

SGT asked the Commission for pregranted abandonment of all sales for resale for which certificate authority was sought, and a waiver of Parts 154 and 271 of the Commission's Regulations concerning maintenance of rate schedules. SGT further requested the Commission to limit its NGA jurisdiction over the activities of SGT to the transactions for which authorization was being sought.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 1, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3690 Filed 2-19-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59254; FRL-3331-7]

Certain Chemical Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-88-5. The test marketing conditions are described below.

EFFECTIVE DATE: February 11, 1988. Written comments will be received until March 8, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS-59254]" and the specific TME number "[TME-88-5]" should be sent to: Document Control officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M. St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Alan Cole, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds

that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-88-5. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published; therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

The following additional restrictions apply to TME-88-5. A bill of lading accompanying each shipment must state that the uses of the substance are restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the dates of manufacture.
2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME-88-5

Date of Receipt: December 30, 1987.

Close of Review Periods: February 13, 1988. The extended comment period will close March 8, 1988.

Applicant/Importer: Confidential.

Chemical: (G) Mixed alkylated diphenyl amine.

Use: (G) Petroleum and rubber additive.

Production Volume: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Twelve months, commencing on first day of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Date: February 11, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-3677 Filed 2-19-88; 8:45]

BILLING CODE 6560-50-M

[FRL-3331-8]

Clean Water Act Class I; Proposed Administrative Penalty Assessment and Opportunity To Comment for Pine Shadows Mobile Home Park

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for an alleged violation of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's "Guidance on Class I Clean Water Act Administrative Penalty Procedures". The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent

may request a hearing, are set forth in the "Guidance on Class I Clean Water Act Administrative Penalty Procedures". The deadline for submitting public comment on a proposed Class I order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Pine Shadows Mobile Home Park, Show Low, Arizona: EPA Docket No. IX-FY88-12; filed on February 12, 1988, with Barbara Dimanlig, Acting Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-0718; proposed penalty up to \$25,000 for discharging without a permit as detected during an Arizona Department of Environmental Quality inspection on September 24, 1987.

FOR FURTHER INFORMATION:

Persons wishing to receive a copy of EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to March 21, 1988.

Dated: February 10, 1988.

Steve Pardieck,

Acting Director, Water Management Division.

[FR Doc. 88-3678 Filed 2-19-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

February 11, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Terry Johnson,

Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0108

Title: Emergency Broadcast System (EBS) Activation Report

Form No.: FCC 201

The approval of form FCC 201 has been extended through 1/31/91. The September 1986 edition with an expiration date of 2/29/88 will remain in use until updated forms are available.

OMB No.: 3060-0076

Title: Annual Employment Report for Common Carriers

Form No.: FCC 395

A revised form FCC 395 has been approved for use through 12/31/90. The January 1987 edition with a previous expiration date of 12/31/87 is obsolete. Revised forms will be implemented for the next report.

OMB No.: 3060-0069

Title: Application for Commercial Radio Operator License

Form No.: FCC 756

A revised form FCC 756 has been approved for use through 10/31/90. The April 1985 edition with an expiration date of 3/31/88 will remain in use until revised forms are available.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-3643 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-68; FCC 87-364]

Radio and Television Broadcasting; Elimination of the Carroll and the UHF Impact Policy

AGENCY: Federal Communications Commission.

ACTION: Report and Policy Statement.

SUMMARY: This action eliminates the Carroll doctrine and the UHF impact policy. The Carroll doctrine requires the Commission, in certain cases, to consider the economic impact a proposed broadcast station will have on an existing station. The Commission found that Carroll issues have been raised in numerous proceedings over the years but have never been the basis for denial of a license for a new station. It also observed that resolution of these claims requires considerable time and resources, resulting in delay in the initiation of new services. The Commission further concluded that the theory underlying the Carroll doctrine was no longer valid and that tremendous growth in the number of media outlets reduced the possibility

that public interest benefits would be realized in the future. Finally, the Commission indicated that the judicial roots of the *Carroll* doctrine do not preclude its elimination due to the flexibility of the public interest standard and the discretion afforded the Commission in similar matters.

Under the UHF impact policy, an application to initiate or improve VHF service may be considered contrary to the public interest if the proposal threatens adverse economic impact on existing or potential UHF stations. This policy was intended to afford UHF stations an opportunity to develop in the marketplace when that service was in its infancy and was at a disadvantage, both economically and technically, to the VHF service. Since the UHF impact policy's implementation, such disparities between the VHF and UHF services have been reduced, obviating the need for protection of the UHF service through restrictions on new VHF service.

EFFECTIVE DATE: February 22, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Minster, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission Report and Policy Statement, adopted November 24, 1987, and released February 11, 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, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. After review of a substantial number of cases and the record developed in this proceeding, the Commission found that although the *Carroll* doctrine has been routinely pleaded in the 30 years since its inception, applicants have been unable to demonstrate sufficient evidence to show a net loss of service to the public. Resolution of these claims has required expenditure of the Commission's time and resources, and caused delays in the initiation of new broadcast service without resulting in any identifiable public benefits.

2. The Commission also observed that the theory underlying the *Carroll* doctrine, that competition in

broadcasting can, in some situations, be ruinous and, therefore, inimical to the public interest, has largely been discredited. This theory was based on an assumption that a new station will compete against an existing station for the same advertisers, thus fragmenting the revenue available to either station, and ultimately resulting in a portion of the public being left without adequate service. To the contrary, while there is not an unlimited amount of advertising revenue available in a market, the amount of revenue is likely to increase whenever additional stations enter a market and seek new sources of advertising.

3. The Commission found that the growth in the number of broadcast stations in the past 30 years, and the recent proliferation of substitute electronic media make it less likely that retention of the *Carroll* doctrine would result in public interest benefits in the future. Even if a *Carroll* injury were to occur, the number of media outlets of all types competing in markets would make the impact minimal. The Commission also noted that the *Carroll* doctrine has not been applied to new non-broadcast services, leading them to question whether, in the competitive market environment that now exists, it makes an appreciable difference whether a new entrant competes through a broadcast station or some other form of mass media outlet. The Commission concluded that there appears to be no basis for special protection of existing broadcast stations from new broadcast stations even if such a difference could be identified.

4. As a final matter, the Commission stated that, although the *Carroll* doctrine is rooted in a judicial decision, the flexibility of the public interest standard in conjunction with the broad discretion afforded the Commission by the Supreme Court in similar actions in other areas permits the Commission to eliminate the *Carroll* doctrine.

5. With respect to the UHF impact policy, which was implemented to further the development of the UHF service, the Commission determined that the competitive position of the UHF service has improved to the point that the disparities between UHF and VHF have been largely eliminated. The growth of the UHF service and the concurrent increase in profitability of UHF stations removes the necessity of continual protection of the UHF service through retention of any form of restriction on new VHF service. The Commission found that continued consideration of UHF impact issues would likely produce negative effects on the public interest by hindering the

introduction of new VHF service. The Commission therefore concluded that retention of the UHF impact policy is no longer in the public interest.

6. Accordingly, it is ordered that the Commission staff dismiss any *Carroll* doctrine or UHF impact policy issues raised in petitions filed with the Commission but not yet acted upon. In addition, it is ordered that the proceeding is terminated.

7. Authority for the policy decision herein is contained in section 4(i) and 303 of the Communications Act of 1934, as amended.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-3644 Filed 2-19-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Rescission of Order of Revocation

Notice is hereby given that the following ocean freight forwarder license revocation has been rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address
1120R.....	Inter-Continental Corporation, 8369 N.W. 36th Street, Miami, FL 33166.

Bryant L. VanBrackle,

Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 88-3641 Filed 2-19-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Thursday, March 17, and Friday, March 18. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The March 17 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m. with a lunch break from 1:00 until 2:00 p.m. The March 18 session is expected to begin at 9:00 a.m. and continue until 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Home Equity Lines of Credit.* Recent surveys and additional disclosure requirements. Briefing by Board staff on the results of (1) a Board-sponsored consumer survey on home equity borrowing and (2) an industry-sponsored survey on home equity lending practices; and briefing by Board staff on the status of a Board proposal to require additional Truth in Lending disclosures for home equity lines and a discussion led by the Home Equity Subcommittee.

2. *Expedited Funds Availability.* Briefing by Board staff on the status of a Board proposal implementing the disclosure rules of the Expedited Funds Availability Act.

3. *Expanded Bank Powers.* Report and recommendations by the Financial Structure Committee on allowing banks to offer insurance brokerage services.

4. *Community Reinvestment Act.* An overview of the Community Reinvestment Act by Board staff; and a report by the Community Affairs Committee on the results of a survey of community groups' information needs concerning CRA.

5. *Automotive Leasing.* Briefing by Board staff on the requirements of the Board's Regulation M (Consumer Leasing) as they pertain to automobile leases; and presentation by a Council member on various characteristics of automobile lease transactions.

6. *Rent-to-Own Transactions.* Briefing by members of the Subcommittee on Rent-to-Own Transactions on issues related to rental purchase agreements.

7. *Committee Reports.* Updates from Council committees on work plans for the year.

8. *Legislative and Regulatory Updates.* Briefing by Board staff to inform Council members about the legislative outlook for 1988, and about the status of recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must

be received no later than close of business Friday, March 11, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452-2412; Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Earnestine Hill or Dorothea Thompson (202) 452-3544.

Board of Governors of the Federal Reserve System, February 16, 1988.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 88-3632 Filed 2-19-88; 8:45 am]

BILLING CODE 6210-01-M

Bank Corporation of Georgia; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 1988.

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

1. *Bank Corporation of Georgia,* Macon, Georgia; to acquire Atlanta Capital Corporation, Roswell, Georgia, and thereby engage in finance leasing of personal and real property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the State of Georgia.

Board of Governors of the Federal Reserve System, February 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3633 Filed 2-19-88; 8:45 am]

BILLING CODE 6210-01-M

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

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

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 11, 1988.

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

a. *Lexington Bancshares, Inc.,* Lexington, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The

Lexington Banking Company, Lexington, Kentucky, a *de novo* bank.

2. *Wesbanco, Inc.*, Wheeling, West Virginia; to acquire 100 percent of the voting shares of Mountain State Bank, Parkersburg, West Virginia.

Board of Governors of the Federal Reserve System, February 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-3634 Filed 2-19-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Bacitracin Methylene Disalicylate for Use in Quail; availability of Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness data and environmental data to be used in support of a new animal drug application (NADA) providing for use of bacitracin methylene disalicylate (bacitracin MD) Type A article in making Type C quail feed for certain indications. The data, contained in Public Master File (PMF) 5178, were compiled under Interregional Research Project No. 4 (IR-4), a national agriculture program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESS: Submit NADA's to the Document Control Section (HFV-16), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lubomyr Babiak, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION:

Bacitracin MD for use in quail feed in a new animal drug under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug it is subject to section 512 of the act (21 U.S.C. 360b) requiring that its use(s) be the subject to an approved NADA. Rutgers University, IR-4 Project, Cook College, New Brunswick, NJ 08903, has provided data and information to demonstrate the effectiveness and safety to the target animal of the use of bacitracin MD in Type C feed (200 grams per ton) for the prevention of ulcerative enteritis in growing quail due to *Clostridium*

colinum susceptible to bacitracin MD. Rutgers has also provided an environmental assessment of possible impacts at the site of use of animal drug product. The data and information are contained in PMF 5178. Sponsors of NADA's or supplemental NADA's may reference without further authorization the PMF to support approval. An NADA or supplemental NADA must include, in addition to a reference to the PMF, drug labeling and other information needed for approval, including data concerning human food safety; manufacturing methods, facilities, and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Lubomyr Babiak (address above).

Bacitracin MD Type A medicated articles are already approved under 21 CFR 558.76 for making Type C feeds containing up to 200 grams per ton for chickens and turkeys and up to 20 grams per ton for quail.

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

Dated: February 11, 1988.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 88-3623 Filed 2-15-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0013]

Paragon Optical, Inc.; Premarket Approval of FluoroPerm™ (Paflufocon A) Rigid Gas Permeable Contact Lens (Clear and Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Paragon Optical, Inc., Mesa, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the spherical FluoroPerm™ (paflufocon A) Rigid Gas Permeable Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological

Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 7, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On May 20, 1987, Paragon Optical, Inc., Mesa, AZ 85201-0171, submitted to CDRH an application for premarket approval of the FluoroPerm™ (paflufocon A) Rigid Gas Permeable Contact Lens. The lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and may correct corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from -20.00 D to +12.00 D and is to be disinfected using the chemical lens care system specified in the approved labeling. The blue tinted lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On October 22, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 31, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved final labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for

use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that DCRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 USC. 301 et seq.), an regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 23, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h)) and under

authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 12, 1988.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88-3626 Filed 2-19-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Information Exchanger; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Los Angeles District Office, chaired by George J. Gerstenberg, District Director. The topics to be discussed are the new drug approval process and acquired immunodeficiency syndrome (AIDS).

DATE: Wednesday, March 2, 1988, 1 p.m. to 3 p.m.

ADDRESS: Maricopa County Cooperative Extension Auditorium, 4341 East Broadway Rd., Phoenix, AZ 85040.

FOR FURTHER INFORMATION CONTACT: Irene Caro, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213-252-7579.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: February 16, 1988.

John M. Taylor,

Associate Commissioner.

[FR Doc. 88-3625 Filed 2-19-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of a Pennsylvania State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on March 15, 1988 in Philadelphia, Pennsylvania to

reconsider our decision to disapprove Pennsylvania State Plan Amendment 87-7.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk by March 8, 1988.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Pennsylvania State Plan Amendment 87-7.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Pennsylvania SPA 87-7 violates section 1902(a)(10)(A) and (C) and 1902(a)(17) of the Social Security Act, and Federal regulations at 42 CFR 435.725(c)(4) and 42 CFR 435.726(c)(4).

Pennsylvania SPA 87-7 includes 13 policies the State believes to be more liberal than permitted under the Medicaid statute and the State believes to be protected under the moratorium provision contained in section 2373(c) of the Deficit Reduction Act (DRA) of 1984 as clarified by section 9 of the Medicare and Medicaid Protection Act (Pub. L. 100-93) of 1987.

Section 2373(c) of the DRA imposes a moratorium which prohibits the Secretary from taking certain adverse actions against States because they are

applying more liberal financial eligibility standards and methods other than those required by certain portions of section 1902(a)(10) of the Social Security Act (the Act). Therefore, during the moratorium period (October 1, 1981–February 17, 1989) no disallowance, compliance, penalty or other regulatory action will be taken against States because a plan (or its operation) employs eligibility standards and methods the Secretary finds to be more liberal than required under sections 1902(a)(10)(A)(ii)(IV),(V) or (VI) or 1902(a)(10)(C)(i)(III) of the Act. The Congress made clear, however, that application of more liberal policies that result in income exceeding FFP limits is not within the scope of the moratorium. For purposes of this provision, we do not interpret "other regulatory action" to encompass disapproval of moratorium plan amendments as part of the official State plan. The moratorium was not intended to confer on States an unlimited right to use more liberal criteria (which would result if the moratorium required approval of State plan amendments) but to permit States, without fiscal penalties, to use more liberal eligibility criteria during the moratorium period.

Accordingly, HCFA disapproved the 13 policies included in SPA 87-7 because they violate the Medicaid statute as specifically described below. Further HCFA has determined that certain of these policies are not protected by the moratorium for a variety of reasons: (a) Certain policies are not within the scope of the moratorium because they are more restrictive than permitted under section 1902(a)(10); (b) certain policies apply to eligibility groups which are not within the scope of the moratorium; (c) certain policies are not within the scope of the moratorium because they are not eligibility policies under section 1902(a)(10); (d) application of such policies would result in income exceeding FFP limits; or (e) the proposed policy is not sufficiently descriptive to make a finding of whether the policy is protected by the moratorium or not.

The following sets forth reasons for HCFA's disapproval and specifies the extent of protection HCFA believes is afforded under the moratorium contained in section 2373(c) of the DRA. HCFA has determined the following proposed policies for AFDC-related individuals violate section 1902(a)(10)(A) and (C) of the Act.

A. The State proposes to count, in determinations of eligibility for both categorically needy and medically needy, lump-sum nonrecurring income in 1 month (or budget period) rather than in

the manner such income is applied under the AFDC program; thus, HCFA has determined it violates sections 1902(a)(10)(A)(C) of the Act. Because this policy can result in a more liberal or more restrictive policy than would result in application of AFDC policy for counting lump-sum nonrecurring income, we do not believe it is protected by the moratorium. Additionally, the policy would be applied to AFDC-related categorically needy eligibility groups not included within the scope of the moratorium.

Under AFDC, when the family's income exceeds the need standard because of receipt of nonrecurring lump-sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump-sum income and any other income by the applicable monthly need standard. (See 45 CFR 233.20(a)(3)(ii)(F).)

Applying this rule under the "same methodology requirement" without undercutting the requirement of a "spenddown" under section 1902(a)(17) results in a methodology which does not make an individual ineligible during the months in which the prorated lump sum amounts are considered to be his income. The State may use the medically needy income level to determine the amount of months over which the lump sum is to be prorated. During those months, the individual's monthly income would be added to the prorated amount in order to determine the spenddown amount.

Pennsylvania's proposal to not apply AFDC lump-sum rules is more liberal than AFDC policy because the lump-sum payment is counted as income only in the month received which results in potentially no more than one month of ineligibility rather than up to several months as may be the case under the AFDC rule. Additionally, the Pennsylvania proposal to not apply the AFDC lump-sum income policy can have the result of treating families in a more restrictive manner, depending on the individual family circumstances. For example, application of the AFDC lump-sum policy in a manner consistent with Medicaid may still permit families with low recurring monthly income to establish medically needy eligibility through spenddown.

However, as Pennsylvania proposes to count the entire lump-sum amount in 1 month (or budget period), the entire lump-sum amount could raise the family's income (and thus the family's spenddown liability) so far above the monthly need standard that the family would be unable to spenddown enough to attain medically needy eligibility.

B. The State proposes to deduct actual amounts incurred for work and personal expenses for both AFDC-related categorically needy and medically needy instead of deducting the \$75 standard work expense used under the AFDC program. (See 45 CFR 233.20(a)(11)(i)(B).) The proposed policy can result in a more liberal or more restrictive policy than application of the AFDC rule. Because the proposed policy differs from AFDC HCFA has determined it violates sections 1902(a)(10) (A) and (C) of the Act. Because the policy can result in a more liberal or more restrictive policy than that used under the AFDC program we do not believe it is protected under the moratorium. Additionally, the policy would be applied to AFDC-related categorically needy groups not included under the scope of the moratorium.

The Pennsylvania proposal is more liberal than AFDC policy because it permits the disregard of actual amounts for work and personal expenses rather than limiting the disregard to \$75 as required under AFDC. The Pennsylvania proposal is also more restrictive than AFDC policy. In cases where the individual's actual work expenses are less than \$75, Pennsylvania would disregard the actual amount rather than apply the required \$75 disregard.

C. The State proposes not to apply (in determinations of eligibility for AFDC-related categorically needy) the AFDC gross income test which is based on 185 percent of the State's AFDC need standard (see 45 CFR 233.20(a)(3)(xiii)). Because the proposed policy is more liberal than AFDC program policy, HCFA has determined it violates section 1902(a)(10)(A) of the Act. We do not believe the proposed policy is protected by the moratorium as these categorically needy eligibility groups are not within the scope of the moratorium.

Since the 185 percent test is a necessary component of determining eligibility for an AFDC payment, it must also apply to categorically needy individuals who are eligible for Medicaid by virtue of being individuals "who would be eligible for an AFDC payment." Pennsylvania's proposal to not apply the 185 percent gross income test to categorically needy individuals is more liberal than AFDC policy because under Pennsylvania's proposal eligibility could be established even though the family's income exceeds the 185 percent amount.

D. The State proposes to deduct, from self-employment income, depreciation, personal business and entertainment expenses, personal transportation expenses, purchase of capital

equipment, and payment on principal of loans for capital assets or durable goods. The proposed policy is more liberal than AFDC program policy and therefore HCFA has determined it violates section 1902(a)(10)(C)(i)(III) of the Act. We believe the proposed policy is protected under the moratorium, but only to the extent application of the more liberal disregards of income (after statutory deductions described in 42 CFR 435.831) is below the FFP limit for the medically needy established in section 1903(f) of the Act. For example, if your FFP limit were \$400 and your MNIL were \$375, you could disregard an additional \$25 when an individual or families' income (after the AFDC deductions) is below \$400. (The State proposes an effective date under the moratorium of October 1, 1986. In order to approve a retroactive effective date the State must provide documentation that the policy was included in its Medicaid operations or program manual from October 1, 1986 to present.)

• HCFA has determined the following proposed policies for SSI related individuals violate section 1902(a)(10)(A) and (C) of the Act—

A. The State proposes not to count support and maintenance in-kind. HCFA has determined the proposed policy is more liberal than SSI program policy and thus HCFA believes it violates sections 1902(a)(10)(A) and (C) of the Act. We believe the proposed policy is protected under the moratorium, but only to the extent it is used to determine eligibility for individuals described under sections 1902(a)(10)(A)(ii)(IV), (V) or (VI) or 1902(a)(10)(C) of the Act and to the extent that application of the disregards does not result in exceeding the FFP limits set forth in section 1903(f).

Under SSI one type of unearned income which is counted in determining eligibility for an SSI payment is in-kind support and maintenance (food, clothing, and shelter). The way SSI values (i.e., the amount it counts) in-kind support depends on the individual's living arrangement. (See 20 CFR 416.1120 through 416.1124.) The Pennsylvania proposal which does not count support and maintenance in-kind as income is more liberal, therefore, than SSI criteria which require that in-kind support and maintenance count as income in determining eligibility.

B. The State proposes not to apply SSI life insurance provisions. This policy is more liberal than SSI program policies and thus HCFA has determined it violates sections 1902(a)(10)(A) and (C) of the Act. We believe the proposed policy is protected by the moratorium, but only to the extent it is used to determine eligibility for individuals

described under section 1902(a)(10)(A)(ii)(IV)(V) or (VI) or 1902(a)(10)(C) of the Act.

The State's proposed plan indicates that the SSI life insurance provisions are not being applied to categorically and medically needy individuals. We are advised by our regional office, that Pennsylvania disregards the cash value of life insurance if the face value of all policies on the individual does not exceed \$1,500. Additionally, where the face value of all policies on the individual exceeds \$1,500, Pennsylvania counts the cash value over \$1,000. (Effectively, where the face value exceeds \$1,500 Pennsylvania disregards the first \$1,000 of cash value of the policies). This policy is more liberal than SSI policy which requires that if the face value of life insurance policies on the individual exceeds \$1,500, all cash value of the policies will be counted in determining eligibility. (See 20 CFR 416.1230.) (The State proposes an effective date under the moratorium of October 1, 1986. In order to approve a retroactive effective date the State must provide documentation that the policy was included in its Medicaid operations or program manual from October 1, 1986 to present.)

C. The State proposes to exclude property used in a trade or business essential to self-support which produces an annual net return of at least 6 percent of the excludable equity value. The State proposes to exclude a person's equity up to an amount not to exceed \$15,000. The proposed policy is more liberal than SSI program policy and thus HCFA believes it violates sections 1902(a)(10)(A) and (C). Effective January 1, 1987, to the extent the proposed policy is used to determine eligibility for individuals described under sections 1902(a)(10)(A)(ii)(IV), (V) or (VI) or 1902(a)(10)(C) of the Act, it is protected by the moratorium.

Under SSI policy, the value of property used in a trade or business essential for self-support is excluded provided that the equity value of the property is less than \$6,000 and the property produces at least a 6 percent return on the equity value. If the equity value of the property is greater than \$6,000, the excess over \$6,000 is counted as a resource.

D. The State proposes not to apply joint bank account provisions. This policy is not described in enough detail to be able to determine how it differs from SSI program policy. HCFA believes it violates section 1902(a)(10)(A) and (C) of the Act because it does differ from SSI policy and is thus disapprovable, but we cannot conclude that it is protected under the moratorium without

evidence that the policy is more liberal than SSI program policy and cannot result in a more restrictive policy.

Under SSI policy, when an eligible spouse enters a medical institution and an ineligible spouse remains at home, the income and resources of the ineligible spouse are not considered to be available to the eligible spouse in the institution because they are not living together. However, where a resource such as a bank account is held jointly by both parties, the full value of the resource is considered to be available to either the spouse at home or the spouse in the institution. This is because when an account is held jointly, either party has the legal right to all of the funds in the account. Thus, the full value of the account is considered to be a resource of the institutionalized spouse in determining eligibility.

E. The State proposes to exclude one automobile regardless of value. This policy is more liberal than SSI program policy and thus HCFA believes it violates sections 1902(a)(10)(A) and (C) of the Act. Effective January 1, 1987 the proposed policy is protected by the moratorium, but only to the extent it is used to determine eligibility for individuals described under sections 1902(a)(10)(A)(ii)(IV), (V) or (VI) or 1902(a)(10)(C) of the Act.

Under SSI policy (20 CFR 415.1218), the value of one automobile is totally excluded as a resource in determining eligibility if the automobile is used for employment, is necessary for medical treatment of a specific or regular medical problem, is modified for operation by, or transportation of, a handicapped person, or is necessary because of the climate, terrain, distance, or similar factors to provide needed transportation to perform essential daily activities. If no exclusion can be made under these rules, the value of one automobile is excluded up to a limit of \$4,500. Any value in excess of \$4,500 is counted as a resource in determining eligibility. The value of any other automobile is counted as a resource against the individual's resource limit.

• In medically needy determinations, the State proposes to deduct from income expenses for medical and remedial care regardless of whether such expenses are ultimately incurred by an individual or family. (The State explicitly refers to this as projection of incurred expenses.) HCFA believes the proposed policy violates section 1902(a)(17) of the Act and thus is not approvable. We believe the proposed policy is not protected by the moratorium as it violates section

1902(a)(17) of the Act not section 1902(a)(10) of the Act.

Income eligibility determinations for the medically needy must provide for the deduction from income the amounts required under the most closely related cash assistance programs (AFDC or SSI). (See section 1902(a)(10)(C)(i)(III) of the Act.) After these cash program deductions are applied, deductions are made for incurred medical and remedial care expenses. (See section 1902(a)(17) of the Act.) Except for certain institutional care expenses, States may not project medical and remedial care expenses for purposes of determining eligibility under spenddown.

• The State proposes to deduct, in the post-eligibility treatment of income, Veteran's Aid and Attendance and Housebound Allowances. HCFA believes the proposed policy violates section 1902(a)(17) and is thus disapprovable. We believe the proposed policy is not protected by the moratorium because it is not an eligibility requirement under section 1902(a)(10), but a post-eligibility policy.

The Medicaid post-eligibility process is distinct and separate from the eligibility process. The authority flows from section 1902(a)(17) of the Act. The purpose of the post-eligibility process is to count income which is clearly available to the individual to offset the costs of institutional care and alternative care provided under a home and community based waiver program (including concomitant attendant care). Therefore, unless the post-eligibility provisions specify a particular payment to be unavailable to the individual or to be unavailable for a specific and protected other purpose, the payment must be considered and applied to the costs of institutional care or home and community-based services, thus reducing the Medicaid payment. In this context, we believe that Veteran's Aid and Attendance and Housebound Allowance is considered to be income and available for application in the post-eligibility process. Thus, if a VA A&A or homebound payment is used for such expenses, it would be protected and not applied to the cost of care. Otherwise, the VA A&A payment is available for use by the individual and must be applied to the cost of institutional care.

Mr. John F. White, Jr.,
Secretary of Public Welfare,
P.O. Box 2675,
Harrisburg, PA 17105.

Dear Mr. White: This is to advise you that your request for reconsideration of the decision to disapprove Pennsylvania State Plan Amendment 87-7 was received on January 14, 1988.

Pennsylvania SPA 87-7 contains 13 policies you believe to be more liberal than allowed under the Medicaid statute and you seek protection of these proposed policies under section 2373(c) of the Deficit Reduction Act (DRA) of 1984 as clarified by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (P.L. 100-93).

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

There are three issues in this matter. The first issue concerns the need to determine whether section 1902(a)(10) (A) and (C) and 1902(a)(17) of the Social Security Act permit the use of financial eligibility rules like those proposed by Pennsylvania which differ from the rules applied under the appropriate cash assistance programs. The second issue is whether section 1902(a)(17) of the Social Security Act and Federal regulations at 42 CFR 435.725(c)(4) and 435.726(c)(4) allows deduction of Veterans Aid and Attendance and Housebound Allowances in the post-eligibility treatment of income. The third issue is whether Pennsylvania's proposed rules are protected by the moratorium provisions of the Deficit Reduction Act of 1984 and as amended by the recently enacted Medicare and Medicaid Patient and Program Protection Act of 1987.

I am scheduling a hearing on your request to be held on March 15, 1988 at 10:00 a.m. in the 3rd Floor Conference Room, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: February 12, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-3668 Filed 2-19-88; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

National Toxicology Program; Chemicals (7) and One Substance Nominated for Toxicological Studies; Request for Comments

SUMMARY: On December 9, 1987, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review seven chemicals and one substance nominated for toxicology studies and to recommend the types of studies to be performed, if any. With this notice, the NTP solicits public comments on the seven chemicals and one substitute listed herein.

FOR FURTHER INFORMATION CONTACT:

Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the *Federal Register*. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for decision-making. The NTP chemical selection process is summarized in the *Federal Register*, April 14, 1981 (46 FR 21828), and also in the NTP FY 1987 Annual Plan, pages 17-19.

On December 9, 1987, the CEC met to evaluate seven chemicals and one substance (pitch-based fibrous graphite) nominated to the NTP for toxicological studies. The following table lists the chemicals and the substance, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC at the meeting.

