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Monday
March 7, 1988

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Boston, MA.
RESERVATION: Call the Boston Federal Information Center, 617–565–8123

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is amending the uniform rules of practice governing formal adjudicatory administrative proceedings instituted by the Department or any agency thereof under the statutes and regulations designated in the subpart. This final rule permits an Administrative Law Judge to issue an oral decision at the close of a hearing instead of issuing a written decision at a later date. This procedure would allow proceedings to be concluded in a more expeditious and less costly manner. This final rule also changes the time periods for proposing corrections to the transcript and for the submission of proposed findings of fact, conclusions, orders, and briefs in administrative proceedings conducted under the uniform rules of practice to allow for the oral decision.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald D. Cipolla, Assistant General Counsel, Regulatory Division, Office of the General Counsel, United States Department of Agriculture, Room 2422 South Building, 14th and Independence Avenue, SW., Washington, DC 20250–1400. Telephone: (202) 447–5550.

SUPPLEMENTARY INFORMATION: The Department has established in 7 CFR Part 1, Subpart H, uniform rules of practice governing formal adjudicatory administrative proceedings instituted by the Secretary of Agriculture under various statutes and regulations.

Section 1.142 of the rules permits the parties to a proceeding to file proposed findings of fact, conclusions, and orders, based solely upon the record and on matters subject to official notice. This section also permits briefs to be filed in support of the proposed findings, conclusions, and orders. Under § 1.142(b), the Judge is required to announce at the hearing a definite period of time within which such documents may be filed. The Judge shall file his or her decision after the parties have had an opportunity to file such documents.

This procedure has precluded the use of an oral decision at the hearing unless all parties to a proceeding waived their right to file such documents. The Department believes that there are many administrative cases in which the issues are so clear that the parties could file briefs before the hearing and the Judge could announce a decision at the close of the hearing or shortly thereafter. This procedure would allow proceedings to be concluded in a more expeditious and less costly manner. Therefore, we are amending § 1.142 (b) and (c) to allow the issuance of such expedited decisions. In addition, § 1.142 of the regulations concerning the parties' opportunity to file corrections to the transcript must also be amended. Currently, corrections to transcripts must be filed no later than the filing date for the proposed findings of fact, conclusions, orders, and briefs. Obviously, the corrections to the transcript could not be filed with such documents, if the documents are filed before the hearing. Accordingly, we are amending § 1.142(a) to permit transcript corrections to be filed by the date set by the Judge.

This final rule relates to internal agency management concerning rules of agency procedure or practice in formal adjudicatory proceedings. Therefore, this rule is exempt from the provisions of 5 U.S.C. 553.

Executive Order 12291 and Regulatory Flexibility Act

Since this final rule relates to internal agency management concerning rules of procedure or practice in formal adjudicatory proceedings, it is exempt from Executive Order 12291. Also, this action is not a rule as defined by Pub. L. 96–351, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This final rule does not seek answers to identical