Chemical/Substance	CAS Registry No.	Committee Recommendations
1. Anthraquinone.....	84-65-1	Chronic toxicity. Carcinogenicity.
2. Camphor.....	76-22-2	Carcinogenicity. Teratology and reproductive effects.
3. 1-Chloro-2-bromoethane.....	107-04-0	Carcinogenicity.
4. Glyoxal.....	107-22-2	Carcinogenicity. Teratogenicity.
5. Lead oxide.....	1317-36-8	Acute and subchronic comparative toxicity studies of lead oxide and lead sulfide.
6. Lead sulfide.....	1314-87-0	Do.
7. Pitch-based fibrous graphite.....		Defer.
8. Urethane.....	51-79-6	Carcinogenicity. In utero carcinogenesis study. Oncogene activation study. DNA adduct formation. Interaction study of urethane and ethanol.

Two of the seven chemicals have previously been selected for study by the NTP. Anthraquinone was mutagenic in *Salmonella*. Urethane was mutagenic in *Salmonella*, and induced sex-linked recessive lethal mutations and reciprocal translocations in *Drosophila*. Urethane also induced sister chromatid exchanges but not chromosomal aberrations in Chinese hamster ovary cells. The NTP has completed an immunology study and is currently conducting pharmacokinetics studies on urethane.

Two of the seven chemicals, lead oxide and lead sulfide, were previously reviewed by the CEC on September 29, 1987, and were deferred to obtain more information from the nomination source regarding the types of recommended studies. Pitch-based fibrous graphite was also previously evaluated by the CEC on January 13, 1987, and was deferred in order to obtain more information on production, worker exposure, physical characteristics of the substance, and toxicology data. One manufacturer informed the NTP of ongoing toxicology studies. On the basis of this information, the CEC deferred pitch-based fibrous graphite pending the completion of these studies.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

- (1) Modes of production, present production levels, and occupational exposure potential.
- (2) Uses and resulting exposure levels, where known.
- (3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies.
- (4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by March 23, 1988. Any submissions received after the above date will be accepted and utilized where possible.

Dated: February 16, 1988.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 88-3714 Filed 2-19-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-08-4213-15; AA-6984-A, AA-6984-B, AA6984-C, AA6984-D]

Alaska Native Claims Selection; Klawock-Heenya Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Klawock-Heenya Corporation for approximately 2,568.58 acres. The lands involved are in the vicinity of Klawock, Alaska.

Copper River Meridian, Alaska

T. 72 S., R. 80 E.

T. 72 S., R. 81 E.

T. 73 S., R. 81 E.

T. 73 S., R. 82 E.

T. 74 S., R. 82 E.

Containing approximately 2,568.58 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 23, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 88-3627 Filed 2-19-88; 8:45 am]

BILLING CODE 4310-JA-M

[ES-970-08-4121-14-2410; ES 36585]

Competitive Coal Lease Offering by Sealed Bid, Clay County, KY; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Coal Lease Offering By Sealed Bid.

SUMMARY: This document corrects the Competitive Coal Lease Offering By Sealed Bid, Clay County, Kentucky (Notice 88-2030) published in the Federal Register on February 1, 1988 (53 FR 2792 and 2793). The following corrections should be made on page 2793, first column:

Item 4—take out (*million tons*) due to printing error;

Item 5—change to 0.033 million tons.

Lane J. Bouman,

Acting State Director.

[FR Doc. 88-3680 Filed 2-19-88; 8:45 am]

BILLING CODE 4310-GJ-M

[NV-020-4322-02]

Winnemucca District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and section 3, Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on March 31, 1988. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10:00 a.m.
2. District Manager's Update
3. Domestic Sheep Conversion and Bighorn Sheep Reestablishment
4. Riparian Update
5. Range Program Summary Update
6. Grazing Decisions/Agreements based on range monitoring
7. Range Betterment (Range Improvement) Funds
FY 88 Projects
FY 89 Projects

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by March 15, 1988. Depending on the number of

persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: February 12, 1988.

Frank C. Shields,

District Manager, Winnemucca.

[FR Doc. 88-3620 Filed 2-19-88; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

North Rim Development Concept Plan/Environmental Assessment, Grand Canyon National Park, AZ; Availability

SUMMARY: The National Park Service, Department of the Interior, has prepared a development concept plan and environmental assessment for the proposed construction of additional overnight accommodations, day use of facilities and associated support facilities at the North Rim area of Grand Canyon National Park, Arizona.

The proposed action includes the development of a 100 unit lodge and 50 unit campground expansion in the vicinity of the North Rim Inn, provision of a new visitor contact center, improvement of traffic circulation at Bright Angel Point and relocation, rehabilitation or new construction of National Park Service and concessioner maintenance and employee housing facilities. Other alternatives evaluated include no action and the location of the 100 unit lodge in the Upper Transept Canyon area.

Comments on the proposed development concept plan and environmental assessment should be addressed to: Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023.

Copies of the proposed plan and assessment may also be obtained from the above address. Comments on the proposed plan and assessment should be received no later than April 1, 1988.

Date: February 8, 1988.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88-3684 Filed 2-19-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Indexing the Annual Operating Revenues of Railroads and Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads and motor carriers of property for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extensiveness of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroads Freight Price Index. For motor carriers of property, the inflation factors are based on the annual average Producers Price Index for all commodities. The indexes are developed by the Bureau of Labor Statistics. Inflation factors for motor carriers of passengers will be issued next year.

The base years for railroads and motor carriers are 1978 and 1980, respectively. The inflation index factors for 1985, 1986 and 1987 are presented as follows:

	Railroads—Railroad freight index			Motor carriers of property—Producers prices index	
	Index	Deflator percent		Index	Deflator percent
1978	213.1		1980	252.4	
1985	374.8	56.86	1985	291.9	86.47
1986	377.4	56.47	1986	284.9	88.59
1987	374.8	56.86	1987	291.0	86.74

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT:

William G. Norris, (202) 275-7510.

Noreta R. McGee,

Secretary

[FR Doc. 88-3713 Filed 2-19-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31213]

St. Louis and Lake Counties Regional Railroad Authority; Lease and Operation

St. Louis and Lake Counties Regional Railroad Authority (Authority), a political subdivision of the State of Minnesota, has filed a notice of exemption to acquire the Lake Front Line belonging to the Duluth, Missabe and Iron Range Railway Company (DM&IR) between Duluth, MN, and Two Harbors Depot, MN in St. Louis and Lake Counties, MN. In addition, Authority will acquire incidental trackage rights over a portion of line owned by the Burlington Northern Railroad Company (BN).¹ The specific portions of line to be acquired are described as follows:

From milepost 0 at Duluth Union Depot to milepost .9 Authority will acquire trackage rights from BN. From milepost .9 to milepost 1.7 the line runs over land owned by BN on track owned by DM&IR.² Authority intends to acquire the underlying land from BN by purchase or donation, and acquire lease rights or trackage rights over the DM&IR track. From milepost 1.7 to milepost 25.57 Authority intends to purchase the land and track owned by DM&IR. From milepost 25.57 to the Two Harbors Depot at milepost 28.46 Authority intends to acquire a leasehold interest over land and track owned by DM&IR consisting of mainline track to milepost 27.53 and then by yard track from milepost 27.53 to milepost 28.46. The total mileage to be acquired by Authority by purchase (from DM&IR) is 24.8 miles,³ together with 3.66 miles

¹ The trackage rights over .9 mile of BN's line that Authority will acquire is incidental to the overall transaction. Acquisition of the trackage rights will occur at the same time as the purchase of the Lake Front Line. Accordingly, acquisition of these trackage rights are incidental to the overall exempt transaction and will not be subject to provisions for the protection of railway labor.

² The acquisition by Authority of the portion of the line abandoned pursuant to authority given in Docket No. AB 101 (Sub-No. 6) *The Duluth, Missabe and Iron Range Railway Company—Abandonment—in St. Louis and Lake Counties, MN* (not printed), served February 3, 1986 (milepost 0.901 to milepost 26.0) does not require Commission authorization See 49 CFR 1150.22.

³ It appears that the 24.8 miles of line to be purchased consists of the 23.87 miles from milepost

under lease and joint operating rights agreements with BN and DM&IR.

Authority expects to acquire the above rights by August 1, 1988. It is unclear whether Authority will operate the line or whether an operator will be obtained to provide this service. A separate modified rail certificate or notice of exemption under 49 CFR 1150.31 will be required if service is going to be provided by an operator. Any comments must be filed with the Commission and served on Steven C. Fecker, P.O. Box 20, Grand Rapids, MN 55744.

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 12, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-3534 Filed 2-19-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-6516 et al.]

Proposed Exemptions; Craig Supply Company, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the

1.7 to milepost 25.57 and the 0.93 miles of yard track from milepost 27.53 to milepost 28.46.

writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Craig Supply Company, Inc. Employees' Profit Sharing Retirement Plan (the Plan), Located in Rochester, New Hampshire

[Application No. D-6516]

Proposed Exemption

The Department is considering granting an exemption under the

authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lease of certain real property by the Plan to Craig Supply Company, Inc. (the Employer), provided all of the terms of the lease were and remain at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

EFFECTIVE DATE: July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with 52 participants and total assets of \$1,512,795 as of September 30, 1985. The trustees of the Plan are Ralph B. Craig, Jr., Margaret S. Christensen, Donald Cook, Dan Jennison and Warren Haas (the Trustees). The Employer operates a laundry center in Durham, New Hampshire.

2. On February 26, 1965, the Plan purchased for \$26,750 land and building located at 46 Main Street, Durham, New Hampshire (the Property). The Property represents under 10% of the total assets of the Plan. At the time of its purchase, the Property was subject to an existing lease to Durham Laundercenter (Durham) dated October 1, 1964 (the Old Lease). Durham was a New Hampshire partnership comprised of employees of the Employer who were participants in the Plan.

3. Simultaneously with the Plan's purchase of the Property, a new lease was entered between the Plan and Durham (the New Lease). The New Lease was for an initial period of nine years beginning March 1, 1965 through February 28, 1974 and provided for three separate five-year renewal terms.¹ The rental during the initial term of the New Lease was \$3,600 per year plus the excess of real estate taxes assessed upon the Property over and above \$700. All other costs and expenses incurred on the Property were paid by Durham.

4. In June 1973 as part of an orderly dissolution, the assets of Durham, including its leasehold interest under the New Lease with the Plan were sold to the Employer. Since purchasing the

assets of Durham, the Employer has continually remained in possession of the Property and utilized it as an operating laundromat and display store.

5. The New Lease was terminated effective June 30, 1984 and the Plan then entered into a new lease with the Employer, effective July 1, 1984 (the Present Lease). The Present Lease is for a term of ten years with a minimum annual rental of \$12,000, adjusted annually to reflect increases in the Consumer Price Index. The Employer also pays the portion of the real estate taxes on the Property in excess of \$800. Effective December, 1986, the annual rental pursuant to the terms of the Present Lease was increased to \$16,620. The Employer's portion of the real estate taxes for the Property totalled \$1,143. Thus, for 1986, the Employer paid a total of \$17,763 to the Plan.

6. An appraisal of the Property was performed by Leo H. Langelier, Sr., of Langelier Enterprises, an appraisal company located in Portsmouth, New Hampshire (the Appraiser). The Appraiser determined that the fair market rental value of the Property is \$17,600 per annum as of December 20, 1986.

7. The Indian Head National Bank (the Bank) is the Plan's independent fiduciary for the Present Lease. The Bank has been the Plan's investment adviser since November of 1973. The Bank is a federally chartered financial institution with its principal place of business in Nashua, New Hampshire. The Bank represents that it is independent from the Employer and that the Employer only has a de minimus lending and depository relationship with the Bank.

8. The Bank represents that it has examined the Plan's overall investment portfolio and diversification of assets, and has considered the liquidity requirements of the Plan and its overall investment objectives and policies. The Bank's review indicated that the Present Lease provides for a higher rate of return to the Plan than could be achieved in a similar transaction with an unrelated party, and is consistent with the Plan's investment objectives, while still meeting the liquidity requirements of the Plan. In addition, the Present Lease gives the Bank the right to terminate the lease upon one year's notice to the Employer.

9. The Bank represents that it has consulted with legal counsel who is experienced with the Act and was advised of its duties, responsibilities and liabilities as a plan fiduciary under the Act. The Bank further represents that it understands and acknowledges

these duties, responsibilities and liabilities. The Bank has agreed to monitor the Present Lease throughout its duration and agrees to take any actions necessary and appropriate to safeguard the interests of the Plan. In conclusion, the Bank represents that the terms of the Present Lease are in the best interest of the Plan and its participants and beneficiaries.

10. In summary, the applicant represents that the transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The Plan has the right under the Present Lease to cancel it upon one year's notice to the Employer;

(2) The Bank has determined that the transaction is in the interest of and protective of the Plan and its participants and beneficiaries;

(3) The Plan is receiving rental on the Property in excess of its appraised rental value;

(4) The transaction involves less than 10% of the Plan's assets; and

(5) The rental paid to the Plan will be adjusted annually with a minimum rental of \$12,000.

FOR FURTHER INFORMATION CONTACT:

Mr. Alan Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Getter Trucking, Inc. Profit Sharing Plan (the Plan), Located in Billings, Montana

[Application No. D-6796]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), and 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lease of certain real property (the Property) by the Plan to the Getter Trucking, Inc. (the Employer), provided that the terms of the lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

EFFECTIVE: If granted, the proposed exemption will be effective on June 1, 1985.²

¹ The applicant represents that the Old Lease and the New Lease were not prohibited transactions until July 1, 1984 because they were covered by section 414 of the Act. The Department expresses no opinion as to the applicability of section 414 to the leases in this proposed exemption.

² The Department is not proposing an exemption for the lease of the Property by the Plan to the Employer prior to June 1, 1985. The applicant has represented that Form 5330 will be filed with the

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 411 participants and total assets of \$2,356,906.18, as of December 31, 1986. The trustee of the Plan is William R. Getter of Billings, Montana (the Trustee) who is a participant of the Plan and an officer, director, and 20 percent shareholder of the Employer. The remaining 80 percent of the issued stock of the Employer is equally owned and divided by two uncles of the Trustee, Thomas I. Getter of Gillette, Wyoming, and Bruce E. Getter of Cut Bank, Montana. The Employer, which sponsors the Plan, is an oil field and heavy-haul trucking company doing business in the western part of the United States.

2. On October 31, 1977, the Plan purchased the Property from an unrelated party for \$200,386.64. The Property as purchased consisted of 15 acres of unimproved land located at 6301 Zero Road in Natrona County on the outskirts of Casper, Wyoming. After purchasing the Property, the Plan had improvements made to 10 of the 15 acres for a total cost of \$223,047.65. These improvements were the construction of a trucking terminal building for a shop and offices, storage shed, fuel pumps, fencing, and sundry improvements. On April 1, 1979, the Plan executed a lease (the Lease) to the Employer for 10 acres of the Property and the improvements thereon. The Lease was for a term of 10 years, ending March 31, 1989, with annual rental of \$42,796.65. The annual rentals were calculated to yield a 12 percent return to the Plan on its costs incurred in acquiring the improving 10 acres of the Property. The first amendment to the Lease was made on October 1, 1980, to include a new storage shed on the 10 acres of the Property, which was added to the original improvement for a total cost to the Plan of \$18,574. The first amendment to the Lease also increased the annual rentals by \$2,786.16. The second amendment to the Lease was made on October 1, 1982, to include leasing the remaining five acres of the Property by the Plan to the Employer. The second amendment to the Lease increased the annual rentals by \$12,000 and increased the total annual rentals to \$57,582.84. The Lease is represented by the applicants to be a "triple net lease" with the Employer paying all real estate taxes, hazard and liability insurance, utilities, and all repairs and

maintenance costs incurred by the Property.

The Lease was again amended on June 16, 1987, and further revised on November 4, 1987, and December 9, 1987, to provide for adjustments to the rental payments beginning April 1, 1988; and on each April 1 thereafter. The adjustments in the rental payments are to reflect changes in the fair market rental value of the Property which is to be determined on December 31, of each year by a qualified, independent appraiser. At no time will the annual rentals be less than \$57,582.84. Also, the Lease provides for a renewal of successive three year terms until March 31, 1998, at the option of the tenant and subject to approval by a qualified, independent fiduciary. Commencing April 1, 1998, the Lease may be renewed for successive three year terms, not to exceed a total of 10 years. Such renewals are subject to the terms and conditions specified above, including the approval of the qualified, independent fiduciary.

Mr. M.F. Elliot, R.M., an independent real estate appraiser of Casper, Wyoming, appraised the Property and determined as of December 31, 1986, that the Property had a fair market value of \$405,000 and annual fair market rental value of \$26,000.

3. On June 1, 1985, Norwest Bank Casper, N.W. (the Bank) with offices in Casper, Wyoming, was appointed as independent fiduciary for the Property. The Bank and the applicants represent that there is no banking or owner relationship between the Bank and either the Employer, the Getter family, or the Plan, except for the fiduciary relationship with the Property. The Bank represents that it is a national bank with trust powers, fully experienced in all aspects of real estate, and possessing broad experience in all matters concerning the Act; and further represents that it is cognizant of and accepts the duties, responsibilities, and liabilities of a fiduciary under the Act and specifically on behalf of the Plan. The Bank also represents that the Lease has been and continues to be in the best interests of the Plan and its participants and beneficiaries because the rate of return on the Plan's investment is comparable to the rate of return on similar investments; the terms of the Lease are comparable with terms that would exist in a similar transaction with an unrelated party; and the transaction is appropriate for the investment portfolio of the Plan, including its liquidity and diversification requirements. In addition, the Bank represents that the financial statements

of the Employer indicate that the Employer is able to satisfy its financial obligations and make rental payments when due under the provisions of the Lease. The Bank will continue, as it has done since June 1, 1985, to monitor the Lease and collect rentals when due for the duration of the Lease, solely on behalf of the Plan and its participants and beneficiaries. The Bank represents that it will continue to have full power and authority to enforce in its sole discretion, by suit or otherwise, all provisions of the Lease and the amendments thereto, including the options for renewals of the Lease. The Bank also will have the right to select, or approve the selection, of an independent appraiser who will perform an appraisal of the Property as to its fair market rental value each year on December 31.

4. In summary, the applicant represents that the transaction meets the statutory criteria of section 408(a) of the Act because (a) the rentals under the Lease are equal to or better than the first market rental value of the Property as determined each year-end by a qualified independent appraiser selected, or approved by a qualified, independent fiduciary; (b) any renewal of the Lease after March 31, 1989, will be reviewed by and subject to the approval of the qualified, independent fiduciary for the Plan; and (c) the qualified, independent fiduciary for the Plan has reviewed the terms and conditions of the Lease and its amendments, the appraisals of the Property made by a qualified, independent appraiser, and the needs of the Plan, including its need for liquidity, diversification, and a favorable rate of return on its investments and has determined that the Lease and its amendments are appropriate for, and protective of, and in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Mark IV Industries, Inc. Master Defined Benefit Plan (the Plan), Located in Amherst, New York

[Application No. D-7223]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and he

Internal Revenue Service and the excise taxes owing for the lease of the Property by the Plan to the Employer prior to June 1, 1985, will be paid within 60 days of publication in the Federal Register of the grant of the proposed exemption.

sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (a) The proposed purchase by the Plan from Mark IV Industries, Inc. (the Employer) of two promissory notes (the Notes) payable to wholly-owned subsidiaries of the Employer, provided the terms of the transaction are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; and (b) the Employer's unconditional guarantee of repayment of the Notes.

Summary of Facts and Representations

1. The Employer designs and manufactures aerospace and defense products. As of January 30, 1987, approximately 8,510,139 shares of the Employer's common stock (the Stock) were issued and outstanding. The Stock is traded on the New York Stock Exchange.

2. The Plan is a defined benefit plan with approximately 7,056 participants and assets valued at \$76,782,954.48 as of October 31, 1987. The Plan is comprised of numerous employee benefit plans of the various subsidiaries and affiliates of the Employer. The trustee of the Plan is Marine Midland Bank, N.A. (Marine).

3. An exemption is requested to permit the Plan to purchase the two Notes from the Employer. The applicant represents that the payors of the two Notes are not parties-in-interest to the Plan. One promissory note (the Gulton Note) issued January 10, 1983 has a principal amount of \$1,300,000 payable on February 11, 1990 to Gulton Industries, Inc., a wholly-owned subsidiary of the Employer. The Gulton Note provides for monthly interest payments of \$10,832.90 and will be secured by a first deed of trust to the plan on real estate consisting of 2.3 acres located in Fullerton, California (the Fullerton Property). The applicant represents that all payments under the Gulton Note have been made timely. An independent appraiser, Jack C. Emery, A.S.A., C.R.A., of Enterprise Appraisal Company (Enterprise) in Wayne, Pennsylvania, appraised the fair market value of the Fullerton Property, as of October 10, 1986, as \$1,500,000.

The second Note (the CAP Note) which the Plan proposes to purchase from the Employer is dated December 28, 1984 and is in the principal amount of \$700,000. The CAP Note is payable to Code-A-Phone Corporation, a wholly-owned subsidiary of Conrac Corporation (Conrac). Conrac is owned by ten Delaware corporations, each of which is a wholly-owned subsidiary of the Employer. The CAP Note is payable

in seven annual installments of interest at the rate of 10% per annum with the entire unpaid principal due on December 28, 1991. The applicant represents that all payments under the CAP Note have been made timely. The CAP Note is secured by: (a) a pledge by the payor, CMC-Hamden Limited Partnership (CMC), of certain promissory notes payable to CMC in the total principal amount of \$700,000; and (b) CMC's unconditional guarantee dated December 28, 1984 of payment of the CAP Note.

The Employer has provided the additional security for the Notes of improved realty located on 35.548 acres at 10500 West Reno Avenue, Oklahoma City, Oklahoma (the Realty). The applicant represents that the Plan will have a recorded first lien on the Realty. An independent appraiser, William E. Benbow (Mr. Benbow), C.R.A., Vice President of Enterprise, determined the fair market value of the Realty to be \$2,950,000, as of January 25, 1988. Mr. Benbow represents that there is no familial or business relationship between Enterprise and the Employer.

4. The Plan will purchase the Notes from the Employer for cash in the amount of the Notes' face value of \$2,000,000. The applicant represents that the Plan will pay no fees, commissions or other expenses, including legal fees, in connection with the purchase of the Notes.

5. The Notes were appraised on November 16, 1987 by Mr. Benbow of Enterprise as having a cumulative fair market value as of November 1, 1987 of \$2,000,000. Mr. Benbow valued the Gulton Note at \$1,300,000 and the CAP Note at \$700,000.

6. Harold C. Brown & Co., Inc. (Brown) has agreed to act as an independent fiduciary in connection with the plan's proposed purchase of the Notes. Brown is a broker-dealer registered with the Securities and Exchange Commission and has performed investment advisory services since 1932. The applicant represents that less than 1% of Brown's annual revenue is derived from fees generated by its management of assets of parties-in-interest to the Plan. Herbert F. Harvey (Mr. Harvey), President of Brown, has reviewed the proposed purchase and determined it to be in the best interest and protective of the Plan and its participants and beneficiaries. In reaching his conclusion, Mr. Harvey has examined the application made to the Department and exhibits thereto, the Enterprise appraisal dated November 16, 1987, and the financial statements of the payor of each of the two Notes. He has evaluated the credit-worthiness of the two payors and has determined their

conditions to be good. Mr. Harvey believes an additional protection for the Plan is the Employer's promise to provide an unconditional guarantee of payment of the Notes. In order to reach this conclusion, he has also examined the financial statements of the Employer and has determined that the Employer has the ability to meet its promised guarantee if necessary. Mr. Harvey considers the Notes to be liquid and convertible into cash with little likelihood of loss to the Plan. He also states that the Plan's ability to meet its benefit payment obligations will not be hindered by the investment. He views the Notes' short term and interest rates to be favorable to the Plan.

7. The Plan's Trustee, Marine, has agreed to act as independent fiduciary for the duration of the Notes. The applicant represents that less than 1% of Marine's revenues is derived from the Employer, or its subsidiaries, officers and directors. The applicant further represents that Marine will have the authority to enforce the terms of the Notes, including the authority to determine when and if a default under either Note has occurred and to sue the Employer to collect upon the Employer's unconditional guarantee of repayment of the Notes.

8. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (1) The Plan will pay no greater than the appraised fair market value for the Notes; (b) the transaction will be consummated for cash; (c) the Plan will incur no cost or fees with respect to the transaction; (d) an independent fiduciary has determined the transaction to be in the best interest and protective of the Plan and its participants and beneficiaries; and (e) an independent fiduciary will have the authority to enforce the terms of the Notes for their duration.

FOR FURTHER INFORMATION CONTACT: Betsy Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Bill Kelley Chevrolet, Inc., Employees Retirement Plan (the Plan), Located in Hallandale, Florida

[Application No. D-7250]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 23, 1975). If the exemption is

granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale (the Sale) by the Plan of certain improvements on real property (the Improvements) to Messrs. Stephen A. Kelley and William J. Kelley Jr. (the Kelleys), parties in interest with respect to the Plan; provided the sales price is not less than the greater of \$81,500 or the fair market value of the Improvements on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with approximately 32 participants. The Plan had total assets of \$375,000 as of December 31, 1983. Effective December 30, 1983, the plan was terminated and its assets maintained in a wasting trust (the Trust). Two of the Plan's trustees are the Kelleys who are also shareholders, directors, officers and employees of Bill Kelley Chevrolet, Inc. (the Plan Sponsor). The Plan Sponsor is a Chevrolet dealer which sells and services new and used cars.

2. The Plan Sponsor desires to terminate the Trust and make final distribution of the assets to the Plan participants. The applicants represent that without an exemption, Plan participants would have to wait until the normal retirement date to receive their distributions. The applicants further represent that certain Trust assets can be distributed only if first liquidated to cash. One such Trust asset consists of the Improvements, including five buildings which the Plan constructed on behalf of the Plan Sponsor which operates its business therein. The Improvements are situated on realty located at 601 N. Federal Highway, Hallandale, Florida (the Property). The Property is owned by Bill Allen Investment Corporation (BIA), which is owned by relatives of the Kelleys.³ The Plan leases the Improvements to the Plan Sponsor pursuant to various written leases executed from 1964 to 1970 (the Leases).⁴

³ The Department is expressing no opinion herein as to whether the trustees' decision to erect certain improvements upon the Property where the Plan had no ownership in the underlying land and where there was no written lease between the Plan and BIA violated any provision of part 4 of Title I of the Act.

⁴ The applicants represent the Leases were covered by section 414 of the Act. The Department expresses no opinion as to the applicability of section 414 in this instance. The applicant further represents that Form 5330, Return of Initial Excise Tax to Relating to Pension and Profit Sharing Plans, will be filed with the Internal Revenue Service and

3. The applicants request an exemption of the Plan's sale of the Improvements to the Kelleys for cash in amount of the fair market value of the Improvements as determined by a qualified independent appraiser. A qualified independent appraiser, Earl Chesler, SREA, CRE, of Fort Lauderdale, Florida valued the Improvements as of October 29, 1986 to be \$81,500. The applicants have agreed to pay the fair market appraised value of the Improvements.

4. In summary, the applicants represent that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

- (1) It will be a one-time transaction;
- (2) The Plan will receive cash;
- (3) The Plan will receive fair market value for its asset as determined by a qualified independent appraiser; and
- (4) The Plan will be able to liquidate its asset in order to make final distributions to the Plan participants.

FOR FURTHER INFORMATION CONTACT: Betsy Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Brooks, Lyon and Brooks, D.O.'s, P.C. Employees Pension Plan (the Plan), Located in Ann Arbor, Michigan

[Application No. D-7252]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the code shall not apply to the proposed cash purchase from the Plan of certain real property (the Property) by Brooks, Lyon and Brooks (the Partnership), a partnership which is a party in interest with respect to the Plan; provided that the terms of such transaction are not less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a target benefit pension plan with thirteen participants as of June 25, 1987 and is sponsored by

that all appropriate excise taxes in connection with the continuation of the Leases beyond June 30, 1984 will be paid by the Employer within 60 days of the granting of this exemption.

Brooks, Lyon and Brooks, D.O.'s, P.C. (the Employer), a Michigan professional corporation engaged in the general practice of orthopedic medicine in Ann Arbor, Michigan. The shareholders and directors of the Employer are R. David Brooks, D.O., Charles R. Lyon, D.O. and Michael F. Brooks, D.O., who are also the sole partners (the Partners) in the Partnership, which is a Michigan general partnership. R. David Brooks is the administrator of the Plan. The Partners are also participants in and trustees of the Plan. The Plan documents provide for the maintenance by the Plan of individual participant accounts and the individually directed investment of such accounts by Plan participants.

2. Among the assets of the Plan is the Property, a 2,347 square foot chalet-style residential structure situated on an 18,000 square-foot lot in the Schuss Mountain Resort Development in Mancelona, Michigan, a golf and skiing resort located in the Lower Peninsula of Michigan. The Property is held and owned solely by the individual Plan accounts (the Accounts) of the Partners pursuant to their directions. As of January 5, 1987, the Property had a fair market value of \$93,000, according to an appraisal of the Property by Thomas W. Oster, S.R.A., a professional real estate appraiser located in Ann Arbor, Michigan.

3. The Accounts acquired the Property in 1984 from the Plan's general account (the General Account) as a corrective action pursuant to the Department's examination of the Employer's previous contribution of the Property to the General Account. The Employer represents that the Accounts' acquisition of the Property from the General Account was accepted by the Department as curative of any violations of the Act's prohibitions arising from the Employer's contribution of the Property to the General Account and that such acquisition did not constitute a violation of section 406 of the Act.⁵ According to the Partners, the Property constituted 8.15 percent of the total assets of the Plan as of December 31, 1986 and has failed to produce any income since its acquisition by the Accounts. The Partners represent that in 1985 and 1986 the Accounts incurred total expenses related to the Property in the amount of \$12,054, resulting in a net loss to the Accounts in that amount. The Partners represent that the Property continues to cause the Accounts to incur expenses

⁵ In this proposed exemption the Department expresses no opinion as to whether the acquisition and holding of the Property by the Plan violated any provision of Part 4 of the Title I of the Act.

related to the Property's maintenance without generating any income for the Accounts.

4. In order to eliminate the losses to the Accounts with respect to an asset which constitutes a significant portion of Plan assets and a substantial demand on the Account's resources, the Partners propose that the Partnership purchase the Property from the Plan and are requesting an exemption to permit such purchase transaction. The Partnership will pay the Accounts cash for the Property in the amount of the Property's appraised fair market value according to a professional appraisal of the Property as of the date of the sale. The Accounts will pay no fees or commissions in relation to the sale and all expenses of the transaction will be borne by the Partnership.

5. The Partners represent that their personal use of the Property has been minimal, covering a total of up to seven days useage since the Plan's acquisition of the Property. As part of the transaction proposed herein, the Partners will pay the Accounts the fair market rental value of the Property for the period of such use, plus interest on such rentals, as determined by the Plan's custodial bank trustee, Citizens Trust Bank of Ann Arbor, Michigan. The Partners recognize that their personal use of the Property constituted a prohibited transaction for which no exemptive relief is proposed herein.

Accordingly, the Partners represent that they will pay any excise taxes which are applicable under section 4975(a) of the Code by reason of such personal use of the Property within 60 days of the publication in the *Federal Register* of a notice granting the exemption proposed herein.

6. In summary, the applicants represent that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The proposed transaction will enable the Accounts to dispose of a costly and substantial asset which has produced no income for the Accounts; (2) The Accounts will receive the Property's full appraised fair market value as of the date of the sale as the purchase price for the Property; (3) The Accounts will not incur any fees, commissions or other expenses related to the proposed transaction; and (4) The proposed transaction will affect only the Accounts in the Plan as a directed investment of the Accounts' participants, the Partners, who desire that the transaction be consummated.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department,

telephone (202) 523-8883. (This is not a toll-free number.)

Bezzerides Company Profit Sharing Plan (the Plan), Located in Benicia, California

[Application No. D-7272]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan of \$82,000 by the Plan to Bezco Enterprises (Bezco), a party in interest with respect to the Plan, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a profit Sharing plan with 10 participants and net assets of \$400,670 as of December 31, 1986. The Bezzerides Company (the Employer) is in the business of processing, packing and shipping food products. Bezco is in the business of oil roasting nuts used by the Employer. The Plan's trustees are Messrs. George and Aaron Bezzerides.

2. The trustees of the Plan wish to loan \$82,000 to Bezco, said loan to be secured by a second deed of trust on the building that the Employer is currently leasing from Bezco. This loan would be used to replace existing commercial financing on the building.

3. Bezco is a general partnership whose partners are George Bezzerides (1/3), Aaron Bezzerides (1/3) and Virginia Roberts (1/3). The building owned by Bezco is located in the Benicia Industrial Park at 398 W. Channel road, Benicia, California (the Property). The Property is currently encumbered by a first deed of trust of approximately \$145,750 which is held by the Sumitomo Bank. A second deed of trust of approximately \$82,000 is held by Independent Savings of Vallejo (Independent).

4. The Plan's trustees propose to pay off the loan to Independent with Bezco then executing a new promissory note (the Loan) in favor of the Plan secured by a second deed of trust on the Property. The Loan would be repaid in monthly installments of approximately \$1,077 over a twelve year period. The Loan would provide for interest at the rate of prime plus 2% with a minimum

interest rate of 12%. The interest rate would be adjusted monthly by the independent fiduciary appointed by the Plan (see representation 6) to reflect any changes in the prime rate. The Property would be insured throughout the term of the Loan and the Plan would be named loss payee on the insurance.

5. Mr. Lawrence E. Hazard, vice-president of Royal Lepage, a firm providing commercial real estate services in Walnut Creek, California, appraised the Property as having a fair market value of \$680,000 as of September 27, 1987. Therefore, the collateral to loan ratio would be approximately 299%.

6. The Plan has appointed Mr. Paul A. Dictos (Mr. Dictos) to serve as independent fiduciary with respect to the proposed Loan. Mr. Dictos is a certified public accountant with the Dictos Accounting Corporation in Fresno, California. Mr. Dictos represents that he has been advised by legal counsel of his duties, responsibilities and potential liabilities in serving as independent fiduciary. Mr. Dictos states that he currently has only a de minimis relationship with the Employer, Bezco and the Plan.

7. Mr. Dictos represents that after examining the terms of the proposed Loan, he has determined that such Loan would be appropriate and suitable for the Plan. In arriving at this conclusion, he has reviewed the proposed Loan with respect to: (a) The Plan's overall investment portfolio, (b) the cash flow needs of the Plan, (c) the necessity of the sale of any of the Plan's assets, (d) the diversification of the Plan's assets, both before and after the Loan, and (e) the terms of the Loan as such terms conform with the Plan's investment policy. The proposed interest rate of prime plus 2% with a guaranteed minimum of 12% is appropriate given the type of Loan, the term of the Loan, the collateral used to secure the Loan, and the amount of the Loan.

8. Mr. Dictos has agreed to accept the responsibility for enforcing terms of the Loan agreement between Bezco and the Plan, including making demand for timely payment, bringing suit or other appropriate process against Bezco in the event of default, and keeping accurate records and reporting annually to the Plan's trustees on the performance of the Loan. Based upon all of the foregoing, he has determined that the proposed Loan is appropriate and suitable for the Plan, in the best interests of the Plan's participants and beneficiaries, and protective of their rights.

9. In summary, the applicant represents that the proposed Loan meets

the statutory criteria for an exemption under section 408(a) of the Act because:

- (a) The Loan will be approved and monitored by Mr. Dictos;
- (b) Mr. Dictos has determined that the Loan is appropriate and suitable for the Plan;
- (c) The collateral to loan ratio would be approximately 3 to 1; and
- (d) The interest rate of prime plus 2% with a floor of 12% has been determined to be appropriate for a transaction of this type by Mr. Dictos.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Tupelo Anesthesia Group, P.A. Profit Sharing Plan (the Plan), Located in Tupelo, MS

[Application No. D-7332]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of certain real property to the participant-directed account of H. Read Jones, M.D. (the Account) in the Plan, by H. Read Jones, M.D. (Dr. Jones), a party in interest with respect to the Plan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with approximately 25 participants. The Plan provides for directed investments and segregated accounts on behalf of the participants. Any participant may direct the Plan trustee, Deposit Guaranty National Bank, as to investment of the balance of such participant's account. Funds invested at the direction of the participant are accounted for separately and any earnings, losses, or change in the value of the investment affect only the account of the participant directing the investment and shall not affect the account of any other participant, former participant, or beneficiary.

2. The total amount of the group plan assets as of August 31, 1987 was \$1,199,535.89. Approximately 40% of this amount was invested in stocks, with the remaining 60% invested in bonds. Dr. Jones' account as of August 31, 1987 had a balance of \$349,362.48. Approximately

40% of the Account was invested in stocks, with the remaining 60% invested in bonds.

3. Dr. Jones owns 196.5 acres of timberland located in Lee County, Mississippi. He proposes to convey the timberland, including the timber thereon, in fee simple without encumbrance to the Plan for the price of \$69,500. This price is \$340 less than the fair market value of said property (the Property) as determined by independent appraisal. Dr. Jones represents that the acquisition is beneficial to the Plan in that plantation management strategies in the area yield a 10% to 14% return per year over a thirty-year rotation and that the Property is a reasonably appreciating asset. Dr. Jones represents that the Plan will not pay any sales commissions or fees in connection with the sale.

4. Mr. Charles M. Williams (Mr. Williams), co-owner of Southern Forest Resources, located at 211 N. Madison, Tupelo, MS, appraised the value of the land as of December 15, 1987. Mr. Williams based his appraisal on: (1) The bare land value, (2) regeneration value and (3) merchantable timber value. The land is divided into three tracts, all of which are prepared and planted to Loblolly Pine. Tract one consists of 36.5 acres, with timberland value of \$200 an acre (total \$7300), regeneration value of zero, and merchantable timber value of \$176 an acre (total \$6424). Tract two consists of approximately 80 acres, with timberland value of \$200 an acre (total \$16,000), regeneration value of \$155.12 acre (total \$12,409.60), and merchantable timber value of zero. Tract three consists of approximately 80 acres, with timberland value of \$200 an acre (total \$16,000), regeneration value of \$146.33 an acre (total \$11,706.40), and merchantable timber value of zero. The total appraised value of all three tracts is \$69,840. Mr. Williams' qualifications include six years as an owner and forester with Southern Forest Resources (a consulting forestry firm) and 2½ years, experience in industrial forestry at American Can Company Southern Woodlands, Butler, Alabama. He is registered as a forester in Mississippi and Alabama, and he possesses a Mississippi real estate license. He earned a Bachelor of Science Degree in Forestry from Auburn University, Auburn, Alabama. He is affiliated with the Society of American Foresters and the George A. McLean Institute for Community Development. Mr. Williams represents that he is not related to Dr. Jones or any member of the Tupelo Anesthesia Group, P.A.

5. In summary, the applicant represents that the proposed transaction

will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the code because:

- (1) The Plan will benefit in that it could receive a 10%-14% return per year on the Property, which Dr. Jones believes is a reasonably appreciating asset;
- (2) The proposed purchase price is less than the Property's fair market value as determined by an independent appraiser;
- (3) The land will be conveyed in fee simple without encumbrance;
- (4) The Plan will not pay any sales commissions or fees in connection with the sale; and
- (5) The only Plan assets involved in the proposed transaction are those allocated to Dr. Jones' account under the Plan so that he is the only Plan participant affected by the proposed transaction, and he wishes the proposed transaction to be effected.

Notice to Interested Persons

Since the only Plan assets involved in the proposed transaction are those in Dr. Jones' account under the Plan and he is the only Plan participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication in the **FEDERAL REGISTER**.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Erwine's Marine Sales & Services, Inc. Profit Sharing Plan and Trust (the Plan), Located in Frostproof, Florida

[Application No. D-7360]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plan to Erwine's Marine Sales & Service, Inc. (the Employer), the sponsor of the Plan, of a certain parcel of improved real property (the Property), provided that the sales price is no less

than the fair market value of the Property on the date of sale.

Summary of Facts And Representations

1. The Plan is a profit sharing plan which, as of December 31, 1986, had two participants and total assets of \$164,031.63. The trustees of the Plan, and the decision-makers with respect to Plan investments, are Mary B. Erwine (Mrs. Erwine) and her son, Gary C. Erwine (together, the Trustees). The Trustees are both officers and employees of the Employer. In addition, each of the Trustees owns 50% of the stock of the Employer.

2. The Employer is a Florida corporation located at 250 South Scenic Highway, Frostproof, Florida. The Employer is engaged in the business of selling and servicing boats and marine engines.

3. The Property was acquired by the Plan on November 18, 1985 from Frostproof Supertest, Inc., and James V. Schwab and Barbara J. Schwab, his wife, all of whom are unrelated parties, for \$122,676. The applicant states that the Plan borrowed \$71,846 from Citizens Bank of Frostproof, another unrelated party, which now holds a mortgage on the Property. Prior to the date of the transaction, Mrs. Erwine transferred \$84,939.26 to the Plan, an amount which represented a rollover distribution from a qualified plan in which she had previously participated.

4. The Property is land with certain improvements, located at 250 South Scenic Highway, Frostproof, Florida. The Property is used as the Employer's principal place of business. The Employer does not own any property which is adjacent or contiguous to the Property. The Property's improvements include a two-story, conventionally built masonry building (the Building), which is used as a marine sales and service facility, and an older frame residence with approximately 1100 square feet of living space, which is presently being used for storage space.

On January 2, 1986, the Plan entered into a written lease agreement (the Lease) with the Employer to lease the Property for a term of five years at an annual rental of \$10,371.48. The Lease provides the Employer with an option to purchase the Property within the first five year term (the Option). The Lease states that monthly rentals, leasehold improvements and real estate taxes paid for by the Employer can be credited toward the purchase price of the Property under the Option. However, the applicant states that the Option will not operate to reduce the amount received by the Plan on the proposed sale of the Property to the Employer.

During 1986, the Plan made certain improvements to the main structure of the Building at a cost of \$19,239. The Employer also expended approximately \$10,000 in 1986 for additional leasehold improvements to the Property. The applicant states that none of the expenditures paid for by the Plan related to the acquisition of any equipment or other trade fixtures for the Employer's use.

5. The Trustees state that they did not realize that when the Plan purchased the Property with the intent of leasing the Property to the Employer, that the transaction would be a violation of the Act. Accordingly, the applicant represents that Form 5330, Return of Initial Excise Taxes for Pension and Profit Sharing Plans, will be filed with the Internal Revenue Service and that all appropriate excise taxes for the past prohibited transactions will be paid within 60 days of the date of a grant of an exemption for the proposed sale of the Property. In addition, the Employer will pay any difference between the actual amount of rent paid on the Property from January 2, 1986 to the date of the proposed sale and the fair market rental value for the same period of time, as determined by an independent appraiser's valuation of the Property. The Employer also represents that it will pay interest on any such deficiency based on an appropriate market rate of interest.

6. The Property was appraised on October 27, 1987 by Charles O. Bates, Jr., ICA, CREA (Mr. Bates), an independent, qualified real estate appraiser in Lake Wales, Florida, as having a fair market value of \$175,000. By letter of November 22, 1987, Mr. Bates states that his valuation of Property was based on an unencumbered fee simple interest and did not take into consideration the rental value of the Lease to the Employer. Mr. Bates also states that his valuation of the Property took into consideration all of the improvements made to the Property, except for those items such as counters, displays, storager racks, stock in trade, and other equipment which were not considered to be part of the realty.

7. The Trustees propose to have the Plan sell the Property to the Employer for \$175,000 in cash, in accordance with Mr. Bates' appraisal. The applicant states that Mr. Bates' appraisal will be updated at the time of the transaction to ensure that the price paid by the Employer is no less than the fair market value of the Property on the date of sale. The Plan will not pay any commissions or other expenses in connection with the sale.

8. The Trustees believe that the transaction is in the best interests of the Plan. The Property is located in a small town and the real estate market for the Property is limited. The applicant states that it is unlikely that there will be any significant growth in the community for the next several years. The Plan's proceeds from the sale will be approximately \$105,000, after satisfying the mortgage indebtedness. The applicant states that the balance due on the mortgage was \$68,101.04, as of November 23, 1987. The Plan's net investment in the Property, plus improvements, is approximately \$70,000. The gain realized from the sale will inure to the participants' accounts. The transaction will allow the Plan to divest itself of the Property and acquire investments which yield a higher rate of return.

9. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the fair market value for the Property as determined by an independent, qualified appraiser; (c) the Plan will not pay any commissions or other expenses in connection with the transaction; and (d) the Trustees have determined that the sale of the Property is in the best interest of the Plan.

Notice to Interested Persons: Because the Trustees are the only participants in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

L & S Anesthesiologist Associates, M.D., P.A., Retirement Plan and Trust (the Plan), Located in Galveston, Texas

[Application No. D-7366]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1(40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash

purchase by the Plan from C. D. Litton, M.D. (Dr. Litton), a party in interest with respect to the Plan, of a 640-acre tract (the Property) located in Edwards County, Texas, provided the purchase price does not exceed the Property's fair market value as of the date of the purchase.

Because Dr. Litton is the sole owner of the sponsor of the Plan and the sole participant in the Plan, the Plan is subject to the provisions of Title II of the Act only and is not subject to Title I (see 29 CFR 2510.3-3(b) and (c)).

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan covering only Dr. Litton, who is also the trustee of the Plan and the sole owner of the sponsor of the Plan, L & S Anesthesiologist Associates, M.D., P.A. The applicant represents that as of April 30, 1987, contributions to the Plan were discontinued but that Plan assets will not be disturbed at this time as Dr. Litton has elected to defer receipt of his benefit under the Plan until his normal retirement age. As of December 9, 1987, the Plan's assets totalled \$1,408,798. The applicant represents that should the Plan sponsor hire any employees in the future, a separate plan will be established for those employees.

2. The Property is a 640-acre tract located in Edwards County, Texas, 8½ miles southeast of Rocksprings, Texas, and 4½ miles east of State Highway 55. Dr. Litton purchased the Property on March 21, 1984 for \$198,400 (\$310 per acre) from an individual, Thompson B. Temple, of Mountain Home, Texas. The Property is fenced in and further improved with a concrete trough, reservoir, an unfinished set of livestock holding pens, a mercury vapor street light, and a painted corrugated metal cabin containing a bath, kitchen, bedroom and living room—all with tiled floors and wood paneled walls—aggregating approximately 828 square feet. The Property is currently used and leased for hunting and for livestock grazing. Liz Price and Bob Reeves, appraisers of R. Floyd Price, Jr., Real Estate Appraiser, have inspected and appraised the Property and determining that its market value as of August 4, 1987 was \$268,800 (\$420 per acre). Their appraisal report states, in pertinent part, that the Property's highest and best use is holding for capital enhancement and with an interim use of livestock pasturage and recreation. Liz Price is a senior member of the American Society of Appraisers, has held positions with the Kerr County Appraisal District Review Board, has employment experience with several banks, law firms, realtors, state and local

government agencies, and qualifies for and has testified in District Courts of Kerr, Travis, Medina, and Kendall Counties. Bob Reeves' employment experience includes work for the Val Verde County Appraisal District and the State Property Tax Board, as well as lending institutions and realtors. Both appraisers certify that they have no personal interest or bias with respect to the Property of the parties involved.

3. Dr. Litton wishes to sell the Property to the Plan for its fair market value of the purchase date as determined by independent appraisers. The Plan will pay no fees or commissions under the proposed transaction. The proposed purchase price (i.e., the Property's fair market value—\$268,000 as of August 4, 1987, according to the appraisal described in the preceding paragraph) represents approximately 19% of the Plan's total assets as of December 9, 1987. The purchase price will be paid in cash in a lump sum. The applicant represents that the Property's value has appreciated approximately 35% since Dr. Litton purchased it and should continue to increase, making the Property a good investment for the Plan. According to the applicant, the current hunting and cattle grazing leases generate \$6,500 to \$10,000 annual income from the Property and are expected to continue into the future.

4. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 4975(c)(2) of the Code because: (a) the purchase price will equal the Property's fair market value as of the date of the purchase as determined by independent appraisers; (b) the Plan will pay no fees or commissions under the proposed transaction; (c) the proposed transaction involves approximately 19% of the Plan's total assets; and (d) the only Plan participant, Dr. Litton, wishes the proposed transaction to be consummated.

Notice to Interested Persons

Because Dr. Litton is the only participant in the Plan and the sole owner of the Plan sponsor, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

SPNB Real Estate Debt Fund for Accounts Described in Section 401(a) of the Internal Revenue Code (the Fund), Located in Los Angeles, California

[Application No. D-7410]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(1), 406(b)(a) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Fund to Security Pacific Investment Managers, Inc. (SPIM) of four real estate loans (the Problem Loans) made by the Fund, for an amount equal to the unpaid principal balance of each loan plus accrued interest, penalties and/or late charges, if any, provided such amount is not less than the fair market value of each of the Problem Loans at the time of the sale.

Summary of Facts and Representations

1. The Fund was established in 1981 to provide investment opportunities for qualified plans for which Security Pacific National Bank (SPNB), or an affiliated bank, was acting as trustee, custodian or agent. The Fund assets are principally invested in debt obligations secured by interests in real property. The total book value of the Fund's assets as of August 31, 1987, was approximately \$139 million, of which approximately \$125 million consisted of debt obligations secured by interests in real property. There are presently 12 plans participating in the Fund.

2. SPNB, the trustee of the Fund, is a wholly-owned subsidiary of Security Pacific Corporation (SPC). SPIM is also a wholly-owned subsidiary of SPC.

3. Problems have developed with certain of the loans made by the Fund. These Problem Loans involve default in repayment and an unexpected decline in value of the underlying security. The Problem Loans involve a total principal amount of less than 10% of the book value of total assets. The Problem Loans are described in detail below:⁶

⁶ As stated above, the scope of this proposed exemption is limited to the sale of the Problem Loans by the Fund to SPIM. This exemption does not extend to any other violations of Part 4 of Title I of the Act which may have occurred by reason of the Fund's investment in the Problem Loans.

(a) *The Carriage Cove Loan.* In December, 1985, the Fund made a loan in the amount of \$6,200,000 to Carriage Cove, a joint venture. The purpose of the loan was to retire existing financing that was in default. The original loan was subsequently increased in February, 1986 to \$6,600,000. The loan bears interest at a graduated rate. The interest rate the first year was 11.25%. In the second, third and fourth years, interest rates increase to 12%, 12.75% and 13.25% after which the rate remains constant at 13.25% until maturity. The Carriage Cove Loan is secured by a first priority Deed of Trust and an Assignment of Rents and Leases on 120 four bedroom residential units in 10 buildings located at 606 West 1720 North, Provo, Utah. At the time of the origination of the loan, the property was appraised at \$8,200,000. This valuation was based on an income approach to value; however, the projected income figures did not materialize. The property was reappraised as of April 2, 1987 at a value of \$5 million. Assuming a 20% to 25% cost to foreclose, the principal loss from this loan based on current value is \$2,600,000 to \$2,850,000. The loan is now in default. The last payment made was January 1, 1987. Since property income is unable to support the existing loan terms, SPNB has been attempting to negotiate a restructuring of the loan.

(b) *The LADJ Loan.* A loan of \$3,400,000 was made to LADJ Corporation in June 1985. The purpose of the loan was to retire the original construction loan, satisfy mechanics' liens recorded against the property and to provide additional funds to complete construction. Repayment terms provide for a 30 year amortization with interest at 13.50% and a final maturity date of July 1, 2000. The LADJ loan is secured by a first priority Deed of Trust and Assignment of Rents and Leases on an office/shopping center facility plus a truck stop service station and store in Acton, California. Approval of the LADJ loan was based on an MAI appraisal which valued the property as of April 20, 1985 at \$4,787,000. As of April 1, 1987, the property was appraised at \$3,750,000. The loan is currently in default for non-payment of the February 1, 1987 and subsequent payments.

(c) *The Tonopah Loan.* The Fund made a loan in the amount of \$2,600,000 to Bill M. Green in July 1985 for the purpose of refinancing existing liens on property and for providing additional construction funds. Repayment terms provide for a 30 year amortization at 13.50% and a final maturity date of August 1, 2000. The loan is secured by a first priority Deed of Trust and

Assignment of Rent and Leases on 114 units of a 140 units apartment project in Tonopah, Nevada. Loan approval was based on a July, 1984 appraisal of \$3,760,000 for the 114 units securing the loan. On June 4, 1987, the 114 units were appraised at \$3,050,000. The borrower has filed for bankruptcy under Chapter 11. Payments were current on the loan through November, 1986.

(d) *The Wave Inn Loan.* This loan was made in October, 1985, for the purpose of constructing a 45 room hotel in Monterey, California. The original loan amount was \$2,750,000 with interest at 13.50% per annum payable interest only until the earlier of October 1, 1986 or the completion of construction. Commencing with the earlier of November 1, 1986 or thirty days following completion of construction, the loan was to be amortized at the same interest rate over 30 years with a final maturity date 15 years following commencement of the principal amortization. Loan approval was based on an MAI appraisal for \$4,300,000 as of June 6, 1985. In January, 1986, SPNB received notice that secondary financing has been placed on the property in favor of Carmel Financial Group (Carmel), a limited partnership. On December 9, 1986, a notice of default was recorded on SPNB's Trust Deed, and on December 15, 1986, a similar notice was recorded on the Carmel Trust Deed. On December 11, 1986, a receiver took control of the property on behalf of the loan servicing entity for SPNB. On April 10, 1987, Carmel acquired full title to the property at its trustee's sale. A total of 13 full amortization payments on the loan were made commencing November 1, 1985, reducing the principal balance to \$2,742,189. As of March 20, 1987, the property was appraised at \$3,300,000, with an indicated equity of less than \$300,000. Because SPNB did not believe that foreclosure would produce sufficient revenue to cover the principal balance owing, plus interest, late charges, fees and other expenses, negotiations commenced with Carmel to restructure the loan. It is not anticipated, however, that the restructuring will generate sufficient cash flow to cover the total interest accrual on the loan.

4. SPIM now proposes to purchase each of the Problem Loans from the Fund in order to protect the participating plans from loss of principal and earnings. SPNB believes that a purchase of the Problem Loans at full book value will be of substantial benefit to the participants in the Fund and will improve the investment performance of the Fund in the future. If the loans are not purchased and the Fund proceeds to

foreclose on the underlying mortgages, the applicant believes that the foreclosure will not produce sufficient income to cover the entire remaining principal balance of the loans, and that losses will result.

5. SPIM intends to pay the Fund as a purchase price for each of the Problem Loans an amount, at the time of the purchase, equal to the total unpaid principal amount of the loan plus accrued interest, penalties and/or late charges, if any, as provided for by the respective loan documents. With respect to the Carriage Cove Loan and the Wave Inn Loan, the purchase price will be determined based on the original terms of the loans, prior to any loan restructuring described above. Houlihan, Jespersion and Stewart, Inc. (Houlihan) of Salt Lake City, Utah, a professional firm specializing in valuations and related financial consulting, has reviewed the proposed transaction in order to determine the appropriate purchase price for the Problem Loans. Houlihan has represented that, in its opinion, the rate of return to the Fund for each of the four Problem Loans was reasonable and consistent with prevailing market rates at the time each was committed to. Furthermore, the terms and conditions of each of the Problem Loans appeared to be reasonably consistent with the then prevailing market standards. Based on this opinion, Houlihan represents that the proposed purchase price would be appropriate for each of the Problem Loans.

6. For purposes of the proposed transaction, the Fund has retained the Salt Lake City, Utah, law firm of Callister, Duncan & Nebeker (Callister) to serve as an independent fiduciary. Callister acknowledges that it is a fiduciary for purposes of the proposed transaction, and that it understands and accepts its duties, responsibilities and liabilities as such under the Act. Callister represents that it has reviewed the proposed transaction, including the Problem Loan documents and payment histories, and the report of Houlihan which Callister engaged to determine the appropriate purchase price of the Problem Loans. Callister has determined that the proposed sale by the Fund of the Problem Loans to SPIM on the proposed terms and conditions is appropriate for and in the best interests of the Fund. Callister represents that it has determined, after reviewing Houlihan's report, that the fair market value of each of the Problem Loans is not greater than the price to be paid by SPIM to the Fund for such Loan.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The sale is a one-time transaction for cash; (2) the sales price of the Problem Loans has been determined to be appropriate and not less than fair market value by Houlihan, an independent expert on valuation of mortgage loans; and (3) Callister, the Fund's independent fiduciary, has determined that the proposed transaction is appropriate for and in the best interest of the Fund.

FOR FURTHER INFORMATION CONTACT:

Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c) (2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c) (2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and

representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of February, 1988.

Robert J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-3635 Filed 2-19-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-19)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by March 23, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC. 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: Non-discrimination in Federally Assisted Programs.

OMB Number: 2700-0058.

Type of Request: Extension, No Change.

Frequency of Report: As Required.

Type of Respondent: Non-profit

Institutions and Small Businesses or Organizations.

Annual Responses: 2,640.

Annual Burden Hours: 31,680.

Abstract-Need/Uses: Records and reports relating to Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and facilities and recipients of the Federal Financial Assistance are required to comply with the objectives of the statutes and NASA implementing regulations.

Michael E. Henry III,

Chief, Management Processes, General Management Division.

February 3, 1988.

[FR Doc. 88-3682 Filed 2-19-88; 8:45 am]

BILLING CODE 7510-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Peace Corps Applicant Questionnaire through March 1, 1991. The Questionnaire is completed by applicants for Peace Corps service who live outside the United States or Puerto Rico. The Questionnaire requests information regarding the applicant's motivation, commitment, social sensitivity, and adaptability for Peace Corps service. Peace Corps uses the information to evaluate an applicant's qualifications and suitability for international service. The information is provided voluntarily, and is protected by the Privacy act of 1974. The information contained in the Questionnaire is available only to those Peace Corps employees with specifically assigned duties which require working with the records on a day to day basis, and to other Peace Corps employees having the need for such records in the performance of their official duties.

Information about the form:
Agency Address: Peace Corps, 806 Connecticut Avenue, NW, Washington, DC 20526.

Title: Peace Corps Applicant Questionnaire

Request: Approval of Use

Frequency of Collection: On occasion

General Description of Respondent:

Individuals who apply for Peace Corps service, and who live outside the United States.

Estimated Number of Responses: 40 annually

Estimated Hours for Respondents to

Furnish Information: sixty (60) minutes each.

Respondents' Obligation to Reply:

Voluntary.

Comments: Comments on this form request should be directed to Francine Picoult, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A copy of the form may be obtained from Terry Anderson, Office of Recruitment, Peace Corps, 806 Connecticut Avenue, NW., Room M-900, Washington, DC 20526. Mr. Anderson may be called at 202/254-8387. This is not a request to which 44 U.S.C. 3504(h) applies. This notice is issued in Washington, DC on February 11, 1988.

Margaret H. Thome,

Associate Director for Management.

[FR Doc. 88-3642 Filed 2-19-88; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25350; File No. SR-CBOE-87-30]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Interest Rate Option Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice hereby is given that on July 28, 1987 the Chicago Board Options Exchange, Inc. ("CBOE" 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. On November 6, 1987, the CBOE submitted Amendment No. 1 to its proposed rule change. 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 Change¹

This proposed rule change will enable the Exchange to list two cash-settled,

European-style interest rate option contracts, one based on a short-term interest rate measure and the other based on a long-term interest rate measure. These measures will be calculated by a reporting authority selected by the Exchange or by the Exchange itself by means of random pollings of primary dealers in United States Treasury securities. Position and exercise limits will be 15,000 contracts for the options based on the short-term interest rate measure and 25,000 contracts for those based on the long-term interest rate measure. Margin on a short position must be equal to at least 100 percent of the current market value of a contract plus 5½ percent of the current value times the multiplier less the out of the money amount, if any, but in no event less than 100 percent of the current market value plus 2½ percent of the current value times in multiplier. Expiration may be at three-month intervals or in consecutive months.

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), and (B), and (C) below of the most significant aspects of such statements.

(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 enable the Exchange to list for trading (in general under the Exchange's usual trading rules) option contracts based on certain interest rate measures. The thirteen-week Treasury bill will be the subject of the short-term interest rate measures. Since thirteen-week bills are auctioned weekly, the Treasury bill used to calculate this interest rate measure generally will change weekly. The newly-auctioned Treasury bill will replace the previous bill on the first business day following the auction. This interest rate measure will be calculated by multiplying the annualized discount yield on the most recently issued thirteen-week Treasury bill by ten. If the discount rate is 7 percent, for example, the level will be 70.0. The aggregate value will be

determined by multiplying the level by 100, giving a value of \$100 to one point. If an auction is not held on or near the normally scheduled weekly date, the Exchange may substitute the existing Treasury bill having nearest to thirteen weeks to maturity or may continue to use as the underlying security the most recently auctioned thirteen-week Treasury bill.

The Treasury currently auctions a total of seven notes and bonds on a regular basis, with maturities of two, three, four, five, seven, ten and 30 years. Of these issues, the seven, ten and 30 generally are considered to be a long-term and therefore will be the subjects of the long-term interest rate measure. This measure will consist of six securities, two from each of the three different maturities. Each of these maturities generally is auctioned quarterly, and these are the only long-term issues in which the Treasury holds auctions. A newly-auctioned issue will replace the earliest dated issue in the relevant maturity on the first business day following the auction. This procedure will insure that this interest rate measure will consist of recent issues, which generally trade with the most liquidity. Should the United States Department of the Treasury add or delete an issue(s) or otherwise revise its auction schedule, the Exchange may substitute another issue(s). This long-term interest rate measure will be calculated by taking the arithmetic average of the midpoint between the bid and ask prices for each of the six issues, then calculating the yield to maturity (calculated to three decimals) using the Securities Industry Association method and multiplying this average by ten. In the case of the short-term interest rate measure, quotes are in the form of annualized discount rates so that it is only necessary to multiply the average by ten. If the average of the components or discount rates is 8.534 percent, for example, the level will be 85.34. The aggregate value will be determined by multiplying the level by 100, giving a value of \$100 to one point.

The statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate in option contracts on interest rate measures and to bring such transactions within the regulatory framework of the Act and of the Exchange's rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

¹ The complete text of proposed Chapter 23 of the CBOE rules is attached as Exhibit A.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on this proposed rule change filing were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at 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 14, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 12, 1988.

Jonathan G. Katz,

Secretary.

Exhibit A

The Exchange proposes to add the following chapter 23 to its rules for the purpose of listing interest rate option contracts.

Chapter XXIII—Interest Rate Option Contracts

Introduction

The rules in this Chapter are applicable only to interest rate option contracts. The rules in Chapters I through XIX are also applicable to the options provided for in this Chapter. In some cases rules in Chapter I through XIX are replaced or are supplemented by rules in this Chapter.

Definitions

Rule 23.1.

Put

(a) The term "put" means an option contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the current value of an interest rate measure times a multiplier.

Call

(b) The term "call" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the current value of an interest rate measure times a multiplier.

Aggregate Exercise Price

(c) The term "aggregate exercise price" means the exercise price of the option contract times a multiplier.

Exercise Price

(d) The term "exercise price" means the specified price per unit at which an interest rate option contract may be purchased or sold upon the exercise of the option.

Underlying Security

(e) The term "underlying security" or "underlying securities" with respect to an interest rate option contract means any of the Treasury bills, notes or bonds that are the basis for the calculation of an interest rate measure.

Multiplier

(f) The term "multiplier" means the specified amount by which the current value of an interest rate measure is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract.

Current and Closing Value

(g) The term "current value" in respect of a particular interest rate measure means the level of the interest rate measure, derived from the price of the underlying security or securities that are the basis for the measure as reported by

the reporting authority for the measure. The "closing value" shall be the last value reported on a business day.

Reporting Authority

(h) The term "reporting authority" in respect of a particular interest rate measure means the institution or reporting service designated by the Exchange as the official source for securing and disseminating the current value of an interest rate measure.

European Option

(i) The term "European option" means an option contract that can be exercised only on the last business day prior to the day it expires.

Treasury Bill

(j) The term "Treasury bill" means a non-interest bearing Government security issued by the U.S. Treasury and sold at an original issue discount from par, with a term to maturity of not more than 1 year at the time of original issuance.

Treasury Note

(k) The term "Treasury note" means a note issued by the U.S. Treasury with a term to maturity of at least two years but no more than ten years at the time of original issuance.

Treasury Bond

(l) The term "Treasury bond" means a bond issued by the U.S. Treasury with a term to maturity of more than ten years at the time of original issuance.

Wire Connections

Rule 23.2. The Exchange will permit members to establish and maintain wire connections with other members and nonmembers for the purposes of obtaining timely information on price movements in Government securities. Written notice of each such wire connection shall be promptly filed with the Exchange. The Exchange may condition or terminate the use of any such wire connection if it deems such action to be necessary or appropriate in the interest of maintaining a fair and orderly market or for the protection of investors.

Position Limits

Rule 23.3. In determining compliance with Rule 4.11, interest rate options shall be subject to a contract limitation (whether long or short) of the put class and the call class on the same side of the market covering no more than 15,000 contracts in the case of an option on a short term interest rate measure and

25,000 contracts in the case of an option on a long term interest rate measure.

Exercise Limits

Rule 23.4. In determining compliance with Rule 4.12, exercise limits for interest rate options shall be equivalent to the position limits prescribed in Rule 23.2.

Terms of Interest Rate Option Contracts

Rule 23.5. (a) **Exercise Prices.** The Exchange shall determine fixed intervals of exercise prices for call and put interest rate option contracts. The intervals between strike prices shall be no less than \$2.50.

(b) **Expiration Months.** Interest rate option contracts may expire at three-month intervals or in consecutive months; there may be up to six expiration months.

(c) **European Exercise.** Interest rate option contracts can be exercised only on the last business day prior to the option's expiration.

Days and Hours of Business

Rule 23.6. The Exchange will determine when transactions in interest rate option contracts may be effected on the Exchange, which shall be no earlier than 8:00 a.m. and no later than 3:15 p.m. Chicago time, except under unusual conditions.

Trading Rotations

Rule 23.7. The opening rotation for interest rate option contracts shall be held at or as soon as practicable after the time set by the Exchange for the opening of trading. The Order Book Official or Designated Primary Market Maker shall open first those series of a class which have the nearest expiration. Thereafter, the Order Book Official or Designated Primary Market Maker shall open the remaining series in a manner he deems appropriate under the circumstances.

Trading Halts and Suspension of Trading

Rule 23.8. Another factor that may be considered by Floor Officials in connection with the institution of trading halts (Rule 6.3) and by the Board in connection with the suspension of trading (Rule 6.4) in interest rate options is that current quotations for the underlying interest measure is unavailable or has become unreliable.

Meaning of Premium—Bids and Offers

Rule 23.9. Bids and offers shall be expressed in terms of dollars and fractions or dollars and decimals per unit of the index, for example, a bid of

4½ and a bid of 4.50 would each represent a bid of \$4.50 per unit.

Accommodation Liquidations

Rule 23.10. Paragraphs (ii)-(v) of Rule 6.54 shall not be applicable to interest rate options closing transactions.

Interpretations and Policies:

.01 For purposes of the applicable provisions of Rule 6.54 and the Interpretations and Policies thereto, references to transactions and orders at a price of \$.01 per share shall be deemed to refer, in the case of interest rate options, to transactions and orders at a price of \$1 per single call or put.

Reconciliation of Unmatched Trades

Rule 23.11. All Exchange members, Clearing Members and their respective agents shall resolve unmatched trades in interest rate options from the previous day's trading no later than the time set by the Exchange for the opening of trading the following business day.

Responsibilities of Floor Brokers

Rule 23.12. A Floor Broker handling a contingency order for interest rate option contracts that is dependent upon quotations or prices other than those originating on the floor, except for the level of the interest rate measures, shall be responsible for satisfying the dependency requirement on the basis of the most reliable information reasonably available to him concerning such quotations and prices but, in no event, shall be held to an execution of such an order. Unless mutually agreed by the members involved, an execution or nonexecution that results shall not be altered by the fact that such information is subsequently found to have been erroneous.

Margin Requirements

Rule 23.12. (a) This rule sets forth the minimum amount of margin which must be deposited and maintained in margin accounts of customers having positions in interest rate option contracts dealt in on the Exchange and issued by the Options Clearing Corporation. The Exchange may at any time impose higher margin requirements in respect of such positions when it deems such higher margin requirements to be advisable. The initial deposit of margin required under this Rule must be made within seven full business days after the date on which a transaction giving rise to a margin requirement is effected. For purposes of this Rule, the term "current market value" of an interest rate option contract shall mean the total cost or net proceeds of the option transaction on the day the option was purchased or sold and at any other time shall mean

the closing price of that series of options on the Exchange on any day with respect to which a determination of current market value is made.

(b) For each put or call option contract on an interest rate option contract carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus 5½% of the current value times the multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the current value as multiplied by the multiplier in the case of a call, or any excess of the current value as multiplied by the multiplier over the aggregate exercise price of the option in the case of a put, provided that the minimum margin required on each such option contract shall not be less than the option market value plus 2½% of the current value times the multiplier.

(c) The requirement set forth in paragraph (b) hereof is subject to the following exceptions, which in each case may be applied at the discretion of the member organization with which the account is maintained.

(1) Short option offset by long option where long option expires with or after short option. This subparagraph (c)(1) applies to accounts carrying positions in long call options (or long put options) which are offset by positions in short call options (or short put options) for the same underlying security or securities with the same multiplier, provided that the expiration date of the long calls (or long puts) is the same as or subsequent to the expiration date of the offsetting short calls (or short puts).

(A) When the exercise price of the long call option (or short put option) is less than or equal to the exercise price of the offsetting short call option (or long put option), no margin is required.

(B) When the exercise price of the long call option (or short put option) is greater than the exercise price of the offsetting short call option (or long put option) margin is required equal to the difference in aggregate exercise prices.

(2) Short put and short call. This subparagraph (c)(2) applies to accounts carrying positions in short put options which are offset by positions in short call options for the same underlying security or securities with the same multiplier. The margin required for such a position shall be the margin required for the short put option contract or the margin required for the short call option contract (pursuant to paragraph (b) of this Rule), whichever is greater, as determined by (b) above, increased by

the amount of any unrealized loss on the other option contract.

Limitation of Liability

Rule 23.14. (a) Neither the Exchange nor the reporting authority shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in collecting or disseminating the current or closing value of interest rate option contracts resulting from an act, condition or cause beyond their reasonable control, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current value.

(b) The Exchange and the reporting authority make no warranty, express or implied, as to results to be obtained by any person or any entity from the use of the interest rate measures or any data included therein in connection with trading or any other use; the Exchange and the reporting authority make no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the interest rate measures or any data included therein.

Furnishing of Books, Records and Other Information

Rule 23.15. No Market-Maker in interest rate options shall fail to make available to the Exchange such books, records or other information maintained by or in the possession of such member or any corporate affiliate of such member pertaining to transactions by such member or any such affiliate for its own account in U.S. Treasury bills, notes and/or bonds and exchange-traded and over-the-counter options, futures and options on futures thereon, as may be called for under the Rules or as may be requested in the course of any investigation, inspection or other official inquiry by the Exchange. In addition, the provisions of Rule 8.9 governing identification of accounts and reports of orders shall, in the case of Market-Makers in interest rate options, apply to (i) accounts for underlying securities and for exchange-traded and over-the-counter options, futures and options on futures thereon and (ii) orders entered by the Market-Maker for the purchase or sale of underlying securities and for exchange-traded and over-the-counter options, futures and options on futures thereon and opening and closing positions concerning one or

more of the foregoing. Any corporate affiliate of a Market-Maker in interest rate options shall maintain and preserve such books, records or other information as may be necessary to comply with this Rule.

[FR Doc. 88-3704 Filed 2-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25349; File No. SR-MSRB-87-14]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fair Dealing

The Municipal Securities Rulemaking Board ("MSRB") on December 23, 1987, submitted copies of an interpretation of MSRB rule G-17 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to ensure that senior syndicate managers comply with principles of fair dealing in allocations of new issue securities. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB") is filing an interpretation of MSRB rule G-17 (the "proposed rule change") concerning the conduct of municipal securities business. The text of the proposed rule change is as follows:

The Board is concerned about reports that senior syndicate managers may not always be mindful of principles of fair dealing in allocations of new issue securities. In particular, the Board believes that the principles of fair dealing require that customer orders should receive priority over similar dealer or certain dealer-related¹ account orders, to the extent that this is feasible and consistent with the orderly distribution of new issue securities.

Rule G-11(e) requires syndicates to establish priority provisions and, if such priority provisions may be changed, to specify the procedure for making changes. The rule also permits a syndicate to allow the senior manager, on a case-by-case basis, to allocate securities in a manner other than in accordance with the priority provisions if the senior manager determines in its discretion that it is in the best interests of the syndicate. Senior managers must furnish this

¹ A dealer-related account includes a municipal securities investment portfolio, arbitrage account of secondary trading account of a syndicate member, a municipal securities investment trust sponsored by a syndicate member, or an accumulation account established in connection with such a municipal securities investment trust.

information, in writing, to the syndicate members. Syndicate members must promptly furnish this information, in writing to others upon request. This requirement was adopted to allow prospective purchasers to frame their orders to the syndicate in a manner that would enhance their ability to obtain securities since the syndicate's allocation procedures would be known.

The Board understands that senior managers must balance a number of competing interests in allocating new issue securities. In addition, a senior manager must be able quickly to determine when it is appropriate to allocate away from the priority provisions and must be prepared to justify its actions to the syndicate and perhaps to the issuer. While it does not appear necessary or appropriate at this time to restrict the ability of syndicates to permit managers to allocate securities in a manner different from the priority provisions, the Board believes senior managers should ensure that all allocations, even those away from the priority provisions, are fair and reasonable and consistent with principles of fair dealing under rule G-17.² Thus, in the Board's view, customer orders should have priority over similar dealer orders or certain dealer-related account orders to the extent that this is feasible and consistent with the orderly distribution of new issue securities. Moreover, the Board suggests that syndicate members alert their customers to the priority provisions adopted by the syndicate so that their customers are able to place their orders in a manner that increases the possibility of being allocated securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The MSRB is concerned about reports that senior syndicate managers may not always be mindful of principles of fair dealing in allocations of new issue securities. The MSRB understands that senior managers must balance a number of competing interests in allocating new issue securities. In addition, a senior manager must be able quickly to determine when it is appropriate to allocate away from the priority provisions and must be prepared to justify its actions to the syndicate and perhaps to the issuer. While it does not appear necessary or appropriate at this time to restrict the ability of syndicates to permit managers to allocate securities in a manner different from the priority provisions,

² Rule G-17 provides: In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice.

the MSRB believes senior managers should ensure that all allocations, even those away from the priority provisions, are fair and reasonable and consistent with principles of fair dealing under rule G-17. Thus, in the MSRB's view, customer orders should have priority over similar dealer orders or certain dealer-related account orders to the extent that this is feasible and consistent with the orderly distribution of new issue securities. Moreover, the MSRB suggests that syndicate members alert their customers to the priority provisions adopted by the syndicate so that their customers are able to place their orders in a manner that increases the possibility of being allocated securities.

(b) The MSRB has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The MSRB neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective pursuant to section 19b(3)(A) of the Act in that it "constitutes a(n) * * * interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization * * *." At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons submitting comments should file six copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-MSRB-87-14.

Copies of the submission and all related items, other than those which may be withheld from public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing and any subsequent amendments also will be available at the office of the MSRB.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-3705 Filed 2-19-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Hartford, Connecticut, will hold a public meeting at 8:00 a.m. on Monday, March 7, 1988, at the Howard Johnson's Restaurant, 402 Sargent Drive, New Haven, Connecticut, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, (203) 240-4670.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 12, 1988.

[FR Doc. 88-3629 Filed 2-19-88; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Chicago, Illinois, will hold a public meeting at 8:00 a.m. Friday, March 11, 1988, at the Hyatt Regency O'Hare Hotel in Rosemont, Illinois to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy A. Olson, Assistant, Regional Administrator for Public Affairs and Communications, U.S. Small Business Administration, 230 South Dearborn Street, Room 510, Chicago, Illinois, 60604-1593, (312) 353-0359.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 12, 1988.

[FR Doc. 88-3630 Filed 2-19-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 12, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45438

Date Filed: February 9, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 8, 1988.

Description: Application of Markair, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations requests the issuance of a certificate of public convenience and necessity, authorizing it to conduct scheduled foreign air transportation of persons, property and mail between Anchorage Alaska and Provideniya, Siberia, U.S.S.R.

Docket No. 45440

Date Filed: February 11, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 10, 1988.

Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity authorizing Delta to engage in the scheduled air transportation of persons, property, and mail over the following unrestricted segment: Between the terminal point Atlanta, Georgia, on the one hand, and the terminal point Dublin, Ireland, on the other, via the intermediate point Shannon, Ireland.

Docket No. 45448

Date Filed: February 12, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 11, 1988.

Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide service between the United States and Mexico over U.S. Routes, B.9, C.9, C.7, C.10, C.11, D.20, D.26, and D.27, as authorized by the U.S. Mexico Memorandum of Consultations signed on January 29, 1988.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-3711 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 88-009]

Chemical Transportation Advisory Committee; Subcommittee on Vapor Control; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of meetings of the Fire Protection Working Group, Waterfront Facilities Working Group, Tankship Working Group, and Tank Barge Working Group, for the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The purpose of the working groups is to develop recommended safety requirements for

vapor control systems in their respective areas. The recommendations of each working group will be considered by the full Subcommittee at its next meeting. The meetings of the working groups will be held on Wednesday, March 2, 1988 in Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, DC. Prior to convening the working groups, members of each working group will meet jointly in order to coordinate efforts. A similar joint meeting will be held at the conclusion of the working group meetings.

The meeting is scheduled to begin at 9:00 a.m.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Break up into individual working groups.
4. Discussion and development of safety requirements relating to vapor control systems and their components in the area of each working group.
5. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1217.

Dated: February 11, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-3696 Filed 2-19-88; 8:45 am]

BILLING CODE 491-014-M

Federal Aviation Administration

[4910-13]

Intention To Prepare an Environmental Document and To Hold an Environmental Scoping Meeting for DuPage Airport, West Chicago, Illinois

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an environmental document will be prepared and considered for

development planned for the next five year time period at DuPage Airport. To ensure that all significant issues related to the proposed action are identified, a public meeting will be held.

FOR FURTHER INFORMATION CONTACT:

Jerry Mork, Community Planner, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7522.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Division of Aeronautics, Illinois Department of Transportation, will prepare an environmental document for development scheduled to occur at DuPage Airport over the next five years. This development involves the following airfield facilities which have been evaluated earlier in an environmental assessment for DuPage Airport prepared by a consultant.

1. Acquisition of land, including relocation assistance;
2. Construction of parallel north-south runways;
3. Closure of two existing runways;
4. Widening existing runway 10/28;
5. Construction of parallel/access taxiways;
6. Construction of stormwater retention/detention ponds;
7. Relocation and closure of portions of Hawthorne Lane.
8. Construction of intra-airport perimeter road;
9. Construction of a new air traffic control tower;
10. Construction of a new terminal building and FBO area;
11. Redevelopment of northeast quadrant;
12. Extension of additional utilities to airport property;
13. Installation of ILS or MLS on Runway 1L;
14. Installation of various types of runway lights;
15. Installation or relocation of navigation aids;
16. Relocation of the Prairie Path (Recreational Trail);
17. Relocation of a portion of Powis/Kress Road;
18. Relocation or removal of some existing utilities; and
19. Partial relocation of C&NW-Great Western Railroad.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Comments and suggestions may be

mailed to the informational contact listed above.

Public Scoping Meeting: To facilitate receipt of comments, a public scoping meeting will be held on Wednesday, March 23, 1988, at the FAA offices at 2300 East Devon Avenue, Des Plaines, Illinois at 10:00 a.m.

Issued in Des Plaines, Illinois, on February 4, 1988.

John Guidotti,

Manager, Chicago Airports District Office
FAA, Great Lakes Region.

[FR Doc. 88-3659 Filed 2-19-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Intent To Examine Depreciation of Fruit and Nut Trees, Assets Used in Radio and Television Broadcasting, Airplanes, Air Transport Services, and Manufacture of Fabricated Metal Products and Notice of Public Meetings

The Office of Depreciation Analysis intends to initiate studies of the depreciation of four classes of assets: Fruit and Nut Trees

Assets Used in Radio and Television Broadcasting

Airplanes and Assets Used in Air Transport Services

Assets Used in the Manufacture of Fabricated Metal Products

Pursuant to the mandates of the Tax Reform Act of 1986 (PL 99-514), the Office of Depreciation Analysis will solicit information relating to the anticipated useful life and anticipated decline in economic value of the above noted assets from the owners and users of these assets. This information, together with additional information such as the depreciation methods used in accounting for such assets in the taxpayer's financial reports, and the terms under which such assets are financed or leased, will be used to determine appropriate class lives for these assets.

The Office of Depreciation Analysis will hold public meetings with all interested parties to discuss the precise definition of the assets to be included in these studies, the specific nature of the information sought, and other related

issues. The schedule for these meetings is as follows:

Fruit and Nut Trees, Wednesday, March 16, at 10:00-12:00 a.m.

Assets Used in Radio and Television Broadcasting, Wednesday, March 16, at 1:30-3:30 p.m.

Assets used in the manufacture of Fabricated Metal Products, Friday, March 18, 10:00-12:00 a.m.

Airplanes and Assets Used in Air Transport Services, Friday, March 18, 1:30-3:30 p.m.

All meetings will be held in Room 4125, Main Treasury Building, 15th Street and Pennsylvania Avenue, Washington, DC. Names of those wishing to attend these meetings, and any inquiries, comments, or other materials relating to these studies should be sent to: The Office of Depreciation Analysis, Room 4217, Main Treasury, Washington, DC 20220.

February 9, 1988.

O. Donaldson Chapoton,

Assistant Secretary (Tax Policy).

[FR Doc. 88-3701 Filed 2-17-88; 3:46 pm]

BILLING CODE 4910-25-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 34

Monday, February 22, 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 ENERGY REGULATORY COMMISSION

February 17, 1988

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: February 24, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 872nd Meeting—February 24, 1988, Regular Meeting (10:00 a.m.)

CAP-1.

Project No. 5233-003, International Falls Power Company

CAP-2.

Project No. 2727-004, Bangor Hydro Electric Company

CAP-3.

Project No. 7490-002, Commonwealth Hydroelectric Inc.

CAP-4.

Project No. 9073-003, Northwest Power Company

CAP-5.

Project No. 8263-003, Summit Hydropower

CAP-6.

Project No. 9744-002, Taft Hydropower, Inc.

CAP-7.

Project No. 6986-004, Tranquility Irrigation District

CAP-8.

Project No. 6524-006, Hy-Tech Company

CAP-9.

Project No. 8654-003, Noah Corporation

CAP-10.

Project No. 8971-001, Big Wood Canal Company

CAP-11.

Project No. 7211-003, Vernon L. and Betty J. Herzinger

CAP-12.

Project No. 6015-009, Charles D. Howard

CAP-13.

Project No. 2597-005, Connecticut Light and Power Company

CAP-14.

Project Nos. 6563-003, 006 and 008, Delmar Wagner

CAP-15.

Project No. 5926-003, City of Bellevue, Washington

CAP-16.

Project Nos. 10145-001, 10146-001, 10148-001, 10149-001, 10150-001, 10151-001, 10152-001, 10185-001, 10187-001, 10189-001, 10197-001, 10210-001, 10211-001, 10212-001, 10213-001, 10214-001, 10215-001, 10216-001, 10217-001, 10183-001, 10390-001, 10398-001, Skykomish River Hydro

Project Nos. 10188-001 and 10192-001, Stillaguamish River Hydro

Project Nos. 10356-001, 10359-001, 10360-001, 10361-001, Snoqualmie River Hydro

Project Nos. 10421-001, 10184-001, 10297-001, 10311-001, 10313-001 Skagit River Hydro

Project Nos. 10100-001, 10099-001, 10101-001, 10258-001, 10268-001, 10274-001, 10288-001, Cascade River Hydro

Project Nos. 10181-001, 10186-001, 10190-001, 10193-001, 10194-001, 10195-001, 10392-001, 10142-001, Sauk River Hydro

Project Nos. 10257-001, 10269-001, 10270-001, 10272-001, 10273-001, 10292-001, 10305-001, 10307-001, 10308-001, 10321-001, 10416-001, Washington Hydro Development Company

Project No. 10432-001, Energy Alternatives

Project No. 10425-001, Steven J. Wight

Project No. 10097-001, Kingdom Energy Products, Inc.

Project Nos. 10299-001 and 10317-001, Nooksak River Hydro

Project No. 10371-001, CPS Products, Inc.

Project No. 10129-001, Cranberry Creek Hydro

Project No. 10141-001, William C. Porter

Project No. 10166-001, Francis A. Smith

Project No. 9593-001, Pollock City Conservationists

Project No. 9952-001, Warren Osborne

Project Nos. 10275-001 and 10279-001, Suiattle River Hydro

CAP-17.

Omitted

CAP-18.

Project No. 4922-002, Arizona Power Authority and Colorado River Commission of Nevada

CAP-19.

Omitted

CAP-20.

Docket No. ER88-170-000, Arizona Public Service Company

CAP-21.

Docket Nos. ER86-368-017, ER86-368-005 and ER86-709-001, El Paso Electric Company

CAP-22.

Docket No. EL86-37-002, Consumer Advocate Division of the West Virginia Public Service Commission and the Maryland People's Counsel, Complainants v. Allegheny Generating Company, Respondent

Docket No. EL86-38-002, David M. Barasch, Consumer Advocate of Pennsylvania, Complainant v. Allegheny Generating Company, Respondent

CAP-23.

Docket Nos. ER78-338-003, ER79-478-005 and ER80-313-005, Public Service Company of New Mexico

CAP-24.

Docket No. ER87-608-000, Kanawha Valley Power Company

CAP-25.

Docket No. EL88-2-000, Safe Harbor Water Power Corporation

CAP-26.

Docket No. EL87-28-000, Kansas City Power & Light Company

Consent Miscellaneous Agenda

GAM-1.

Docket No. FA88-8-000, Alamito Company

GAM-2.

Docket No. RM87-15-001, Regulations Implementing the National Environmental Policy Act of 1969

GAM-3.

Docket No. RM86-14-001, Revisions to the Purchased Gas Adjustment Regulations

GAM-4.

Docket No. GP87-76-000, Bettis, Boyle and Stovall

GAM-5.

Docket No. GP87-72-000, State of West Virginia, Department of Energy, Oil and Gas Division

GAM-6.

Docket No. GP87-61-000, Chapman Energy, Inc., Herring No. 22-1 Well, FERC JD No. 83-04308

GAM-7.

Docket No. GP83-37-000, El Paso Natural Gas Company, Aycock No. 1 Well

GAM-8.

Docket No. GP86-16-000, Phillips Petroleum Company, Marquette A No. 1, FERC No. JD85-21844

GAM-9.

Docket No. RO87-18-000, Texaco, Inc.

GAM-10.

Docket No. RM87-25-000, Regulations Delegating Authority

GAM-11.

Docket No. RM87-29-000, State Corporation Commission of the State of Kansas

Consent Gas Agenda

- CAG-1.
Docket No. TA88-3-28-000, Panhandle Eastern Pipe Line Company
- CAG-2.
Omitted
- CAG-3.
Docket No. TA88-5-5-000, Midwestern Gas Transmission Company
- CAG-4.
Docket No. TA88-1-63-000, Carnegie Natural Gas Company
- CAG-5.
Docket No. TA88-2-12-000, Distrigas Corporation and Distrigas of Massachusetts Corporation
- CAG-6.
Docket No. TA88-2-21-000, Columbia Gas Transmission Corporation
- CAG-7.
Docket No. TA88-2-25-000, Mississippi River Transmission Corporation
- CAG-8.
Docket Nos. TA88-2-26-000 and 001, Natural Gas Pipeline Company of America
- CAG-9.
Omitted
- CAG-10.
Docket No. TA88-1-22-000, CNG Transmission Corporation
- CAG-11.
Docket No. RP88-16-001, Southern Natural Gas Company
- CAG-12.
Docket No. RP85-177-049, Texas Eastern Transmission Corporation
- CAG-13.
Docket Nos. RP88-35-002 and CP88-143-001, Transwestern Pipeline Company
- CAG-14.
Docket No. RP85-169-032, Consolidated Gas Transmission Corporation
- CAG-15.
Docket No. RP88-27-001, United Gas Pipe Line Company
- CAG-16.
Docket Nos. RP88-5-005 and RP88-37-002, Transcontinental Gas Pipe Line Corporation
- CAG-17.
Docket Nos. RP82-58-024 and RP87-103-006, Panhandle Eastern Pipe Line Company
- CAG-18.
Docket No. TA88-1-2-003, East Tennessee Natural Gas Company
- CAG-19.
Docket Nos. TA88-3-37-001 and RP88-36-001, Northwest Pipeline Corporation
- CAG-20.
Docket No. TA88-4-51-001, Great Lakes Gas Transmission Company
- CAG-21.
Docket No. TA88-1-9-002, Tennessee Gas Pipeline Company, a Division of Tenneco
- CAG-22.
Docket Nos. RP87-52-010, RP85-209-000, RP85-209-010, CP86-246-002, RP87-34-003, RP86-93-005, RP86-158-008, RP88-8-005 and TC88-6-000, United Gas Pipe Line Company
- CAG-23.
Docket Nos. RP85-169-000, 028, RP88-10-002 and 003, Consolidated Gas Transmission Corporation
- CAG-24.
Docket No. RP87-93-001, Columbia Gas Transmission Corporation
- CAG-25.
Docket Nos. RP88-8-002, RP88-8-005, CP86-526-000 and RP85-209-000, United Gas Pipe Line Company
- CAG-26.
Docket No. RP86-57-003, Northwest Pipeline Corporation
- CAG-27.
Docket Nos. RP87-84-000 and 001, El Paso Natural Gas Company
- CAG-28.
Docket Nos. RP86-138-001 and 002, Mid Louisiana Gas Company
- CAG-29.
Docket Nos. RP86-69-008, TA86-2-15-005, RP82-51-007, RP86-138-004 and CP82-31-003, Mid Louisiana Gas Company
- CAG-30.
Docket Nos. TA88-1-45-001 and 004, Inter-City Minnesota Pipelines, Ltd., Inc.
- CAG-31.
Docket Nos. TA87-2-22-002 and TA87-3-22-002, Consolidated Gas Transmission Corporation
- CAG-32.
Docket No. TA88-1-43-001, Williams Natural Gas Company
- CAG-33.
Docket No. TA87-3-48-010, ANR Pipeline Company
- CAG-34.
Docket Nos. RP88-17-000, 001 and 002, Southern Natural Gas Company
- CAG-35.
Docket Nos. RP88-29-000, 001, 002, Tarpon Transmission Company
- CAG-36.
Docket Nos. TA88-1-7-000 and RP87-108-000, Southern Natural Gas Company
- CAG-37.
Docket No. TA88-1-33-000, El Paso Natural Gas Company
- CAG-38.
Docket Nos. TA88-1-29-000 and 001, Transcontinental Gas Pipeline Corporation
- CAG-39.
Docket Nos. RP86-102-004 and RP86-102-005, Equitable Gas Company
- CAG-40.
Docket No. RP87-32-000, Transcontinental Gas Pipeline Corporation
- CAG-41.
Docket Nos. RP85-138-000 and RP85-139-000, Consolidated Gas Transmission Corporation
- CAG-42.
Docket No. RP87-26-023, Tennessee Gas Pipeline Company
- CAG-43.
Docket Nos. TA88-1-23-001 and 002, Eastern Shore Natural Gas Company
- CAG-44.
Docket Nos. CP86-232-014 and 024, Panhandle Eastern Pipe Line Company
- CAG-45.
Omitted
- CAG-46.
Docket Nos. RP87-15-018 and RP86-115-010, Trunkline Gas Company
- CAG-47.
Docket Nos. RP86-63-000 and RP86-114-000, Southern Natural Gas Company
- CAG-48.
Docket Nos. RP83-109-000 and 005, Tennessee Gas Pipeline Company, a Division of Tenneco
- CAG-49.
Docket Nos. RP86-48-000 and RP87-7-020, Columbia Gas Transmission Corporation v. Transcontinental Gas Pipe Line Corporation
- CAG-50.
Docket Nos. RP88-14-000 and TA88-1-7-000, South Carolina Pipeline Corporation v. Southern Natural Gas Company
- CAG-51.
Docket Nos. TA86-3-29-000, CP84-146-000, CP84-223-000, CP84-335-000 and CP84-336-000, Transcontinental Gas Pipe Line Corporation
- CAG-52.
Docket Nos. RP87-22-000, High Island Offshore System
- CAG-53.(A)
Docket Nos. TA86-1-12-000 and TA86-2-12-000, Distrigas Corporation and Distrigas of Massachusetts
- CAG-53.(B)
Docket No. CP87-509-000, Distrigas of Massachusetts Corporation and Distrigas Corporation
- CAG-54.
Docket Nos. ST87-2155-000, ST87-2229-000, ST87-4060-000 and ST88-1079-000, Seagull Shoreline System
- CAG-55.
Docket Nos. ST87-2410-000 and ST87-2411-000, Dow Intrastate Gas Company
- CAG-56.
Docket No. ST88-1-000, Arkansas Western Gas Company
- CAG-57.
Docket Nos. CI87-548-001 and CI87-558-001, Conoco Inc.
- CAG-58.
Omitted
- CAG-59.
Omitted
- CAG-60.
Docket No. CP87-410-001, Great Lakes Gas Transmission Company
- CAG-61.
Docket No. CP88-89-001, Tarpon Transmission Company
- CAG-62.
Docket No. CP82-342-004, Consolidated Gas Company of Florida, Inc. v. Florida Gas Transmission Company
- CAG-63.
Docket Nos. CP87-503-001 and 002, Pacific Gas Transmission Company
- CAG-64.
Docket Nos. RP86-116-015 and CP86-585-005, Panhandle Eastern Pipe Line Company
- CAG-65.
Docket No. CP87-20-001, Williston Basin Interstate Pipeline Company
- CAG-66.
Docket No. CP86-146-001, Consolidated Gas Transmission Corporation
Docket No. CP86-579-002, Transcontinental Gas Pipe Line Corporation
- CAG-67.
Docket No. CP86-693-008, Washington Gas Light Company
- CAG-68.
Docket No. CP87-13-001, The Brooklyn Union Gas Company, Complainant vs. Distrigas of Massachusetts Corporation, Respondent

Docket No. CP87-30-001, Boston Gas Company, Complainant vs. Distrigas Corporation and Distrigas of Massachusetts Corporation, Respondents

CAG-69.
Docket No. CP87-49-002, Distrigas of Massachusetts Corporation

Docket No. CP87-50-002, Cabot Energy Supply Corporation

CAG-70.
Docket No. CP87-368-001, Trunkline Gas Company

CAG-71.
Docket No. CP84-441-023, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG-72.
Docket No. CP87-407-000, National Fuel Gas Supply Corporation

CAG-73.
Docket No. CP88-1-000, Williston Basin Interstate Pipeline Company

CAG-74.
Docket Nos. CP85-108-000 and 001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG-75.
Docket No. CP70-7-035, Southern Natural Gas Company

CAG-76.
Omitted

CAG-77.
Omitted

CAG-78.
Docket No. CP87-221-000, Southwest Gas Corporation v. Northwest Pipeline Corporation

CAG-79.
Docket Nos. CP88-148-000 and CP88-153-000, Texas Eastern Transmission Company

CAG-80.
Docket No. IN86-6-001, Ozark Gas Transmission System

CAG-81.
Docket Nos. RP85-125-000, 003 and 004, Distrigas of Massachusetts Corporation

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket No. EL87-53-000, Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company.

Order on petition for declaratory order concerning rates for purchases from qualifying facilities.

Miscellaneous Agenda

M-1.

Reserved

I. Pipeline Rate Matter

RP-1.

Reserved

II. Producer Matters

CI1.

Reserved

III. Pipeline Certificate Matters

CP-1.

Docket No. CP88-2-000, Northern Natural Gas Company, Division of Enron Corporation.

Order on request for section 7(c) certificate authorization for interruptible sale of surplus natural gas.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3729 Filed 2-18-88; 10:35 am]

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Federal Register

Monday
February 22, 1988

Part II

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303 and 305
Child Support Enforcement Program;
Provision of Services in Interstate IV-D
Cases; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303 and 305

Child Support Enforcement Program; Provision of Services in Interstate IV-D Cases

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This regulation revises current regulations at 45 CFR 301.1, 302.36, 303.7, 305.20 and 305.32 by clarifying the responsibilities of initiating and responding States in referring and processing interstate IV-D cases and by revising existing audit criteria to reflect these changes. By requiring the establishment of a central registry for receipt of interstate IV-D cases, the regulation ensures the consistent and expeditious treatment of these cases. The regulation also clarifies responsibility for payment of blood testing in establishing paternity as well as other costs in processing interstate IV-D cases and sets timeframes for acknowledging receipt of and requesting or providing additional information on interstate IV-D cases.

EFFECTIVE DATE: Effective February 22, 1988, except for the requirements of § 302.36(b), 303.7(a) and 305.32(f) concerning central registries which are effective August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Joyce Linder, (202) 245-1773.

SUPPLEMENTARY INFORMATION:

Background

The Child Support Enforcement program was created in response to the alarming rise in welfare costs resulting from increasing non-marital birth rates and parental desertion of families, and to the growing demand on the Congress to relieve taxpayers of the financial burden of supporting these families. Since enactment of title IV-D of the Social Security Act in January 1975, States have been required to cooperate with one another in locating absent parents, establishing paternity and obtaining and enforcing support owed by absent parents to their children. From the beginning of the IV-D program, States have tended to give less than equal attention and treatment to working interstate IV-D cases. In order to carry out their responsibilities under the IV-D program with respect to interstate cases, States must focus greater attention on these cases.

Current regulations governing interstate cases provide insufficient guidance for processing referrals, lack specificity in requiring States to cooperate in interstate child support enforcement and do not require monitoring and following-up on incoming interstate cases.

We believe that the interstate process can be improved and have made this one of OCSE's priorities. This regulation clarifies State responsibilities and emphasizes the need for States to be more responsive and dedicated to working interstate IV-D cases to ensure that all children receive the support they deserve.

Statutory Authority

This regulation is published under the authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Section 454(9) of the Act requires each State, in accordance with standards prescribed by the Secretary, to cooperate with any other State in establishing paternity, if necessary; in locating an absent parent in the State; in securing compliance by an absent parent residing in the State with an order issued by a court competent jurisdiction against the parent for the support and maintenance of the child or children or the parent of the child or children with respect to whom aid is being provided under the plan of such other State; and, in carrying out other IV-D functions. Therefore, ample statutory authority exists to prescribe standards which States must meet to fulfill their responsibilities under the State plan to work interstate IV-D cases.

Regulatory Provisions

This regulation revises current regulations at 45 CFR 301.1, 302.36, 303.7, 305.20 and 305.32. It requires under the title IV-D State plan that States extend to interstate IV-D cases the full range of services available in the State for locating absent parents; establishing paternity; establishing a child support obligation; and securing compliance by an absent parent with a support order. In addition, this regulation requires the establishment of a central registry in each State for receiving and monitoring all incoming interstate IV-D cases and revises existing audit criteria to address changes in §§ 302.36 and 303.7.

Section 301.1 General definition

The term "central registry" is defined in § 301.1 as a single unit or office within

the State IV-D agency which receives, disseminates, and has oversight responsibility for incoming interstate IV-D cases, including URESA petitions and requests for wage withholding. At State option, the central registry may also perform these functions for interstate IV-D cases.

Section 302.36 State plan requirement

This regulation strengthens 45 CFR 302.36 in several ways. First, the section title, Cooperation with other States, is changed to Provision of services in interstate IV-D cases.

Second, we include a requirement that States establish a child support obligation, if necessary, in interstate cases. Former § 302.36 did not address establishment of child support orders and, to clarify that States are required to provide all necessary IV-D services in interstate cases, we believe it is necessary to refer to establishment of child support orders in § 302.36(a).

Third, § 302.36(b) requires each State to establish a central registry in accordance with the requirements in § 303.7(a).

Section 303.7 Provision of services in interstate IV-D cases

The regulation substantially revises 45 CFR 303.7 to delineate clearly the responsibilities of responding and initiating States, as well as to require each State to establish a central registry for receipt of interstate IV-D cases. In addition, the section title, Cooperation with other States, is changed to Provision of services in interstate IV-D cases, for the reasons explained previously.

Section 303.7 Interstate central registry

Section 303.7(a) requires States to establish, and sets forth requirements governing, interstate central registries.

1. *Establishment.* In paragraph (a)(1), each State agency must establish a central registry responsible for receiving, disseminating and responding to inquiries on all incoming interstate IV-D cases, including URESA petitions and requests for wage withholding in IV-D cases.

Since many problems cited in interstate cases also exist in intrastate cases, under § 303.7(a) at State option, central registries may be used for intrastate, as well as interstate IV-D cases. Central registries must be established and operational according to the requirements of this regulation no later than six months after publication of this final rule.

2. *Responsibilities.* Under paragraph (a)(2), within 10 days of receiving an interstate IV-D case from an initiating State, the central registry must (1) ensure that the documentation submitted with the case is reviewed to determine completeness; (2) forward the case to either the State Parent Locator Service (PLS) for locate services or the appropriate agency for processing; (3) acknowledge receipt of the case; (4) ensure that any missing documentation is requested from the initiating State; and (5) inform the IV-D agency in the initiating State where the case was sent for action.

Requiring that the central registry ensure that the information provided is reviewed to determine adequacy, as well as providing in paragraph (a)(3) that the central registry forward the case for any action which can be taken pending receipt of additions of corrections to the documentation from the initiating State, will reduce the delay caused by interstate IV-D cases being returned to the initiating State without action. We encourage States to accept documentation even if it is not in the usual form required by State or local rules, as long as substantive requirements are met. In this way, the central registry will commence action on a case by forwarding the case for necessary action, if possible, ensuring any missing documentation has been requested from the initiating State, acknowledging receipt of the case, and informing the initiating State of where the case was sent for action—all within the 10-day limit.

Finally, the central registry must, in paragraph (a)(4), respond to inquiries on any case within 5 working days of the request.

Section 303.7(b) Initiating State IV-D agency responsibilities

Section 303.7(b) sets forth specific responsibilities of the initiating State.

1. *Use of long-arm statutes to establish paternity.* Under paragraph (b)(1), States with long-arm statutes allowing establishment of paternity must use those statutes to establish paternity in appropriate cases. Establishment of paternity is the very core of a child's rights to support and increased State and Federal efforts to improve the process are essential.

Because the State where the custodial parent and child reside is frequently the most appropriate forum to hear evidence concerning the paternity claim and to enter an order affecting the rights of the child and the rights and responsibilities of the parents, use of a long-arm statute to establish paternity is an effective and advantageous remedy.

2. *Referral to another State.* Paragraph (b)(2) requires prompt referral of any interstate IV-D case, including URESA petitions and requests for wage withholding, to the responding State's interstate central registry for action unless the State uses a long-arm statute as provided for in proposed paragraph (b)(1). This ensures that all interstate IV-D cases are referred by initiating State or local IV-D agencies to one central registry in each responding State. The initiating State or local IV-D agency must send URESA petitions in IV-D cases as well as interstate requests for wage withholding and all other types of actions in IV-D cases to the responding State's central registry.

3. *Use of forms.* Because of the overwhelming need for standardization of information transfer, paragraph (b)(3) requires States to use standardized forms, a URESA forms package to accompany URESA petitions or a form for non-URESAs requests, or computer-generated replicas of the forms containing the same information and in the same format, to refer an interstate IV-D case for action. For non-URESAs actions, the Interstate Child Support Enforcement Transmittal form must be used to transmit requests for location, documentation verification, administrative reviews for Federal tax refund offset cases, and wage withholding or State tax refund offset.

The forms and attachments are intended to replace cover letters and include all necessary information a responding State would need to initiate action on a case. The forms specify documentation which must be attached to the request, indicate where acknowledgment of receipt and requests for further information should be sent and provide a carbon copy acknowledgment which is easily detached and returned to the initiating jurisdiction.

4. *Providing additional information.* Paragraph (b)(4) requires the IV-D agency in the initiating State to provide the IV-D agency or central registry in the responding State with any requested additional information within 30 days of receipt of the request or notify the responding State when the information will be provided by submitting an updated form, or a computer-generated replica of the form, and any necessary documentation. If the nature of the necessary additional information allows, States are encouraged to use telecommunications to update or supply the information. Our purpose is to achieve standardization and speed of information transfer. Successful processing of the case depends on

initiating States making every effort to respond quickly.

5. *Changes in case status.* Section 303.7(b)(5) requires that the IV-D agency in the initiating State notify the IV-D agency in the responding State of any change in case status or information within 10 days of receipt of information about the change in case status by submitting an updated form or a computer-generated replica of the form.

6. *Case status update.* Section 303.7(b)(6) requires that the IV-D agency in the initiating State contact the IV-D agency in the responding State for a status update on cases not in payment status if 90 days has elapsed since the last contact with the responding State IV-D agency. This requirement will expire on June 1, 1990, or upon publication of final regulations on standards for program operators (currently under development within OCSE), whichever is earlier.

Section 303.7(c) Responding State IV-D agency responsibilities

Section 303.7 establishes clear, specific responsibilities for responding IV-D agencies in interstate IV-D cases.

1. *Case management.* Section 303.7(c)(1) requires the IV-D agency to establish and use procedures for managing its interstate caseload which ensure provision of necessary services. These procedures must include maintenance of case records in accordance with the existing requirements in § 303.2. Under paragraph (c)(2), the IV-D agency must periodically review program performance in interstate IV-D cases to evaluate the effectiveness of the procedures. Finally, paragraph (c)(3) requires the State to ensure that the organizational structure and staff of the IV-D agency are adequate to provide for the administration or supervision of the following required IV-D functions: intake; establishment of paternity and the legal obligation to support; location; financial assessment; establishment of the amount of child support; collection; monitoring; enforcement and investigation.

2. *Actions required within 60 days of receipt.* Paragraph (c)(4) requires the IV-D agency in the responding State to complete certain actions with regard to an incoming interstate IV-D case within 60 days of receipt of the forms and documentation on the case from its central registry. The first required action is to provide locate services in accordance with § 303.3. Location of absent parents, if the form or documentation does not include adequate locate information on the

absent parent. Section 303.7(c)(4)(i) requires the responding State IV-D agency to do an in-state location search if information provided by the initiating State is inadequate to locate the absent parent to proceed with the requested action. This will avoid needless delays which occur when cases are returned to initiating States because of inadequate location information.

Section 303.7(c)(4)(ii) requires the responding IV-D agency, if unable to proceed with the case because of inadequate documentation, to notify the IV-D agency in the initiating State of the necessary additions or corrections to the form or documentation. States should make every effort to proceed with a case by remedying faulty documentation or accepting documentation not in the usual form required by State or local rules, as long as the substantive requirements are met.

Section 303.7(c)(iii) requires the responding State IV-D agency, if the documentation received with a case is inadequate and cannot be remedied by the responding IV-D agency without the assistance of the initiating State, to process the case to the extent possible pending necessary action by the initiating State.

Section 303.7(c)(5) requires the IV-D agency, within 10 days of locating the absent parent in a different jurisdiction within the State, to forward the form and documentation to the appropriate jurisdiction within the State and notify the initiating State and the central registry of its action.

Section 303.7(c)(6) requires the responding State IV-D agency, within 10 days of locating the absent parent in a different State, to either return the form and documentation to the initiating State, including the new location, and notify the central registry that the case has been returned to the initiating State or, if directed by the initiating State, forward the form and documentation to the central registry in the State where the absent parent has been located and notify the central registry that the case has been forwarded.

3. Provision of necessary services. Section 303.7(c)(7) contains requirements regarding provision of any necessary services in interstate cases, with the exception of location services which are addressed under § 303.7(c)(4) regarding actions required within 60 days of receipt. It adds, however, that services must be provided as they would be in a similar intrastate case to ensure equal treatment of cases.

Paragraph (c)(7)(i) requires the IV-D agency in the responding State to establish paternity and to attempt to

obtain a judgment for costs should paternity be established.

Under paragraph (c)(7)(ii) we require the IV-D agency to establish a support obligation in accordance with §§ 303.4, 303.101 and 306.51.

Paragraph (c)(7)(iii) requires States to process and enforce all orders from other States using appropriate remedies applied in their own cases, in accordance with §§ 303.6, 303.100 through 303.105 and 306.51.

Paragraph (c)(7)(iv) requires State IV-D agencies to collect and monitor any support payments and to forward payments to the location specified by the IV-D agency in the initiating State no later than 10 days after the collection is received by the responding State IV-D agency, except with respect to certain Federal tax offset collections as specified in § 303.72(h)(5) of this part. The IV-D agency must include sufficient information to identify the case as well as the responding State's identifying code and indicate when the payment was received by the initial point of receipt within the responding State IV-D agency.

Because under paragraph (c)(7)(iv) responding IV-D agencies are responsible for monitoring support payments, after a responding State obtains a support order it must also initiate enforcement, including wage withholding if there is a one-month arrearage, when it determines a payment is missed, just as it would in an intrastate IV-D case, without requiring or waiting for a specific request from the initiating State.

4. Notice of hearings. Paragraph (c)(8) requires that State IV-D agencies notify the initiating State IV-D agency in advance of any formal hearings which may result in establishment or modification of a support order.

5. Changes in case status. Paragraph (c)(9) requires the responding State to notify the initiating State within 10 days of receipt of new information on a case.

6. Closing a case. Paragraph (c)(10) requires the responding IV-D agency to notify the central registry when a case is closed.

Section 303.7(d) Payment and recovery of costs in interstate cases

Section 303.7(d) sets forth clear policy on responsibility for payment of costs in interstate IV-D cases, as well as the authority for both States to recover costs of providing services.

1. Payment of costs. Under paragraph (d)(1) the responding State IV-D agency is responsible for payment of costs it incurs in interstate cases subject to specific provisions in paragraphs (d) (2) through (4).

Paragraph (d)(2) requires that the initiating State must pay for the cost of blood testing in actions to establish paternity. In addition, if paternity is established in the responding State, the responding State must petition the court for payment of costs by the absent parent, and, if costs of blood testing are recovered from the absent parent, must reimburse the initiating State.

2. Recovery of costs. Paragraphs (d) (4) and (5) address recovery of costs in non-AFDC interstate IV-D cases. Paragraph (d)(4) allows each IV-D agency to recover the costs it incurs in providing services in interstate non-AFDC cases if it elects to recover costs in all cases.

Paragraph (d)(5) requires the IV-D agency in the responding State to identify any fees or costs deducted from support payments when forwarding payments to the IV-D agency in the initiating State.

Sections 305.20 and 305.32 Audit provisions

The regulation revises existing audit criteria in § 305.32 to conform to changes contained in this document. Specifically, the title and introductory phrase are revised to parallel the title of corresponding §§ 302.36 and 303.7, i.e., provision of services in interstate IV-D cases. We amended § 305.32(c) to require that, in order to be found to be in compliance with the State plan requirement for provision of services in interstate IV-D cases at § 302.36, under paragraph (c)(1), a State must have established and be using written procedures for establishing paternity in its own cases using its long-arm statute if it has such a statute which allows establishment of paternity. Paragraph (c)(2) requires a State, in order to be found in compliance with § 302.36, to have established and be utilizing written procedures for establishing paternity or assist in establishing paternity when requested by another State. Existing paragraphs (f) through (i) are redesignated as (g) through (j). The regulation then adds a new paragraph (f) containing audit criteria assessing whether States have established and are using procedures governing central registries required under § 302.36(b). We also added to proposed paragraph (g) audit criteria assessing whether States have established and are using written procedures for maintenance of case records, as well as monitoring interstate IV-D cases.

This regulation also amends audit regulations at 45 CFR 305.20 by adding paragraph (d)(5) which includes the audit criteria added to § 305.32 by this

regulation. This requires the interstate IV-D case procedures required by audit criteria in § 305.32 to be used in 75 percent of the cases reviewed for each criterion, effective 6 months from publication of the final rule.

We also are making a technical change to § 305.20(b) because of an error in that section published October 1, 1985 in the *Federal Register* at 50 FR 40101. Reference to §§ 305.37(c) and 305.38(c) was erroneously included under § 305.20(b)(2) as opposed to § 305.20(b)(1). We are amending § 305.20(b) to delete reference to those sections in paragraph (b)(2) and add reference to them in paragraph (b)(1). We are also making a technical change to delete reference to "Expedited processes (45 CFR 305.50(b))" from § 305.20(c)(2) because compliance with expedited process requirements is audited under § 305.20(c)(1).

Response to Comments

We received comments from 55 commenters on the Notice of Proposed Rulemaking. Twenty-seven State IV-D agencies, 14 State and District Attorneys and State Court offices, seven public interest groups, three private citizens, two U.S. Senators, one State Supreme Court, and one State Child Support Commission submitted comments.

Sections 301.1 and 303.7(a) Interstate Central Registry

We received over 50 comments on the requirement that States establish a central registry responsible for receiving and controlling all incoming interstate IV-D cases, including URESA petitions and requests for wage withholding in IV-D cases. The majority of the commenters were concerned with the proposed timeframe for establishing the central registry, duplication of effort, and review of case status every 90 days.

1. *Comment:* We received 13 comments on the proposed requirement that central registries be operational within 90 days of publication of the final regulation. All of the commenters proposed longer implementation periods ranging from 6 months from publication of the final rule to an indefinite period of time after publication to be determined by the State. Some commenters requested additional time in order to set up automated systems and others requested an implementation date two years from publication of the final rule if legislation is needed to establish the central registry.

Response: With respect to the concern that automated systems are essential for a central registry, we would point out that over 33 States are developing or have already developed an automated

system to track and monitor child support cases. We urge States not already developing automated systems to take advantage of the enhanced funding available under title IV-D, which has been available since 1981, to design and develop such systems. However, while automated tracking of cases is desirable, we do not believe it is a prerequisite under this regulation because the central registry's responsibilities do not necessitate maintenance of complete case files. We also do not believe that States will have to enact legislation before they can establish a central registry. A reorganization within the existing State IV-D agency should be all that is necessary. However, we recognize the need to allow adequate time for States to develop procedures for and organize their central registries and, in response to States' concerns, have required in this final rule that central registries be operational 6 months from publication. This should allow States that currently do not have central registries adequate time to establish them.

2. *Comment:* One commenter requested an exemption from establishing a central registry for county-administered IV-D programs.

Response: One of the major problems initiating States face in interstate child support enforcement is determining where in the responding State a case was sent for action and if any action is being taken in that case. This problem is compounded in States with county-administered programs for which there is no single individual or office at the State level with oversight responsibility for interstate case processing. Establishing a central registry in States with county-administered programs will ensure that initiating States have one contact point within the State if they need to locate an interstate case at the county level or need assistance from the central registry to ensure action is being taken in that case.

3. *Comment:* One commenter requested that start-up costs of establishing the central registry be excluded from administrative costs for the purpose of computing incentives until States have sufficient time to develop a cost effective system.

Response: We believe that the benefits of increased tracking and monitoring of interstate cases to ensure they are worked will outweigh any additional start-up costs of establishing a central registry. Interstate collections, for which responding States receive credit in computing incentives, should increase concurrently with the establishment of the central registry. Therefore, there should not be any

initial adverse impact on the amount of incentives a State receives as a result of establishing a central registry, and indeed, increased interstate collections as a result of improved interstate processing will result in increased incentives.

Furthermore, section 458 of the Act specifies that all administrative costs, with the exception at State option of laboratory costs in establishing paternity, must be included in computing incentive payments.

4. *Comment:* We received a number of comments expressing the concern that establishing central registries will give priority to interstate cases over intrastate cases, create another layer of bureaucracy and duplication of effort, result in built-in delays and double the paperwork in interstate cases. Other comments suggested the proposed definition of a central registry be revised to clarify that the central registry receives, distributes and coordinates incoming interstate cases rather than controls the cases.

Response: Our purpose in revising these regulations is to clarify States' responsibilities in working interstate IV-D cases to ensure adequate attention is given to working those cases. From the beginning of the IV-D program, States have given less than equal attention and treatment to working interstate IV-D cases. We do not believe that these new requirements place greater emphasis on interstate cases than interstate cases. These requirements are meant to reduce the difficulties States have experienced in processing child support cases across State lines.

The central registry, as required by this regulation, is not intended to be another layer of bureaucracy, duplicate effort in working cases, or delay the processing of those cases. Rather, it is intended to guarantee that cases are quickly routed for the needed service to the appropriate State or local IV-D agency, prosecutor, State Parent Locator Service, etc. for action. The central registry's responsibilities do not include working a case but rather acting as a conduit for cases coming into the State to ensure they quickly reach the individual or agency responsible for their processing. The central registry also is responsible for responding to inquiries about the location and status of interstate cases being worked within the State. Therefore, there is no need for two complete case files to be maintained. The central registry needs only to maintain minimal data on the location and status of the case, and update the status upon request.

Since the central registry is required to forward cases for action within 10 days of receipt, there should be no built-in delays. Once a case is sent to the local individual or agency responsible for processing the case, contact should be between the initiating State and that local individual or agency. It is not necessary for information to flow back through the central registry. The initiating State should only have to contact the central registry if it has lost track of the case or cannot determine if any action is being taken on the case. The central registry's role, in such cases, is to locate the case and ensure that the case is receiving adequate attention.

Since there was confusion about the proposed role and responsibilities of the central registry, we have revised the definition at § 301.1 to read as follows: "Central registry" means a single unit or office within the State IV-D agency which receives, disseminates, and has oversight responsibility for processing incoming interstate IV-D cases, including URESA petitions and requests for wage withholding in IV-D cases, and at the option of the State, intrastate IV-D cases." We also revised § 303.7(a)(1) to require the State IV-D agency to establish an interstate central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate IV-D cases, and at the option of the State, all intrastate IV-D cases. We believe that these revisions respond to commenters' concerns about the role of the central registry.

5. *Comment:* One commenter asked that the option to use the central registry in intrastate IV-D cases involving more than one local jurisdiction be expanded to include all intrastate cases. Another commenter requested that the initiating State be required to send all outgoing interstate cases through its central registry. Finally, a commenter asked that we require the central registry to be the URESA information agent.

Response: In revising our definition of central registry, we allow States to opt to us the central registry for all intrastate IV-D cases. States may opt to route all outgoing interstate cases through their central registries, however that is not a requirement because we believe that the need for additional control of interstate cases is in the State working the case, i.e., the responding State.

We did not require the central registry to be the URESA information agent because all URESA cases are not IV-D cases. However, as stated in the preamble to the proposed regulation, States may control all child support cases, including non-IV-D cases, through the central registry as long as

costs are allocated and the State only claims expenditures associated with the IV-D program for Federal reimbursement.

6. *Comment:* Two commenters stated that the requirement to establish a central registry is premature because there has been an adequate opportunity to develop interstate linkages under the interstate grant program or to otherwise learn from the interstate grants.

Response: We believe the need to establish interstate central registries is immediate. In fact, because use of central registries is a proven method of effective receipt, acknowledgement, review and control of incoming interstate IV-D cases, we denied application for interstate grants to establish central registries and are requiring establishment of central registries in this final regulation.

7. *Comment:* One commenter asked if "location-only" requests, in which no other services are requested, must be sent through the central registry.

Response: All requests for services from the IV-D program, including "location-only" requests must be sent through the central registry.

8. *Comment:* Nine commenters were concerned that 10 days is not adequate time for the central registry to review, forward for action, and acknowledge receipt of a case, request any missing documentation and inform the initiating State where the case was sent for action. Suggested alternatives included 20 working days, 30 days and 10 days after timely verification of the location of the obligor.

Response: We believe that 10 working days is adequate time to perform the limited activities required. The central registry's responsibility is to review the case, determine if any obviously necessary documentation, such as a copy of a support order, financial statement or affidavit, is missing, determine where the case must be sent for action, and forward the case to the appropriate location for action. The central registry is not expected to conduct an in-depth analysis of the case but rather an initial review and evaluation in a limited time period. Once the case is referred for action, the agency responsible for processing the case may need to request additional information. With the use of standardized forms, the additional requirements of acknowledging receipt of the case, requesting missing information and indicating where the case was sent will be easily accomplished.

In response to the suggestion that the 10-day timeframe begin after timely verification of the location of the

obligor, we wish to clarify that the central registry is responsible for referring the case for location services, if such services are necessary, within the 10-day timeframe.

9. *Comment:* Two commenters requested that the proposed requirement to forward the case to the appropriate agency for processing under § 303.7(a)(2)(ii) be revised to require forwarding the case to the appropriate agency or court for processing. Commenters also asked whether, and if so how, the central registry determines where to refer the case if there is more than one option and whether the central registry determines which enforcement action to take.

Response: Section 303.7(a)(2)(ii) requires the central registry to forward cases to the appropriate local IV-D agency for necessary action. Forwarding to the court may be an option if the court operates as the local IV-D agency because it is under cooperative agreement with the State and if this option is appropriate for processing a case. Therefore, although we have not revised this paragraph, the option "appropriate agency" could include the court.

The central registry makes the initial determination of which service is necessary for each incoming case but is not responsible for determining which enforcement action is necessary; that decision is left to the agency or individual responsible for actually working the case. For instance if the absent parent needs to be located, the central registry must forward the case for location services. If other services are needed, the central registry must determine where in the State to forward the case for appropriate action. That determination must be based on the organization of the IV-D agency in each particular State.

10. *Comment:* We received several comments requesting clarification about the requirement that the central registry must process the case to the extent possible pending receipt of additional necessary information from the initiating State.

Response: By proposing that the central registry process the case to the extent possible pending receipt of additional information, we mean that the central registry may not simply hold the case until the additional information is received if some action can be taken immediately on that case. For example, if the incoming case did not include a copy of the support order and the location of the absent parent is unknown, the central registry must request a copy of the support order from

the initiating State, and must forward the case for location services pending receipt of the support order. In other words, if the additional information is not immediately necessary to work the case, the central registry should forward the case for any action that can be taken pending receipt of the information. Because use of the term "process" may be confused with actually working the case, we have revised paragraph (a)(3) to require the central registry to forward the case for any action which can be taken pending receipt of the additional information.

11. *Comment:* A number of commenters wanted the initiating State to be allowed to deal directly with the local office handling the case or wanted to limit inquiries to the central registry to those made prior to the initiating State's receipt of notice of where the case was sent for action.

Response: Once a case is forwarded to the appropriate agency or court for action and the initiating State has been notified where the case was sent, we intend that the initiating State and agency or court actually working the case should be in direct contact. In order to adequately work a case the responding jurisdiction responsible for working the case must communicate with the initiating State to request additional information, if necessary, or otherwise communicate on actions taken in the case. Such direct contact is essential and it is not our intention that these ongoing contacts should flow through the central registry.

The requirement is § 303.7(a)(4) for central registries to respond to inquiries from other States is intended for situations in which an initiating State loses track of a case or is unable to determine whether any action is being taken on a case. Inquiries to the central registry should, therefore, be limited to instances where direct contact between the initiating State and the agency or court working the case is ineffective or impossible.

12. *Comment:* Ten commenters were concerned with the requirement that the central registry review case status at least every 90 days. Three commenters wanted the review more frequently, every 30 or 45 days. Others wanted cases to be reviewed only until they were assigned to a local jurisdiction for processing or only until an order is established and enforcement activities have commenced. Other alternatives included requiring review only in problem cases or with the same frequency as intrastate cases.

Response: We have revised § 303.7(a)(4) to require the central registry to respond to inquiries from

other States and to monitor the progress of interstate IV-D cases, upon request, to ensure that any necessary action is completed. We deleted the proposed 90-day case status review because we believe that requiring central registries to review the status of every IV-D case in the State every 90 days is excessively burdensome. Rather, a central registry must review the status of a case upon request of an initiating State, and respond to inquiries from other States about where a case was sent for action or whether action is being taken on a case, and respond within 5 working days of the request. We have added a timeframe because although mandatory periodic review in every case is excessively burdensome, adequate assistance must be provided to other States in locating and ensuring cases are being worked.

The importance of direct frequent contact between the initiating State and the jurisdiction working the case cannot be overstated. Without contact regarding actions taken on a case, cases may remain "in process" for indefinite periods of time. Accordingly, we have added a paragraph (b)(6) to require the initiating State to contact the responding IV-D agency for status updates on cases not in payment status if 90 days elapses since the last contact regarding the particular case. Adding this type of "tickler" ensures that the initiating State is apprised of case processing actions and should there be a problem, allows the initiating State to contact the central registry regarding the problem before too much time has elapsed.

To enable central registries to update their files when a case is no longer being worked in the State, we have added a requirement at § 303.7(c)(10), which will require the agency or jurisdiction responsible for processing the case to notify the central registry when the case is closed. This would occur, for example, if the absent parent moves out of the State or dies, or the children reach the age of majority and the support order is no longer in effect and there are no arrearages.

Section 303.7(b) Initiating State IV-D Agency Responsibilities

1. *Comment:* We received several comments on the proposed requirement that States which have statutory authority to use long-arm jurisdiction in paternity cases be required to use it in appropriate cases, and if paternity is established, to attempt to obtain a judgment for costs. The majority of the commenters did not want long-arm statutes to be mandated as a first option. Some commenters wanted it to be left up to the State's discretion to

decide which were "appropriate" paternity cases in which to use the long-arm statute. Others requested that long-arm statutes only be required if the initiating State cannot get URESA services from the responding State. Some of the commenters requested a definition of "appropriate cases." Finally, most of the commenters proposed that States only secure a judgment for costs if it is in the State's best interest.

Response: Establishment of paternity is the very core of a child's right to support and State and Federal efforts to improve the process are essential. Several factors must be taken into consideration when discussing which jurisdiction is most appropriate for paternity establishment. First, many jurisdictions are either unable or unwilling to process contested interstate paternity cases. In addition, motivation for successful establishment and prosecution of a child support case is greater when States work their own cases. Furthermore, chances of successful adjudication of paternity may increase in jurisdictions where the custodial parent is available to testify. In many cases, witnesses to the relationship between the mother and putative father may all reside in the State where the mother and child live. Use of a long-arm statute for paternity establishment allows the State in which the child may have been conceived, the parties lived together or the mother and accused father had other significant contacts, to be the State which determines the factual question of paternity. Currently, State and local IV-D agencies may rely on URESA in many situations where a superior remedy may be available under their existing long-arm authority. URESA is often chosen because program staff and attorneys are unaware of the existence of this alternative. Although the case may involve some additional work in establishing the basis for long-arm jurisdiction, the advantages of proceeding in the State where the mother and child reside far outweigh the disadvantages inherent in many URESA paternity actions.

The fact that motivation for successful prosecution of a child support case is greater when States work their own cases cannot be overstated. If appropriate, the long-arm statute can ensure effective and expeditious paternity establishment. We agree, however, that there are situations when use of a long-arm statute to establish paternity would not be appropriate, e.g., if the basis for jurisdiction is questionable or witnesses are available

to testify in the responding State. In these cases, another remedy, such as the URESA process, may be more effective. A requirement that States with statutory authority use long-arm jurisdiction in paternity establishment whenever appropriate will ensure that States examine all available options in each case and choose the most effective one.

Finally, because commenters expressed concerns that in some situations it is not in the States best interest to pursue reimbursement of costs, we are deleting the requirement in § 303.7(b)(1) that, if paternity is established using a long-arm statute, States must attempt to obtain a judgment for costs. However, we strongly urge States to attempt to recover their own costs, which should be assessed against the defendant.

2. Comment: Two commenters requested that use of long-arm statutes not be limited to paternity establishment cases.

Response: As stated previously, many States and local IV-D agencies rely on URESA actions in many situations where a superior remedy may be available. States with statutory authority to use long-arm jurisdiction in non-paternity cases are permitted to do so and are urged to do so where the result will be more effectively obtained.

3. Comment: We received five comments on the proposed requirement that States promptly refer any interstate IV-D case, including URESA petitions and requests for wage withholding, to the responding State's central registry for action. All of the commenters requested that cases be forwarded within a specific timeframe. Two commenters suggested that cases must be referred within 10 days of application for IV-D services. In addition, several commenters requested an explanation of how much work the initiating State must do on a case before forwarding it to the responding State for action. One commenter suggested that the initiating State should be required to obtain a valid, current address before forwarding the case to the responding State and require the responding State to do locate only if the address is found to be invalid. Finally, one commenter asked if "any" cases meant "all" cases and requested that regulations clarify than any interstate IV-D case means interstate IV-D cases that the initiating State deems appropriate.

Response: While we agree that interstate IV-D cases must be forwarded in an expeditious manner, cases enter the IV-D system at varying levels of readiness. We believe that adding a timeframe for referring a case is not as important as ensuring that a case is

complete enough to send to the responding State's central registry for action.

Before referring a case, a State must make every effort to gather adequate case information as it would in an intrastate case. Using the standardized data elements on the transmittal forms as a guide will help to ensure that the initiating State provides sufficient information to the responding State to enable it to either act on the case or provide location services. Without adequate, accurate information and documentation, successful establishment and enforcement of support orders is impossible. Furthermore, the initiating State is required to send as much information as is available on the location of the absent parent to enable the responding State to locate that individual.

Finally, with regard to the comment that initiating States forward only those cases they deem to be appropriate, States are required to cooperate with one another in locating absent parents, establishing paternity and obtaining and enforcing support owed by absent parents to their children. Any interstate IV-D case which requires one or all of these actions, including URESA petitions and requests for wage withholding, must be referred to the appropriate State's central registry for action.

4. Comment: We received four comments on the proposed requirement that States must submit the appropriate form or a computer-generated alternative of the form which contains the same information with each referral of an interstate IV-D case for action. All of the commenters suggested that in addition to containing the same information, the computer-generated alternatives must be in the same format as the forms. In addition, one commenter stated that the URESA Action Request form duplicates the information already presented in the petition.

Response: As stated in the preamble to the proposed rule, there is an obvious, overwhelming need for standardization of information transfer. In response to the need for uniformity and timely processing of interstate IV-D cases, we have revised paragraph (b)(3) to require that computer-generated replicas of the forms contain the same information and be in the same format as the forms. As previously stated in the preamble to the proposed rule, because one of the crucial needs for improved interstate enforcement is better communication, we encourage States to consider the advantages to using systems link-ups for interstate cases. This will allow for

expeditious, accurate transfer of standardized information and greatly reduce the amount of paperwork involved in processing and working interstate IV-D cases.

A package of standardized forms was developed by a committee representing legal, court, judicial and child support professionals to facilitate the performance of child support actions under URESA. The forms are designed to reduce court preparation time and provide easy access to URESA case information. In addition to the URESA Action Request form (which transmits the more specific URESA case information in the package), the package includes a Uniform Support Petition, Paternity Affidavit, General Testimony for URESA, Order and Judgment and Judge's Certificate and Order. The standardized information on the forms should result in more complete, successful interstate child support case actions by improving communications between child support agency personnel and courts; enhancing cooperation between the States involved; and improving the tools available to judges, attorneys and child support agency personnel in working interstate cases. The national use of these forms should eliminate a significant number of delays that currently occur in the transmission of data from State to State. An initial supply of the forms may be obtained from State IV-D Directors. Once again, the transmission of the standardized data elements is more important than the forms themselves and therefore States may submit computer-generated replicas of the forms as long as the replicas contain the same information and are in the same format as the forms.

5. Comment: Five commenters were concerned that 30 days was not a reasonable amount of time to provide the IV-D agency or central registry in the responding State with any requested additional information. Some suggestions included specifying 45 days, 60 days and 20 days. In addition, one commenter agreed with the requirement to provide information within 30 days but requested that exceptions be made due to the nature of the information sought. One reason given was that some information requires contact with a local office or client in the initiating State which may result in delays. A commenter suggested that there should be an allowance for notifying the responding State that the information requested is still under research.

Response: Successful processing of interstate cases depends on initiating States making every effort to respond quickly when further communication is

needed. We agree with the comment that in some situations, due to the nature of the information sought, it may be necessary to have the option of notifying the responding State that the information is not readily available. This option is preferable to responding that it does not exist because it cannot be obtained within the timeframe. Accordingly, we have revised § 303.7(b)(4) to require that the initiating State must, within 30 days, either provide the requested information or notify the responding State when the information will be provided. Once again, expeditious responses are crucial. Often, the information may be required to respond to a discovery request within a court imposed deadline. We believe 30 days is adequate time since the information is sent directly to the jurisdiction requesting the information, not through the responding State's central registry. If the responding State needs the information sooner, it should advise the initiating State of the urgency of its request.

6. *Comment:* We received six comments on the proposed requirement that the IV-D agency in the initiating State must notify the IV-D agency in the responding State of any change in case status or information within 10 days of receipt of the information about the change in case status. All of the commenters stated that 10 days is unreasonable and unrealistic and suggested requiring 30 days. In addition, the commenters stated that it is impossible to notify the responding State of a change in AFDC status since status may switch back and forth in a very short period of time. Furthermore, one commenter requested that the specific information be listed in the regulation, e.g., change from AFDC to non-AFDC, change in number of children and new locate leads. Finally, one commenter requested a definition of new information.

Response: Initiating States must make every effort to act quickly when there is a change in case status or new information which may affect case processing. Setting a timeframe is imperative to ensure that the inherent delays in the processing of interstate cases are minimized. We believe 10 working days is adequate time to notify the responding State of receipt of new information via the forms or computer-generated replicas. In addition, we want to reiterate that the initiating State must notify the individual or jurisdiction working the case in the responding State of any change in case status or information. As previously stated, States should consider the advantages to using

automated systems link-ups for interstate cases to allow for expeditious transfer of information.

With respect to the request for clarification of the meaning of "new information", any information affecting case status must be sent including changes from AFDC to non-AFDC and vice versa, AFDC closure, change in number of children for whom support is sought, new locate leads, etc. Notifying the responding State of changes in AFDC status is necessary for reporting purposes and even though this status may change often, the initiating State's burden is small because an updated form is sent directly to the responding jurisdiction within 10 days of the receipt of the new information, not within 10 days of the change in status.

Section 303.7(d) Payment and Recovery of Costs in Interstate IV-D Cases

1. *Comment:* We received several comments on the proposed requirement that the initiating State must pay for the cost of bloodtesting in actions to establish paternity. One commenter stated that the initiating State should approve bloodtests on a cost-effectiveness basis. In addition, two commenters wanted clarification in who must pay for costs of travel, food, lodgings, expert witness fees, etc. in paternity establishment cases. Finally, one commenter requested that in cases where testimony would be a hardship in either party, the court allow obtaining testimony through telephonic or video means.

Response: The cost of establishing paternity and lack of clear responsibility for payment of costs are often cited as major impediments to pursuing paternity establishment in interstate IV-D cases. We cannot stress strongly enough our concerns that these issues, such as cost-effectiveness of blood testing, are secondary to the lasting value of paternity establishment. The benefits so far outweigh the costs, over the long-run, that fiscal considerations should rarely be considered an obstacle to the ultimate goal.

Since the responding State has ultimate responsibility for filing the petition, preparing evidence, presenting testimony, etc., that State should determine whether bloodtests are necessary. The initiating State, however, is only responsible for the costs of drawing and analyzing the blood. Expert witness fees, depositions and other costs of the paternity trial must be borne by the responding State. We would encourage initiating States, in appropriate cases, to provide affidavits and videotaped testimony. Costs of

preparing evidence or testimony in the initiating State should, of course, be paid by the initiating State.

Federal financial participation at the applicable matching rate is available for services and activities determined to be necessary expenditures properly attributable to the Child Support Enforcement program. Finally, we strongly urge States to consider the benefits of using available technology and telecommunication as an alternative to traditional testimony in enforcing child support cases. Teleconferencing and other forms of telecommunication would be expeditious, efficient and cost-effective.

Section 303.7(c) Responding State IV-D Agency Responsibilities

1. *Comment:* Several commenters expressed concern about the requirements in § 303.7(c)(1) through (3) for case management procedures, periodic review of program performance, and adequate organizational structure and staff to ensure interstate cases are provided necessary services. Concerns were expressed that these requirements place greater emphasis on interstate cases than intrastate cases and that States retain the right to prioritize interstate cases in the same manner and on the same basis as intrastate cases.

Response: As explained in the preamble to the proposed regulation, §§ 302.10, 302.12, 303.2 and 303.20 set forth requirements for maintenance of case records, regular planned evaluations of operations at the local level and minimum organizational and staffing requirements for the IV-D program. State IV-D programs have been responsible since the inception of the program for meeting these requirements for all cases, both interstate and intrastate. However, we added specific requirements for interstate cases because lack of performance standards for, and adequate staff to work, interstate cases is often cited as a major reason for poor State performance on interstate cases.

With respect to case prioritization, States which opt to prioritize cases in accordance with the requirements of § 303.10 may continue to include interstate cases as long as all regulatory requirements are met.

2. *Comment:* Some commenters were confused about use of the term "central registry" versus "IV-D agency". One commenter asked who is responsible for submitting a request to the Federal Parent Locator Service (PLS).

Response: As explained earlier, the central registry's responsibilities are

limited to actions taken within 10 days of receipt of a case and responding to inquiries subsequent to that case being assigned to the agency or court for processing. The central registry's responsibilities are enumerated in section 303.7(a). When we refer to the IV-D agency, or any entity under contract or cooperative agreement with the IV-D agency which is responsible for working the case. We stress that the central registry is not responsible for working the case but rather for ensuring that the case is sent to the appropriate agency or court for action. Any action taken on a case after the initial 10-day period after receipt by the central registry is the responsibility of the State or local IV-D agency, including the State PLS and any entity which is under contract or has a cooperative agreement with the IV-D agency. Finally, only the State PLS, in accordance with § 303.70, may submit requests to the Federal PLS.

3. *Comment:* We received a number of comments on the requirement that, within 60 days of receipt of a case, the IV-D agency must provide location services if the request is for location services or if there is inadequate location information on the absent parent. Several commenters indicated that 60 days is inadequate for providing location services, especially if the Federal Parent Locator Service (FPLS) is involved, wanted to extend that period to 90 days and only wanted to require initiation of location services within that timeframe.

Response: This is not a new requirement. Section 303.3(d) requires States to use all appropriate location sources within 60 days of receipt of a case. This requirement merely reiterates longstanding Federal policy with respect to providing location services.

OCSE has undertaken a major effort to reduce the time it takes to respond to requests for use of the Federal PLS resources. In addition, we intend to enhance the Federal PLS's ability to provide information to the States by linking the FPLS to State PLS's and the regional hubs developed through the interstate grants. In order to maximize the effectiveness of this enhanced system, grant funds have been made available to States to enable them to develop the capability to transfer data reliably without mailing tapes using a magnetic tape transfer system (enabling the State to transfer large amounts of data quickly, efficiently and inexpensively via ordinary long-distance telephone lines).

4. *Comment:* We received four comments on the adequacy of the information provided by initiating States for purposes of locating absent parents.

Commenters wanted to ensure that initiating States are required to make every effort to provide sufficient locate information or that minimum location information be established in these regulations.

Response: Initiating States are required to send as much information as is available on the location of an absent parent to enable the responding State to locate that individual. It is in the initiating State's best interest to provide any available information which would help to locate the absent parent. Responding States in turn must make every effort to locate those individuals using all resources.

5. *Comment:* Several commenters requested that if an absent parent is located in another jurisdiction the case be returned to the initiating State with the new location information and that the initiating State be responsible for forwarding the case to the central registry in the new State.

Response: In response to these comments we made the following changes to the regulation. We revised § 303.7(c) by adding a new paragraph (5) to require that within 10 days of locating the absent parent in a different jurisdiction within the State, the responding IV-D agency must forward the form and documentation to the appropriate jurisdiction within the State and notify the initiating State and the central registry where the case was sent for action. We then added a new paragraph (c)(6) to require that, if the absent parent is residing in a different State, the responding State IV-D agency must, within 10 days of locating the absent parent in the different State, either return the form and documentation, including the new location of the absent parent, to the initiating State and notify the central registry that the case has been returned to the initiating State, or if so directed by the initiating State, forward the form and documentation to the central registry in the State where the absent parent has been located and notify the central registry that the case has been forwarded.

5. *Comment:* One commenter was confused that the requirement in § 303.7(c)(4)(iii) for the responding IV-D agency to request additional documentation if unable to proceed with the case was limited to instances when further information was required in order to locate the absent parent.

Response: We have clarified paragraph (c)(4)(iii), (redesignated as (c)(4)(ii)) by specifying that, if the responding State is unable to proceed with the case because of inadequate documentation, it must notify the

initiating IV-D agency of any necessary additions or corrections to the form or documentation. For example, this provision would apply if the responding State could process the case because the initiating State did not provide a financial statement or did not supply adequate information in a financial statement.

6. *Comment:* Several commenters commented on the requirement in proposed paragraph (c)(5) (redesignated as paragraph (c)(4)(iii)) that the responding IV-D agency must process the case to the extent possible pending receipt of additional information from the initiating State. One commenter wanted to substitute "to the extent practical" for "to the extent possible" while another insisted action couldn't be taken if the information was insufficient.

Response: We disagree. For example, if additional information is necessary to locate the employer of an absent parent, but a support order has been established and arrearages have accrued pursuant to that order, the responding State could attempt to impose a lien against real or personal property of the absent parent pending receipt of additional information necessary to identify the absent parent's employer and initiate wage withholding.

7. *Comment:* One commenter requested that the requirement that the IV-D agency establish paternity under proposed paragraph (c)(6) (redesignated in the final regulation as paragraph (c)(7)) be revised to include that paternity be established in accordance with the laws of the responding State.

Response: Because all States must be able to establish paternity in interstate cases in order to qualify for funding under the IV-D program, we have not revised the requirement. We believe that with the expanded use of genetic testing and telecommunications to record evidence and present testimony, most impediments to interstate establishment of paternity have been removed. It only remains for States to more fully utilize the tools which are available to facilitate the fair and efficient resolution of paternity disputes across State lines.

8. *Comment:* We received nine comments on the requirement that responding States must forward collections to the initiating State within 10 days of collection. Suggestions included forwarding collections within three days of receipt, 10 working days, 15 days, 30 days or after the check clears. States did not want to alter their normal distribution schedule to process interstate payments. One commenter was concerned that the timeframe could not be met if the payment had to be sent

through the central registry to the initiating State. Another commenter indicated that an exception to the 10-day rule must be made for Federal income tax refund offset collections in non-AFDC cases involving a joint return because a State may delay distribution of amounts offset for a period not to exceed 6 months, in accordance with 45 CFR 303.72(h).

Response: This requirement has been in effect at 45 CFR 303.52(f)(1) since May 9, 1985, when final regulations implementing the Child Support Enforcement Amendments of 1984 were published. There are naturally built-in delays in distributing collections in interstate cases. Therefore, it is essential to minimize the amount of time taken in transferring these collections from jurisdiction to jurisdiction. This need far outweighs the argument against altering regular distribution systems used in intrastate cases. Some States currently forward payments within three days of receipt and we urge all States to eliminate any delays in forwarding payments. With regard to State concerns that there is a need to build in additional delays to allow for check clearance, we believe that 10 days is adequate in most cases. Many child support payments are made in cash, by wage withholding, or with local checks which should clear quickly.

Finally, we agree that 45 CFR 303.72(h)(5) allows States to delay distribution of Federal income tax refund offset collections in non-AFDC cases for a period not to exceed six months from notification of offset or until notified that the unobligated spouse's proper share of the refund has been paid, whichever date is earlier. Therefore, we have added this exception to the 10 day requirement in § 303.7(c)(7)(iv).

9. *Comment:* Several commenters requested that the responding State be required to tell the initiating State when the collection was made and whether it was a current support payment, for the purpose of determining whether a \$50 disregard payment is appropriate. One commenter requested that the date of collection for distribution purposes be the date the payment was received by the responding State.

Response: Current regulations at 45 CFR 302.51(a) require that the date of collection "shall be the date on which the payment is received by the IV-D agency in the State in which the family is receiving aid."

We proposed changing that requirement in a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on September 19, 1984

(49 FR 36780). We had proposed that date of collection should be the date the payment was received "by the IV-D agency of the State in which the collection is made," or, in wage withholding cases, "the date the employer withholds the wages to meet the support obligation." Those changes were widely criticized by States on the basis of anticipated difficulty in verifying collection and withholding dates in interstate cases, and the final rule, published on May 9, 1985 (50 FR 19608) retained the existing definition of date of collection. We believe that some States may have improved their tracking and monitoring systems in the last two years and we have received indications from some commenters that it may be appropriate to review once again our date of collection policy. As an essential first step in our plans to revise the definition for interstate cases, we believe that both States should be apprised of the date when the support payment was actually received by the first point of contact within the responding State IV-D agency. Thus, we have required in paragraph (c)(7)(iv) that the responding State inform the initiating State of that date.

Because the responding State agency must forward the collection within 10 days of receipt, the \$50 disregard payment will generally be credited for the same month in which it was actually made.

10. *Comment:* We received 11 comments on the requirement in paragraph (c)(7) (redesignated as paragraph (c)(8)) that the responding State IV-D agency notify the initiating State IV-D agency in advance of any hearings in an interstate IV-D case. A number of commenters wanted the responding State IV-D agency to notify both the custodial parent and the initiating State IV-D agency in advance of any informal or formal hearings or negotiations. Other commenters felt it is too burdensome to notify the initiating State of routine enforcement hearings and that notice should only be provided when the case is received, an obligor is located, the case is assigned and an order is entered. Finally, commenters requested clarification of the terms "formal" hearings and "timely notice".

Response: With respect to requests that the responding IV-D agency be required to deal directly with the custodial parent by providing notice of hearings or other activities in a case, we would point out that the initiating IV-D agency may be seeking arrearages only and the custodial parent may not even be involved. Furthermore, it is not the

responding State's responsibility to be in direct contact with the custodial parent and it would be overly burdensome to require them to do so. In addition, the responding State generally does not even have the custodial parent's address. However, we would point out that the initiating State IV-D agency is representing the custodial parent and should keep the custodial parent apprised of significant actions taken in his or her case. As stated in the preamble to the proposed regulation, while we are not mandating notice of informal hearings or negotiations, we urge frequent contact between IV-D agencies to ensure that the custodial parent's and children's best interests are being represented by the responding State IV-D agency. We believe that the use of guidelines to establish child support awards as well as the prohibition against retroactive modification of child support arrearages should also protect the custodial parent's and children's interests in interstate cases. Therefore, while only mandating notice of formal hearings, that is, court or administrative hearings to establish or modify an order, in these regulations, we encourage frequent contact between State agencies in interstate cases to ensure the most equitable outcome in these cases.

In response to the request for clarification of the phrase "timely notice", a responding State should provide notice as far in advance of a hearing as it would expect to receive notice from another State and at least as much notice as is given for intrastate cases. We strongly urge initiating States to advise responding States of current status and any recent developments which may affect the outcome of the case.

11. *Comment:* We received six comments on the requirement in paragraph (c)(8), redesignated as paragraph (c)(9), that the responding State notify the initiating State within 10 days of receipt of new information on a case. Several commenters wanted the requirement to be extended to 30 days. Others wanted the requirement to be deleted or limited to pertinent information, or information which affects the status of the case or is needed by the initiating State for action.

Response: We strongly believe that the responding State must keep the initiating State informed about the status of an interstate case by notifying the initiating State of receipt of new

information or actions taken in a case. Almost any new information on a case which might affect the status of that case should be conveyed to the initiating State.

Sections 305.20 and 305.22 Audit Provisions

1. *Comment:* One commenter stated that FY 1987 is too early to include audit criteria because the regulation would not be published in final until the latter part of the same fiscal year.

Response: We agree and have deleted FY 1987 audit criteria for these requirements. As stated previously, we have required in this final rule that central registries be operational 6 months from publication. Therefore, we are revising § 305.20(d)(2) to include the audit criteria added to § 305.32 by this regulation, effective six months from publication of the Final Rule.

Paperwork Reduction Act

This proposed regulation at 45 CFR 303.7(a) (2) and (4), (b), (c)(1), (4), (7)(iv), (8) and (9), (d)(4) and 45 CFR 305.32 (d), (f), and (g) contains information collection requirements which are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The public is not required to comply with these information collection requirements until OMP approves them under section 3507 of the Paperwork Reduction Act. A notice will be published in the *Federal Register* when OMB approval is obtained.

Economic Impact

The Child Support Enforcement program was established under title IV-D of the Act by the Social Services Amendments of 1974, for the purposes of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity and obtaining child support. The IV-D program collected \$3.2 billion in FY 1986—\$1.2 billion on behalf of children receiving AFDC and \$2.0 billion on behalf of children not receiving AFDC. Of total collections, \$192 million were interstate collections. State and local expenditures amounted to \$926 million. Collections for AFDC families are used to offset the costs of assistance payments made to such families. The intent of this regulation is to improve the efficiency and effectiveness of the processing of interstate IV-D cases, thereby increasing the effectiveness of the Child Support Enforcement program. Although hard data are not available, it is expected that this regulation will result in increased interstate activity and doubled interstate collections. In

addition, a minor increase in administrative costs is anticipated.

For the most part this regulation merely strengthens existing regulations and results in minor additional costs. We expect an increase in caseload, however, since the process will be streamlined and cases will be worked more efficiently. The principal impact of the regulation will be on Federal and State budgets and State operations. Federal and State expenditures are projected to increase; however we believe that the increase will be more than offset by the increase in collections, and therefore, a net savings to State governments will result.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

—An annual effect on the economy of \$100 million or more;

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

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

As discussed above, the regulation will have an insignificant impact on State and Federal expenditures.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

List of Subjects

45 CFR Parts 301, 302, and 303

Child welfare, Grant programs, Social programs.

45 CFR Part 305

Child welfare, Grant programs, Social programs, Accounting.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: July 20, 1987.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved: December 4, 1987.

Otis R. Bowen,

Secretary.

PART 301—[AMENDED]

1. The authority citation for Part 301 is revised to read as set forth below, and the authority citations following all sections of Part 301 are removed:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, and 1302.

§ 301.1 [Amended]

2. 45 CFR Part 301, § 301.1 is amended by inserting the following definition between the definitions of "Applicable matching rate" and "Department":

"Central registry" means a single unit or office within the State IV-D agency which receives, disseminates and has oversight responsibility for processing incoming interstate IV-D cases, including URESA petitions and requests for wage withholding in IV-D cases and, at the option of the State, intrastate IV-D cases.

PART 302—[AMENDED]

3. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

4. 45 CFR Part 302 is amended by revising § 302.36 to read as follows:

§ 302.36 Provision of services in interstate IV-D cases.

(a) The State plan shall provide that the State will extend the full range of services available under its IV-D plan to any other State in accordance with the requirements set forth in § 303.7 of this chapter for:

(1) Locating an absent parent who is present in the State;

(2) Establishing paternity;

(3) Establishing a child support obligation;

(4) Securing compliance by an absent parent who is present in the State with a court order or an order of an administrative process established under State law for the support and maintenance of a child or children and of the spouse (or former spouse) who is living with the child or children and who is receiving services under a IV-D State plan in another State; and

(5) Carrying out any other functions required under its approved IV-D State plan.

(b) The State plan shall provide that the State will establish a central registry for interstate IV-D cases in accordance

with the requirements set forth in § 303.7(a) of this chapter.

PART 303—[AMENDED]

5. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

6.45 CFR Part 303 is amended by revising § 303.7 to read as follows:

§ 303.7 Provision of services in interstate IV-D cases.

(a) *Interstate central registry.* (1) The State IV-D agency must establish an interstate central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate IV-D cases, including URESA petitions and requests for wage withholding in IV-D cases, and at the option of the State, intrastate IV-D cases no later than (6 months from publication).

(2) Within 10 days of receipt of an interstate IV-D case from an initiating State, the central registry must:

(i) Ensure that the documentation submitted with the case has been reviewed to determine completeness;

(ii) Forward the case for necessary action either to the State PLS for location services or to the appropriate agency for processing;

(iii) Acknowledge receipt of the case and ensure that any missing documentation has been requested from the initiating State; and

(iv) Inform the IV-D agency in the initiating State where the case was sent for action.

(3) If the documentation received with a case is inadequate and cannot be remedied by the central registry without the assistance of the initiating State, the central registry must forward the case for any action which can be taken pending necessary action by the initiating State.

(4) The central registry must respond to inquiries from other States within 5 working days of receipt of the request for a case status.

(b) *Initiating State IV-D agency responsibilities.* The IV-D agency must:

(1) If the State has a long-arm statute which allows paternity establishment, use the authority to establish paternity whenever appropriate.

(2) Except as provided in paragraph (b)(1), promptly refer any interstate IV-D case to the responding State's interstate central registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage

withholding, and State income tax refund offset in IV-D cases.

(3) Provide the IV-D agency in the responding State sufficient, accurate information to act on the case by submitting with each case any necessary documentation and either the Interstate Child Support Enforcement Transmittal Form or the URESA Action Request Form package as appropriate. The State may use a computer-generated replica in the same format and containing the same information in place of either form.

(4) Provide the IV-D agency or central registry in the responding State with any requested additional information or notify the responding State when the information will be provided within 30 days of receipt of the request for information by submitting an updated form or a computer-generated replica in the same format and containing the same information and any necessary additional documentation.

(5) Notify the IV-D agency in the responding State within 10 days of receipt of new information on a case by submitting an updated form and any necessary additional documentation.

(6) Contact the responding State IV-D agency for status update on cases not in payment status if 90 days has elapsed since the last contact with the responding State IV-D agency.

(c) *Responding State IV-D agency responsibilities.* (1) The IV-D agency must establish and use procedures for managing its interstate IV-D caseload which ensure provision of necessary services and include maintenance of case records in accordance with § 303.2 of this part.

(2) The IV-D agency must periodically review program performance on interstate IV-D cases to evaluate the effectiveness of the procedures established under this section.

(3) The State must ensure that the organizational structure and staff of the IV-D agency are adequate to provide for the administration or supervision of the following support enforcement functions specified in § 303.20(c) of this part for its interstate IV-D caseload: Intake; establishment of paternity and the legal obligation to support; location; financial assessment; establishment of the amount of child support; collection; monitoring; enforcement and investigation.

(4) Within 60 days of receipt of an Interstate Child Support Enforcement Transmittal Form, a URESA Action Request Form or other alternative State form and documentation from its interstate central registry, the IV-D agency must:

(i) Provide location services in accordance with § 303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the absent parent;

(ii) If unable to proceed with the case because of inadequate documentation notify the IV-D agency in the initiating State of the necessary additions or corrections to the form or documentation.

(iii) If the documentation received with a case is inadequate and cannot be remedied by the responding IV-D agency without the assistance of the initiating State, the IV-D agency must process the interstate IV-D case to the extent possible pending necessary action by the initiating State.

(5) Within 10 days of locating the absent parent in a different jurisdiction within the State, the IV-D agency must forward the form and documentation to the appropriate jurisdiction and notify the initiating State and central registry of its action.

(6) Within 10 days of locating the absent parent in a different State, the IV-D agency must—

(i) Return the form and documentation, including the new location, to the initiating State, or, if directed by the initiating State, forward the form and documentation to the central registry in the State where the absent parent has been located; and

(ii) Notify the central registry where the case has been sent.

(7) The IV-D agency must provide any necessary services as it would in intrastate IV-D cases by:

(i) Establishing paternity in accordance with § 303.5 of this part and attempting to obtain a judgment for costs should paternity be established;

(ii) Establishing a child support obligation in accordance with §§ 303.4 and 303.101 of this part and § 306.51 of this chapter;

(iii) Processing and enforcing orders referred by another State, whether pursuant to the Uniform Reciprocal Enforcement of Support Act or other legal processes, using appropriate remedies applied in its own cases in accordance with §§ 303.6 and 303.100 through 303.105 of this part and § 306.51 of this chapter; and

(iv) Collecting and monitoring any support payments from the absent parent and forwarding payments to the location specified by the IV-D agency in the initiating State no later than 10 days after the collection is received by the responding State IV-D agency except with respect to certain Federal tax offset collections as specified in § 303.72(h)(5)

of this part. The IV-D agency must include sufficient information to identify the case, indicate when the payment was received by the initial point of receipt within the responding State IV-D agency and include the responding State's identifying code as defined in the Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Codes issued by the General Services Administration.

(8) The IV-D agency must provide timely notice to the IV-D agency in the initiating State in advance of any formal hearings which may result in establishment or modification of an order.

(9) The IV-D agency must notify the IV-D agency in the initiating State within 10 days of receipt of new information on a case by submitting an updated form or a computer-generated replica in the same format and containing the same information.

(10) The IV-D agency must notify the interstate central registry in the responding State when a case is closed.

(d) *Payment and recovery of costs in interstate IV-D cases.* (1) Except as provided in paragraphs (2) and (4), the IV-D agency in the responding State must pay the costs it incurs in processing interstate IV-D cases.

(2) The IV-D agency in the initiating State must pay for the costs of blood testing in actions to establish paternity.

(3) If paternity is established in the responding State, the IV-D agency in the responding State must attempt to obtain a judgment for the costs of blood testing from the putative father, and, if costs of blood testing are recovered, must reimburse the initiating State.

(4) Each IV-D agency may recover its costs of providing services in interstate non-AFDC cases in accordance with § 302.33(d) of this chapter.

(5) The IV-D agency in the responding State must identify any fees or costs deducted from support payments when forwarding payments to the IV-D agency in the initiating State in accordance with § 303.7(c)(7)(iv) of this section.

§ 303.52 [Amended]

7. 45 CFR Part 303 is further amended by removing paragraphs (e) and (f) from § 303.52.

PART 305—[AMENDED]

8. The authority citation for Part 305 is revised to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

§ 305.20 [Amended]

- 9. 45 CFR 305.20 is amended by:
a. Amending § 305.20(b)(1) by adding the words "and (c)" after "305.37(a)" and after "305.38(a)";
b. Amending § 305.20(b)(2) by removing "Bonding of employees. (45 CFR 305.37(c))" and "Separation of cash handling and accounting functions. (45 CFR 305.38(c))"; and
c. Amending § 305.20(c)(1) by adding the words "and (b)" after "305.50(a)";
d. Amending § 305.20(c)(2) by removing "Expedited processes. (45 CFR 305.50(b))"; and
e. Adding a new paragraph (d)(5) to read as follows:

§ 305.20 Effective support enforcement program.

(d) For fiscal year 1988 and future audit periods:

(5) Effective (6 months from publication) the procedures required by

the criteria prescribed in § 305.32 (a) through (h) of this part must be used in 75 percent of the cases reviewed for each criterion.

10. 45 CFR 305.32 is amended by revising the title, the introductory text and paragraphs (c) and (d), redesignating paragraphs (f) through (i) as (g) through (j), revising newly designated (g) and adding a new paragraph (f) to read as follows:

§ 305.32 Provision of services in interstate IV-D cases.

For purposes of this part, to be found in compliance with the State plan requirement for provision of services in interstate IV-D cases (45 CFR 302.36), a State must:

- (c) Have established and be utilizing written procedures for:
(1) Using its long-arm statute to establish paternity in its own cases, if the State has a long-arm statute that allows establishment of paternity; and
(2) Establishing paternity or assisting in establishing paternity when requested by another State.
(d) Have established and be utilizing written procedures for establishing support orders upon request by another State, including procedures for responding to a complaint under the Uniform Reciprocal Enforcement of Support Act (URESA);

(f) Have established and be utilizing written procedures governing the central registry and its required activities;

(g) Have established and be utilizing written procedures for maintenance of case records and monitoring the status of cases upon which the State is taking action on behalf of another State;

**Energy
Department
Federal Register**

Monday
February 22, 1988

Part III

**Department of
Energy**

10 CFR Part 600
Financial Assistance; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 600

Financial Assistance

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is issuing a final rule amending the DOE Financial Assistance Rules, 10 CFR Part 600, Subparts A, B, and C, as proposed on August 18, 1987, in the *Federal Register* (52 FR 31016). This final rule is a comprehensive revision of Subpart C because it provides application, funding, and administrative requirements for cooperative agreements based primarily upon Government-wide policy and procedures. Consequently, the requirements for cooperative agreements (Subpart C) are essentially the same as those for grants (Subpart B). Conforming amendments are also being made to Subparts A and B.

EFFECTIVE DATE: February 22, 1988.

FOR FURTHER INFORMATION CONTACT:

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Paul Sherry, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1526

SUPPLEMENTARY INFORMATION:

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- V. Review Under the National Environmental Policy Act
- List of Subjects in 10 CFR Part 600

I. Background

On July 8, 1980, the Department of Energy (DOE) published a final rule establishing specific procedures and requirements for the award and administration of cooperative agreements (45 FR 46044). These rules were codified at 10 CFR Part 600, Subpart C. Subparts A and B of those rules, covering general financial assistance policies and procedures and specific policies and procedures for grants, had been published on March 8, 1979 (44 FR 12920).

On October 5, 1982, DOE published a final rule which revised and superseded Subparts A and B and amended Subpart

C to conform with the revised Subparts A and B (47 FR 44076). Subsequently, on August 7, 1984, DOE made additional conforming amendments to Subpart C (49 FR 31390).

On August 18, 1987, DOE published a proposed substantive revision of Subpart C and conforming and technical amendments to Subparts A and B. One public comment was received on the proposed rule. The commenter expressed concern that DOE's definition of substantial involvement is inappropriate for research projects because it would permit joint direction and shared control of a research project which the commenter believes is contrary to the Government-wide guidance issued by the Office of Management and Budget (OMB) on May 19, 1978 (43 FR 21832).

We believe DOE's definition of substantial involvement is consistent with OMB's final guidance which was issued on August 18, 1978 (43 FR 36860). DOE's policy in § 600.202(b) states that substantial involvement exists when: (1) Responsibility for the management, control, or direction of the project is shared by DOE and the participant, or (2) responsibility for the performance of the project is shared by DOE and the participant, or (3) DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons.

In the final OMB guidance for Federal agency use in implementing the Federal Grant and Cooperative Agreement Act of 1977, OMB states its general policy that substantial Federal involvement is anticipated "when the instrument indicates that the recipient can expect agency collaboration or participation in the management of the project." Several examples were provided by OMB to illustrate this policy including:

(1) Agency power to immediately halt an activity if detailed performance specifications (e.g. construction specifications) are not met;

(2) Agency and recipient collaboration or joint participation.

(3) Agency monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects;

(4) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes, coupled with close agency monitoring or operational involvement * * *

Because we believe that DOE's policy with respect to substantial involvement is not contrary to OMB guidance as shown above, the definition for

substantial involvement will remain as proposed.

Although this rule defines when substantial involvement exists, it is not DOE's intent in doing so to authorize more DOE involvement in a project than is programmatically necessary. It continues to be DOE policy as stated in § 600.5, Selection of Award Instrument to limit involvement between itself and the recipient in the performance of the project to the minimum necessary to achieve DOE program objectives.

During internal review, it was noted that several citations were either incomplete or incorrect. These citations have been corrected. In addition, DOE has reconsidered the necessity (re liability provisions in award document), of § 600.202(c)(1)(v), and has decided to delete it as administratively burdensome. The department does not intend to lessen the importance of limiting DOE's liability in cooperative agreement arrangements. In this regard, § 606.202(c)(2)(i) retains the provisions of former § 600.283(b)(2)(B) and provides that the cooperative agreement shall be developed so that it, "represents only the DOE involvement intended and does not unnecessarily increase DOE liability under the cooperative agreement." Except for these changes, the final rule is the same as the proposed rule.

Today's final revision of Subpart C will supersede the existing Subpart C, as amended, in its entirety.

II. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. Pursuant to the requirements of the Executive order, DOE submitted to OMB the rule for review. The OMB has concluded its review.

III. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility

analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. The rule does not impose any new administrative requirements on small entities that are small government jurisdictions or small nonprofit organizations. These entities will continue to be covered by the administrative requirements of OMB Circulars A-102 and A-110. Small businesses will be affected by the rule only as eligible recipients of cooperative agreement awards. Since DOE is lessening the administrative requirements imposed on such recipients, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis has been prepared.

IV. Review Under the Paperwork Reduction Act

The information collection and recordkeeping requirements imposed by this rule are subject to the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. Chapter 3501 *et seq.*). Except for Subpart D of the Part, Audit Requirements for State and Local Governments, the information and recordkeeping requirements imposed by this rule have been cleared by OMB for DOE use under OMB Clearance number 1910-0400. A control number to be issued by OMB for information collections under OMB Circular A-128 will apply to the information collection and recordkeeping requirements imposed by Subpart D.

V. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and the DOE guideline (10 CFR Part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Applications, Audit, Cooperative agreements/energy, Copyrights, Educational institutions, Eligibility, Energy financial assistance, For-profit organizations, Grants, Hospitals, Indian tribes, Individuals, Inventions and patents, Local governments, Management standards,

Nonprofit organizations, Patents, Reporting requirements, Solicitations, Small businesses, States, Technical data, Uniform administrative requirements.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

For the reasons set out in the preamble, Part 600 of Title 10 of the Code of Federal Regulations is amended as set forth below.

PART 600—[AMENDED]

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308).

2. The table of contents for Subpart C of Part 600 is revised to read as follows:

Subpart C—Cooperative Agreements

Sec.

- 600.200 Scope and applicability.
- 600.201 Definitions.
- 600.202 Selection of cooperative agreement as financial assistance instrument.
- 600.203 Application budgetary information.
- 600.204 Instrument conversion.
- 600.205 Application, funding, and administrative requirements.
- 600.206 Cost sharing.
- 600.207 Patents, data, and copyrights.

Subpart A—[Amended]

3. In Part 600, Subpart A, "Head of Procuring Activity (HPA)" is revised to read "Head of Contracting Activity (HCA)" wherever it appears.

4. In Part 600, Subpart A, "Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224 (41 U.S.C. 501 *et seq.*)" is revised to read "Federal Grant and Cooperative Agreement Act, Pub. L. 97-258 (31 U.S.C. 6301-6308)" wherever it appears.

5. Section 600.4 (c)(2)(i) and (c)(3) are revised to read as follows:

§ 600.4 Deviations.

* * * * *

(c) * * *

(2) * * *

(i) A single-case deviation may be authorized by the responsible Head of Contracting Activity (HCA). Any proposed single-case deviation from the requirements of § 600.118 or § 600.207 concerning patents or technical data shall be referred to the General Counsel or designee for review and concurrence prior to submission to the HCA.

* * * * *

(3) Whenever the approval of OMB, other Federal agency, or other DOE office is required to authorize a

deviation, the proposed deviation must be submitted to the Director or designee for concurrence prior to submission to the authorizing official. Any proposed class deviation from the requirements of § 600.118 or § 600.207 concerning patents or technical data shall be forwarded through the Assistant General Counsel for Patents.

* * * * *

6. Section 600.6 is amended by revising paragraph (a)(3) and by adding paragraph (a)(4) to read as follows:

§ 600.6 Discretionary awards.

(a) * * *

(3) Applications submitted in response to a Program Opportunity Notice (PON) (see 48 CFR 917.72 for the submission, evaluation, and selection procedures to be used for a PON. When it is anticipated that a PON will result in a financial assistance award(s), the procedures in 48 CFR 917.72 shall be supplemented as appropriate by the provisions set forth in §§ 600.9 and 600.10 to cover those solicitation and application requirements which are specific to financial assistance and for which there is no alternate coverage in 48 CFR 917.72; e.g., presubmission reviews and clearances, preaward assurances, etc.); or

(4) Applications submitted in response to a Program Research and Development Announcement (see 48 CFR 917.73) if, after an application is selected for award, DOE determines that a grant or cooperative agreement is the appropriate award instrument.

* * * * *

7. Section 600.9(c)(19) is revised to read as follows:

§ 600.9 Solicitation.

* * * * *

(c) * * *

(19) A statement that DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (see § 600.103);

* * * * *

8. Section 600.10 is revised to read as follows:

§ 600.10 Form and content of applications and preapplications.

(a) *General.* Applications shall be required for all financial assistance projects or programs. Preapplications shall be required for all construction, land acquisition, and land development projects or programs for which the need for Federal funding exceeds \$100,000

unless the cognizant program office makes a written program determination to waive the preapplication requirement.

(b) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this Part, in a program rule, or in the applicable solicitation, and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the forms prescribed by OMB Circular A-102, Attachment M. Such applicants shall not be required to submit more than the original and two copies of the application or preapplication.

(c) *Signature.* The application and any preapplication must be signed by the individual who is applying or by an individual who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the financial assistance instrument, if awarded.

(d) *Contents of a preapplication.* In general, a financial assistance preapplication shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF)424;

(2) A brief narrative statement describing the project objectives and method of accomplishment; and

(3) A project budget identifying the estimated amounts of Federal funds and non-Federal contributions (cash or in-kind) needed to support the project.

(e) *Contents of an application.* In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF)424;

(2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification (see §§ 600.102 and 600.203); and

(4) Any required preaward assurances.

(f) *Incomplete applications.* DOE may return an application which does not include all information and documentation required by statute, program rule, and the solicitation, if in the judgment of the DOE Contracting Officer, the nature of the omission precludes review of the application.

(g) *Supplemental information.* During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

9. Section 600.14(e)(2) is revised to read as follows:

§ 600.14 Unsolicited applications.

(e) * * *

(2) Any request for continuation, renewal, or supplemental funding of a project which was originally funded as the result of an unsolicited application shall be evaluated in the same manner as any other request for such funding and shall not be subject to the selection criterion of paragraph (e)(1)(ii) of this section.

* * *

10. Section 600.19 is revised to read as follows:

§ 600.19 Application evaluation and selection.

(a) Applications for discretionary financial assistance, whether solicited or unsolicited, shall be evaluated by reviewers in accordance with this rule, DOE directives, and the terms and conditions of the solicitation, if any.

(b) In deciding which new applications (other than unsolicited applications) or renewal applications for discretionary financial assistance to select for award, DOE shall consider the results of the application evaluation (technical, business and financial) which has been conducted in accordance with this section, plus any intergovernmental review comments (see § 600.11), or other available advice or information as well as published program policy factors, if any. The selection of applications under any given solicitation shall be made by responsible program Assistant Secretary or his or her designee; unless, in accordance with applicable DOE directives, such selection is required to be made by the Secretary or designee.

(c) Program policy factors are factors which the selection official may use to select a range of projects that would best serve program objectives. DOE shall describe in the solicitation any program policy factor that may be used in making selections, the justification for its use and, if appropriate, the relative priority of each such factor. Examples of program policy factors are:

- (1) Geographic distribution;
- (2) Diverse types and sizes of applicant entities;
- (3) A diversity of methods, approaches, or kinds of work; and
- (4) Projects which are complementary to other DOE programs or projects.

(d) After the selection of an application, DOE may, if necessary, enter into negotiations with an applicant. Such negotiations are not a

commitment that DOE will make an award.

(e) For cooperative agreements, DOE may use the source selection process (see 48 CFR 915.612 and 915.613) for the solicitation and evaluation of applications and selection of awardees.

(f) See § 600.106 for the selection process for continuation applications and § 600.14 for the selection process for unsolicited applications.

11. Section 600.25(d) is revised to read as follows:

§ 600.25 Access to records.

* * *

(d) *Duration of access right.* The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor. (See § 600.124 for record retention requirements).

12. Section 600.26(d)(1) (iii), (iv) and (v) are revised to read as follows:

§ 600.26 Disputes and appeals.

* * *

(d) * * *

(1) * * *

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.103 and 600.114 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under § 600.121(b), (1), (2), (3), or (5) of this part with respect to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under § 600.112(g) or § 600.119 of this part or under another term or condition of the award;

* * *

13. Section 600.107(a) is revised to read as follows:

§ 600.107 Cost sharing.

(a) *General.* DOE shall specify in the solicitation or in the program rule, if any, any cost sharing requirement. The award document shall be specific as to whether the cost sharing is based on a minimum amount for the recipient or on a percentage of total costs.

* * *

14. Section 600.118(b)(1) is revised to read as follows:

§ 600.118 Patents, data and copyrights.

* * *

(b) * * *

(1) *Patent Rights (Small Business Firm or Nonprofit Organization).* This clause shall apply to grants to small business firms and domestic nonprofit

organizations where such grants have as a purpose the conduct of experimental, developmental, demonstration, or research work and where the small business firm or domestic nonprofit organization states in writing that it qualifies as a small business firm or domestic nonprofit organization. In exceptional circumstances, DOE may, as determined by Patent Counsel, use a patent rights clause other than the clause specified in this paragraph (b)(1). Exceptional circumstances have been declared for classified subject matter, high level radioactive waste, and uranium enrichment. In addition, if the particular grant is affected by an international agreement or treaty, special provisions are to be included in the clause specified herein.

Patent Rights—Small Business Firm or Nonprofit Organization

(a) *Definitions.* (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.) or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) "Subject Invention" means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant, provided that in the case of a variety of plant the date of determination (as defined in section 44(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of grant performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and subcontracting, at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 506(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(b) *Allocation of principal rights.* (1) The grantee may retain the entire right, title and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) [Reserved]

(c) *Invention disclosure, election of title and filing of patent application by grantee.*

(1) The grantee will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to grantee personnel responsible for patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time to the disclosure of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the grantee will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the grantee.

(2) The grantee will elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel within two years of disclosure to the Patent Counsel. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by Patent Counsel to a date that is no more than sixty days prior to the end of the statutory period.

(3) The grantee will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The grantee will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing, under subparagraphs (1), (2), and (3) may, at the discretion of the Patent Counsel be granted.

(d) *Conditions when the Government may obtain title.* The grantee will convey to the DOE, upon written request, title to any subject invention:

(1) If the grantee fails to disclose or elect title to the subject invention within the time specified in (c) above, or elects not to retain title; provided that the DOE may only request title within 60 days after learning of the failure of the grantee to disclose or elect within the specified times;

(2) In those countries in which the grantee fails to file patent applications within the times specified in (c) above; provided, however, that if the grantee has filed a patent application in a country after the time specified in (c) above but prior to its receipt of the written request of the Patent Counsel, the grantee shall continue to retain title in that country; or

(3) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to grantee and protection of the grantee right to file.* (1) The grantee will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in (c) above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a part and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of DOE except when transferred to successor of the part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and 10 CFR Part 781. This license will not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the grantee a written notice of its intention to revoke or modify the license, and the grantee will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with 37 CFR Part 404 and 10 CFR Part 781, any decision

concerning the revocation or modification of its license.

(f) *Grantee action to protect the Government's interest.* (1) The grantee agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the grantee elects to retain title, and

(ii) Convey title to DOE when requested under (d) above and to enable the Government to obtain patent protection throughout the world in the subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under this grant in order that the grantee can comply with disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by (c)(1) above. The grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

(3) The grantee will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the grant) awarded by the Department of Energy. The Government has certain rights in this invention."

(5) The grantee agrees to:

(i) Upon request, provide a report prior to the close-out of the grant listing all subject inventions or stating that there were none;

(ii) Provide, upon request, a copy of the patent application, filing date, serial number and title, patent number and issue date for any subject invention in any country in which the grantee has applied for a patent; and

(iii) Provide upon request, but not more than annually, listings of all subject inventions which were disclosed to DOE during the applicable reporting period.

(g) *Contracts and Subgrants under the Grant.* (1) The grantee will include this clause, suitably modified to identify the parties, in all contracts and subgrants under the grant, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The contractor or subgrantee will retain all rights

provided for the grantee in this clause, and the grantee will not, as part of the consideration for awarding the contract or subgrant, obtain rights in the contractor's or subgrantee's subject inventions.

(2) The grantee will include in all other contracts or subgrants under the grant, regardless of tier, for experimental, development, demonstration or research work the patent rights clause of 41 CFR 9-9.107-5(a) or 9-9.107-6 as appropriate, modified to identify the parties.

(3) In the case of a contract or subgrant under the grant at any tier, DOE, the contractor or subgrantee, and the grantee agree that the mutual obligations of the parties created by this clause constitute a contract between the contractor or subgrantee and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as DOE may reasonably specify. The grantee also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the grantee.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in-rights.* The grantee agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of DOE to require the grantee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon

terms that are responsible under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for grants with nonprofit organizations.* If the grantee is a nonprofit organization it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the grantee;

(2) The grantee will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the grantee determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the grantee is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the grantee. However, the grantee agrees that the Secretary of Commerce may review the grantee's licensing program and decisions regarding small business applicants, and the grantee will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary of

Commerce's review discloses that the grantee could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(1) *Communications.* The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

15. Subpart C is revised to read as follows:

Subpart C—Cooperative Agreements

§ 600.200 Scope and applicability.

(a) This subpart establishes requirements for the award and administration of cooperative agreements. For purposes of this subpart, "cooperative agreement" and "participant" have the same meaning as "grant" and "grantee" as used in Subpart B of this part. For cooperative agreements and subawards, this subpart implements QMB Circulars A-102, A-110, and the Federal cost principles.

(b) The requirements of this subpart shall apply as indicated in § 600.2 except that this subpart shall not apply to any new award resulting from a solicitation issued before February 22, 1988.

(c) The noncompliance procedures of § 600.121 and the suspension and termination procedures of § 600.122 which are specified for cooperative agreement use in § 600.205 shall apply, with the concurrence of the affected parties, to any applicable action initiated before February 22, 1988, and shall apply to any applicable action initiated after February 22, 1988, under an active cooperative agreement. The closeout procedures of § 600.123 which are specified in § 600.205 shall apply to any terminated or expired cooperative agreement which has not been closed out prior to February 22, 1988.

§ 600.201 Definitions.

The definitions contained in § 600.101 except for "formula grant" and "subgrant" shall apply to all cooperative agreements. In addition, for purposes of this subpart, "participant" means the organization, individual, or other entity that receives a cooperative agreement award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

§ 600.202 Selection of cooperative agreement as financial assistance instrument.

(a) *Determinations.* When DOE determines in accordance with the appropriate authorizing statute, the

Federal Grant and Cooperative Agreement Act, Pub. L. 97-258, and § 600.5 that the principal purpose of the relationship is assistance and it is anticipated that there will be substantial involvement between DOE and the participant during performance of the contemplated activity, the award instrument shall be a cooperative agreement.

(b) *Substantial involvement.* Anticipated substantial involvement between DOE and the participant during performance of the contemplated activity is the only criterion which distinguishes a grant relationship from a cooperative agreement relationship.

(1) Substantial involvement exists when:

(i) Responsibility for the management, control, or direction of the project is shared by DOE and the participant, or

(ii) Responsibility for the performance of the project is shared by DOE and the participant, or

(iii) DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. (Suspension or termination of the cooperative agreement under § 600.122 does not constitute "intervention in the conduct or performance of project activities.")

(2) Providing technical assistance or guidance of programmatic nature to a recipient does not constitute substantial involvement if the recipient is not required to follow such guidance or if the technical assistance or guidance is provided at the request of the recipient, and such assistance or guidance is not expected to result in continuing DOE involvement in the performance of the project.

(3) Technical assistance or guidance which pertains to the administrative requirements of the award does not constitute substantial involvement.

(c) Statement of substantial involvement between DOE and the participant. Every cooperative agreement shall explicitly state the substantial involvement anticipated between DOE and the participant during performance of the project.

(1) The cooperative agreement award document shall affirmatively state, under the heading "Substantial Involvement between DOE and the Participant," all relevant information concerning the substantial involvement anticipated between DOE and the participant during performance of the project. This statement shall describe the following:

(i) The project activities in which substantial involvement between DOE and the participant is anticipated;

(ii) The specific responsibilities and authorities of DOE and the participant in the conduct and/or performance of each of the project activities in which substantial involvement is anticipated;

(iii) Any limitations on DOE/participant responsibilities and authorities in the conduct and/or performance of each of the project activities;

(iv) The duration of DOE/participant responsibilities and authorities in the conduct and/or performance of each of the project activities.

(2) A statement of substantial involvement between DOE and the participant shall be developed so that it:

(i) Represents only the DOE involvement intended and does not unnecessarily increase DOE liability under the cooperative agreement;

(ii) Integrates, as appropriate, DOE's responsibilities and involvement in project activities with administrative requirements such as performance reporting and monitoring, property management, and suspension and termination; and

(iii) Specifies which general administrative requirements applicable to cooperative agreements are deleted or modified because they are inconsistent with the provisions related to substantial involvement.

§ 600.203 Application budgetary information.

For cooperative agreement application subject to the SEB process, DOE may require that applicants, other than governmental entities, submit budget information in a different format and in greater detail than that specified in §§ 600.10 and 600.205 only when that information is essential to evaluation under the SEB process. State, local, and Indian tribal governments shall continue to provide budget information as specified in §§ 600.10 and 600.205 and shall be excluded from this requirement. (Also see §§ 600.10 and 600.205 for the other requirements pertinent to application contents.)

§ 600.204 Instrument conversion.

(a) *Conversion of a grant to a cooperative agreement.* Subsequent to the award of a grant, it may be necessary for DOE to become substantially involved with the participant in the performance of the project. However, the introduction of substantial involvement does not by itself constitute a conversion from a grant to a cooperative agreement

relationship nor does it necessarily require that a change be made in instrument type.

(1) *Determination.* When DOE determines in accordance with § 600.202 that a cooperative agreement would be the appropriate instrument because of the necessity for substantial involvement between the parties, and the substantial involvement is necessary for a period of at least twelve months beyond the expiration date of the current budget period, DOE will initiate action to convert the grant to a cooperative agreement.

(2) *Conversion.* DOE shall notify the grantee of its intention to convert from a grant to a cooperative agreement as soon as the decision is made, but no later than sixty days prior to the expiration date of the current budget period. Conversion of a grant to a cooperative agreement shall be effected at the time of negotiation of the continuation or renewal award or any extension of twelve months or more. A grant may also be converted to a cooperative agreement at any time after award when it is mutually agreed that DOE should be substantially involved in the performance of the project. The conversion shall be accomplished by an amendment to the award. The amendment documents shall:

(i) Change the instrument-type designation in the award document from "Grant" to "Cooperative Agreement";

(ii) Indicate that thereafter Subpart C of this part shall apply to the agreement in lieu of Subpart B of this part;

(iii) Add a statement of substantial involvement between DOE and the participant in accordance with § 600.202(c); and

(iv) Change any other terms, as appropriate (e.g., special provisions, reporting), to reflect the increased involvement by DOE.

(3) In the event DOE determines substantial involvement between the parties is necessary for at least twelve months after the expiration date of the current budget period and the grantee does not agree to conversion of the instrument at the time of negotiation, the grantee's refusal to agree to the conversion will be the basis for not making a continuation award, renewal award, or extension and the recipient shall have no right of appeal under § 600.26. Any refusal to accept a cooperative agreement award shall be treated in accordance with § 600.22.

(b) *Conversion of a cooperative agreement to a grant.* A cooperative agreement may be converted to a grant if DOE determines after award of a cooperative agreement that the anticipated substantial involvement

between the parties will not be necessary. Conversion of a cooperative agreement to a grant shall be accomplished by a bilateral amendment to the award as soon as possible after it is determined that no substantial involvement will be necessary between DOE and the participant during performance of the activity. The amendment shall:

(1) Change the instrument type designation in the award document from "Cooperative Agreement" to "Grant";

(2) Indicate that thereafter Subpart B of this part will apply to the agreement in lieu of Subpart C of this part;

(3) Delete the "Substantial Involvement Between DOE and Participant" section from the agreement; and

(4) As necessary, change any other administrative terms which relate to the substantial involvement between DOE and the participant. If the participant does not agree to the conversion, DOE shall initiate a termination of the agreement in accordance with § 600.122(d).

§ 600.205 Application, funding, and administrative requirements.

Except for § 600.118 and unless otherwise specified in this subpart, §§ 600.102 through 600.124 of Subpart B which set forth the application, funding, and administrative requirements for grants shall also apply to cooperative agreements. Furthermore, the audit requirements set forth in Subpart D of this Part shall apply to cooperative agreements.

§ 600.206 Cost sharing.

In addition to the requirements of § 600.107, the following requirements apply to research, development, and demonstration projects:

(a) When DOE awards cooperative agreements for research, development, and demonstration projects where the primary purpose of the project is the ultimate commercialization and utilization of technology by the private sector and when there are reasonable expectations that the participant will receive significant present or future economic benefits beyond the instant award as a result of the performance of the cooperative agreement, cost sharing shall be required unless waived by the cognizant Program Assistant Secretary or designee.

(b) DOE will decide, on a case-by-case basis, the amount of cost sharing required for a particular project.

(c) Factors in addition to those specified in § 600.107(c) which may be considered when negotiating cost sharing for research, development, and

demonstration projects include the potential benefits to a participant resulting from the project and the length of time before a project is likely to be commercially successful.

§ 600.207 Patents, data, and copyrights.

(a) *General.* Cooperative agreements shall be awarded and administered by DOE in compliance with the patent, data, and copyright provisions of this section and 48 CFR Part 927. DOE shall specify in each award, the applicable patent, data, and copyright provisions.

(b) *Required clauses.* DOE shall determine which of the clauses listed in this paragraph or in 48 CFR Part 927 apply, based on DOE review of the application, other information submitted by the applicant, and any negotiations. These clauses may be modified by DOE Patent Counsel, in accordance with the procedures of 48 CFR Part 927, for a particular cooperative agreement or for a class of cooperative agreements. In each patent, data, and copyright clause selected for inclusion in the cooperative agreement, the terms "grant" or "contract" shall be read as "cooperative agreement" or "agreement," the terms "grantee" or "contractor" shall be read as "participant," the term "subgrant" shall be read as "subaward," and "subcontract" or "contract" awarded under a grant shall be read as "contract" under a cooperative agreement.

(1) *Patent Rights (Small Business Firm or Nonprofit Organization).* The clause set forth in § 600.118(b)(1) shall be included in cooperative agreements with small business firms and nonprofit organizations where such cooperative agreements have as a purpose the conduct of experimental, developmental, demonstration, or research work. The policies and procedures of § 600.118(b)(1) require the small business firm or nonprofit organization to state in writing that it qualifies as a small business firm or nonprofit organization. In exceptional circumstances, DOE may, as determined by Patent Counsel, use a patent rights clause other than the clause specified in paragraph (b)(1) of § 600.118 for such participants. Exceptional circumstances have been declared for classified subject matter, high level radioactive waste, and uranium enrichment. In addition, if the cooperative agreement is affected by an international agreement or treaty, special provisions are to be included in the clause specified herein.

(2) *Patent Rights (Long Form).* As specified by 48 CFR 927.300(a), the clause set forth in 41 CFR 9-9.107-5(a) shall be included in all cooperative agreements awarded to participants

other than small business firms or nonprofit organizations, where such cooperative agreements have as a purpose the conduct of experimental, developmental, demonstration, or research work. The applicant/participant may request in advance of, or within thirty days after the award is signed, a waiver of all or any part of the rights of the United States with respect to subject inventions. DOE shall notify the applicant of this right by inserting the notice of 48 CFR 952.227-84 in all solicitations which may result in cooperative agreements calling for experimental, research, developmental, and demonstration work. For unsolicited applications, DOE shall provide this notice to the applicant prior to award. If a waiver is granted, the appropriate waiver clause shall be substituted for the Patent Rights (Long Form) clause. DOE also may authorize an advance waiver for a class of awards, when appropriate, and shall specify the applicable patent rights clause in every award covered by such a waiver. The clause set forth in 41 CFR 9-9.107-5(a) shall be modified in accordance with 41 CFR 9-9.107-5, as appropriate.

(3) *Rights in Technical Data (Long Form)*. The clause set forth in 48 CFR 952.227-75 shall be included in all cooperative agreements having as a purpose the conduct of experimental, developmental, demonstration, or research work. This clause shall be modified in accordance with 48 CFR 952.227-75 Alternate I and II, as appropriate.

(4) *Additional technical data requirements*. The clause set forth in 48 CFR 952.227-73 shall be included in all cooperative agreements having as a purpose the conduct of experimental,

developmental, demonstration, or research work unless all technical data requirements are known in advance of the agreement and are set forth in the cooperative agreement project description/statement of work.

(5) *Patent indemnity*. As specified in 48 CFR 927.300(a), the clause set forth in 41 CFR 9-9.103-3(b) shall be included in all cooperative agreements for experimental, developmental, demonstration, or research work, when DOE determines that the cooperative agreement will require standard supplies sold or offered for sale to the public on the commercial open market or will use the participant's practices or methods which normally are or have been used in providing goods and services on the commercial open market or will use any parts, components, practices, or methods to the extent to which the participant has secured indemnification from liability. The participant shall include this clause in contracts for the types of activities described in this paragraph.

(6) *Classified inventions*. As specified in 48 CFR 927.300(a), the clause set forth in 41 CFR 9-9.106 shall be included in every cooperative agreement which covers, or is likely to cover, classified subject matter.

(7) *Authorization and consent*. The clause set forth in § 600.118(b)(5) shall be included in all cooperative agreements under which experimental, developmental, demonstration, or research work is to be performed within the United States, its possessions, or Puerto Rico.

(8) *Notice and assistance*. The clause set forth in § 600.118(b)(6) shall be included in all cooperative agreements in excess of \$10,000 for construction,

experimental, developmental, demonstration, or research work which is to be performed within the United States, its possessions, or Puerto Rico.

(9) *Reporting of royalties*. In order that DOE may be informed regarding royalty payments to be made by a participant in connection with any cooperative agreement where the amount of the royalty payments is included in the proposed budget, the applicant shall provide:

(i) Information concerning the royalty payments expected to be made under the cooperative agreement, if awarded, together with the name of the licensors, and either the patent numbers involved or such other information as will permit identification of the patents and patent applications as well as the basis on which the royalties are to be paid; or

(ii) A certification that the proposed budget includes no amount representing any royalty that would be paid by the participant directly to others in connection with the performance of the award.

(iii) If the information or certification specified in paragraphs (b)(9)(i) and (b)(9)(ii) is not available at the time of award, DOE shall include the clause set forth in § 600.118(c)(2) in any applicable cooperative agreement award.

(10) Subawards and contracts under cooperative agreements or subawards. The participant shall include the applicable clauses of this section in any subaward or contract awarded under a cooperative agreement and assure that the applicable clauses are also included by subrecipients in contracts.

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1983/Pub. L. 100-249

Authorizing the Secretary of the Interior to preserve certain wetlands and historic and prehistoric sites in the St. Johns River Valley, Florida, and for other purposes. (Feb. 16, 1988; 102 Stat. 13; 3 pages) Price: \$1.00

H.R. 2566/Pub. L. 100-250

To amend the National Parks and Recreation Act of 1978, as amended, to extend the term of the Delta Region Preservation Commission, and for other purposes. (Feb. 16, 1988; 102 Stat. 16; 1 page) Price: \$1.00

H.R. 3884/Pub. L. 100-251

To rescind certain budget authority recommended in Pub. L. 100-202. (Feb. 16, 1988; 102 Stat. 17; 1 page) Price: \$1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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3 (1986 Compilation and Parts 100 and 101)	11.00	Jan. 1, 1987	0-149	12.00	Jan. 1, 1987
4	14.00	Jan. 1, 1987	150-999	13.00	Jan. 1, 1987
5 Parts:			1000-End	19.00	Jan. 1, 1987
1-1199	25.00	Jan. 1, 1987	17 Parts:		
1200-End, 6 (6 Reserved)	9.50	Jan. 1, 1987	1-199	14.00	Apr. 1, 1987
7 Parts:			200-239	14.00	Apr. 1, 1987
0-45	25.00	Jan. 1, 1987	240-End	19.00	Apr. 1, 1987
46-51	16.00	Jan. 1, 1987	18 Parts:		
52	23.00	Jan. 1, 1987	1-149	15.00	Apr. 1, 1987
53-209	18.00	Jan. 1, 1987	150-279	14.00	Apr. 1, 1987
210-299	22.00	Jan. 1, 1987	280-399	13.00	Apr. 1, 1987
300-399	10.00	Jan. 1, 1987	400-End	8.50	Apr. 1, 1987
400-699	15.00	Jan. 1, 1987	19 Parts:		
700-899	22.00	Jan. 1, 1987	1-199	27.00	Apr. 1, 1987
900-999	26.00	Jan. 1, 1987	200-End	5.50	Apr. 1, 1987
1000-1059	15.00	Jan. 1, 1987	20 Parts:		
1060-1119	13.00	Jan. 1, 1987	1-399	12.00	Apr. 1, 1987
1120-1199	11.00	Jan. 1, 1987	400-499	23.00	Apr. 1, 1987
1200-1499	18.00	Jan. 1, 1987	500-End	24.00	Apr. 1, 1987
1500-1899	9.50	Jan. 1, 1987	21 Parts:		
1900-1944	25.00	Jan. 1, 1987	1-99	12.00	Apr. 1, 1987
1945-End	26.00	Jan. 1, 1987	100-169	14.00	Apr. 1, 1987
8	9.50	Jan. 1, 1987	170-199	16.00	Apr. 1, 1987
9 Parts:			200-299	5.50	Apr. 1, 1987
1-199	18.00	Jan. 1, 1987	300-499	26.00	Apr. 1, 1987
200-End	16.00	Jan. 1, 1987	500-599	21.00	Apr. 1, 1987
10 Parts:			600-799	7.00	Apr. 1, 1987
0-199	29.00	Jan. 1, 1987	800-1299	13.00	Apr. 1, 1987
200-399	13.00	Jan. 1, 1987	1300-End	6.00	Apr. 1, 1987
400-499	14.00	Jan. 1, 1987	22 Parts:		
500-End	24.00	Jan. 1, 1987	1-299	19.00	Apr. 1, 1987
11	11.00	July 1, 1987	300-End	13.00	Apr. 1, 1987
12 Parts:			23	16.00	Apr. 1, 1987
1-199	11.00	Jan. 1, 1987	24 Parts:		
200-299	27.00	Jan. 1, 1987	0-199	14.00	Apr. 1, 1987
300-499	13.00	Jan. 1, 1987	200-499	26.00	Apr. 1, 1987
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13	19.00	Jan. 1, 1987	700-1699	18.00	Apr. 1, 1987
14 Parts:			1700-End	12.00	Apr. 1, 1987
1-59	21.00	Jan. 1, 1987	25	24.00	Apr. 1, 1987
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140-199	9.50	Jan. 1, 1987	§§ 1.0-1.60	12.00	Apr. 1, 1987
200-1199	19.00	Jan. 1, 1987	§§ 1.61-1.169	22.00	Apr. 1, 1987
1200-End	11.00	Jan. 1, 1987	§§ 1.170-1.300	17.00	Apr. 1, 1987
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1927-End.....	23.00	July 1, 1987	1-999.....	15.00	Oct. 1, 1987
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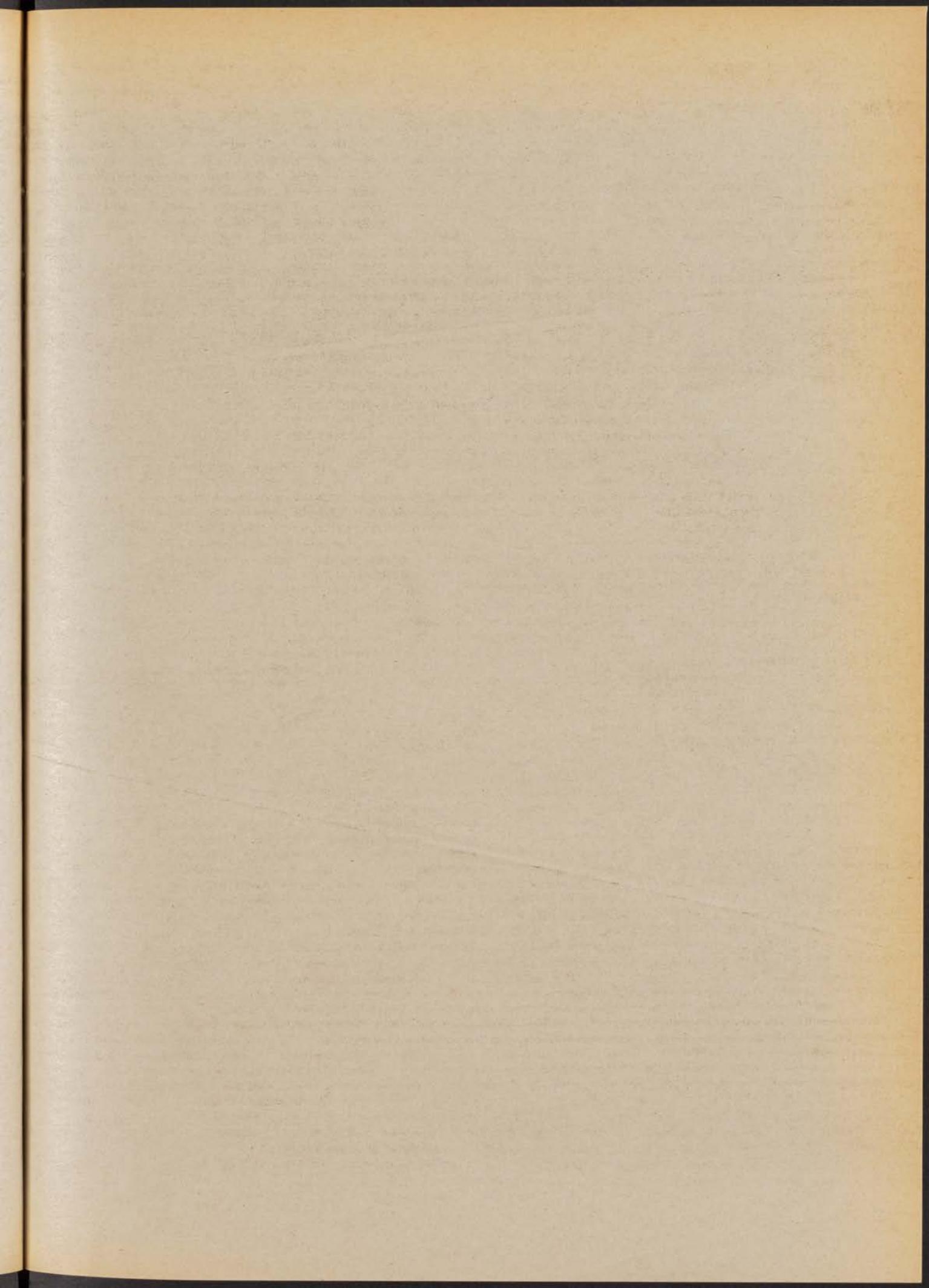
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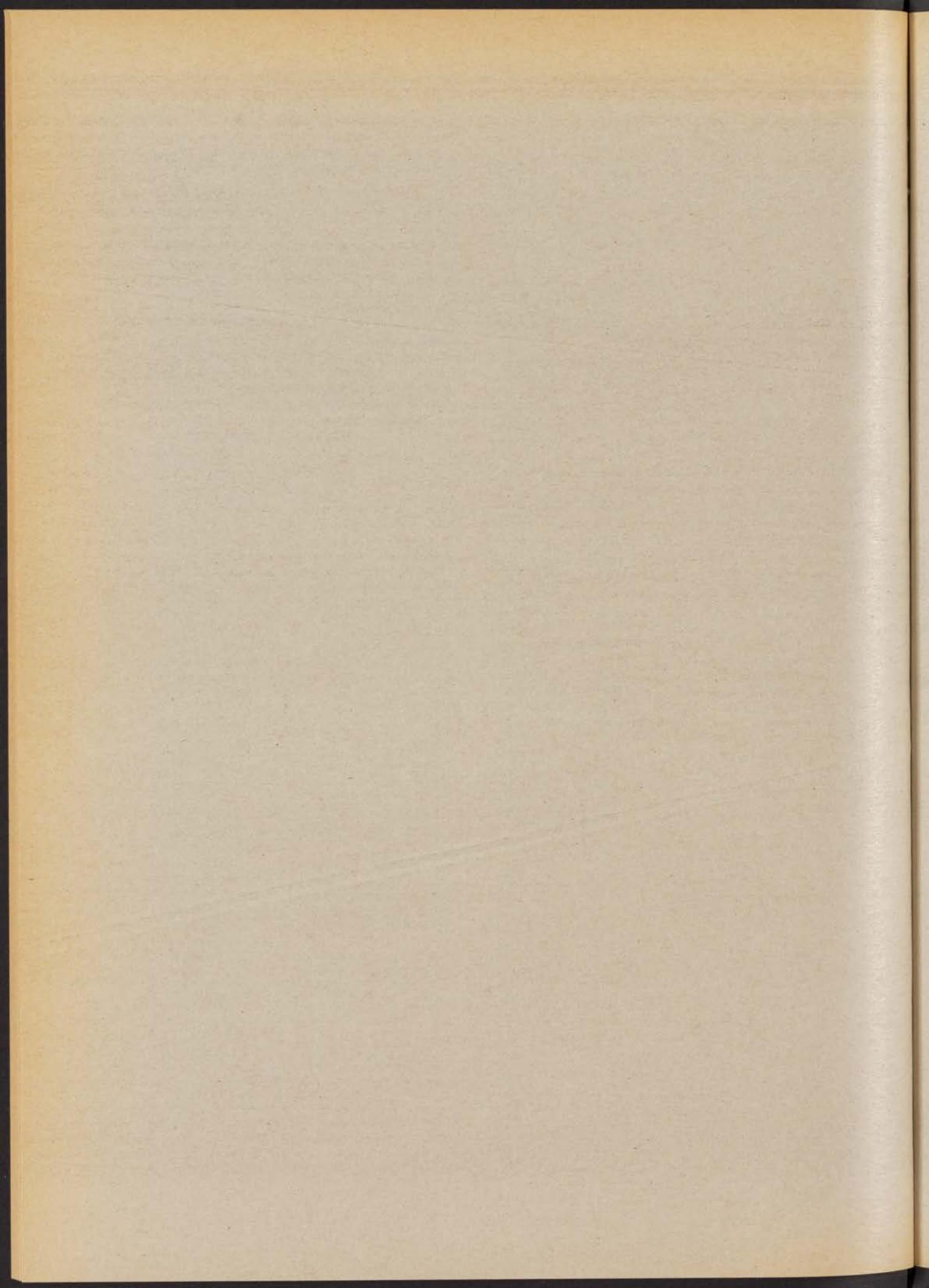
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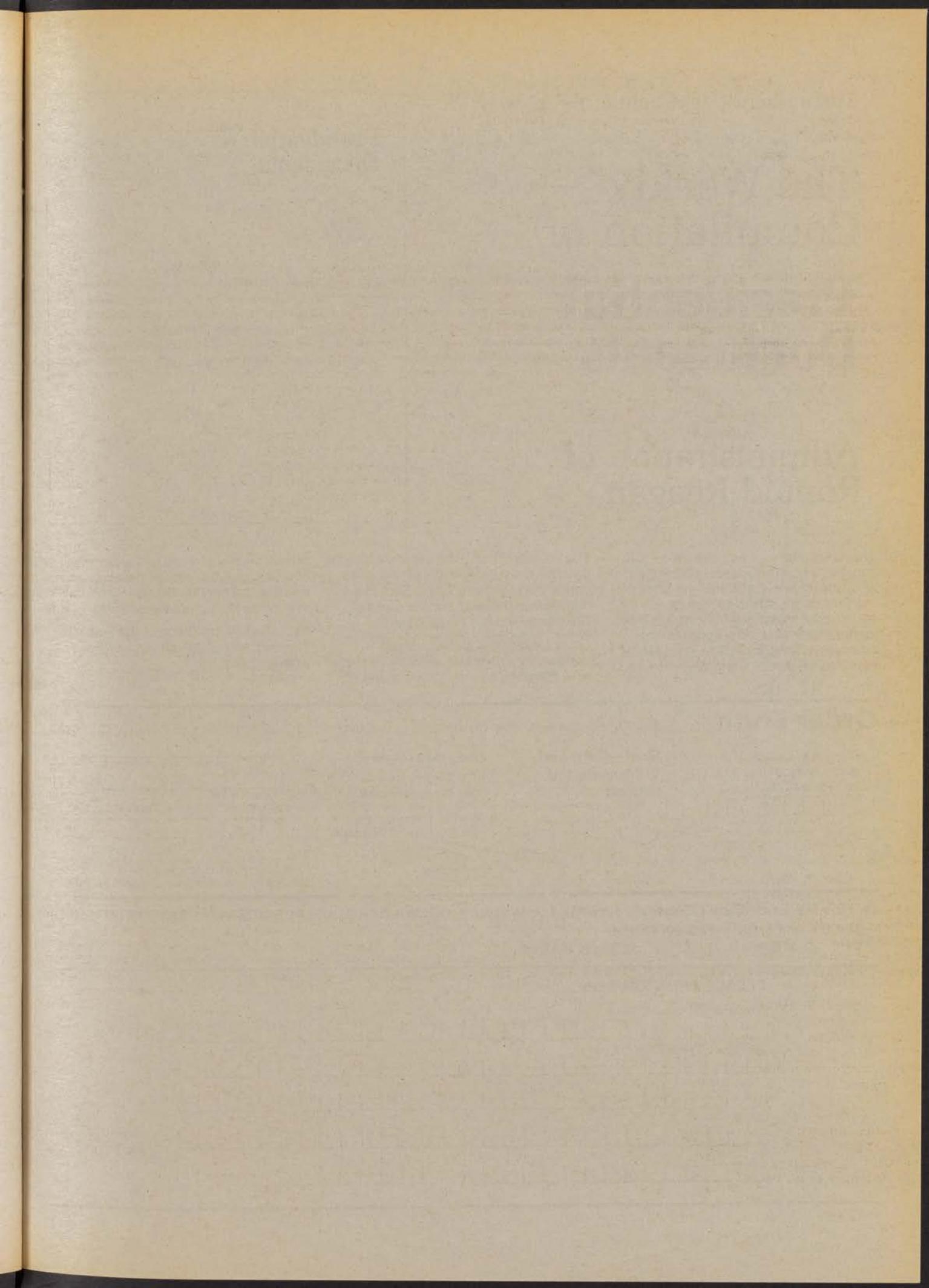
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⁵ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

** Note: The original version of 46 CFR Parts 41-69, revised as of October 1, 1987, was printed incorrectly. A corrected edition will be issued in the near future.



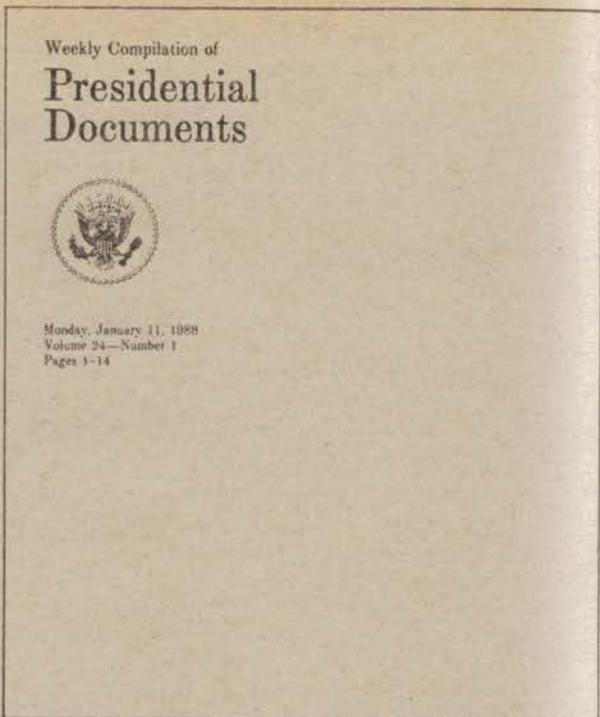




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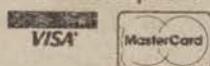
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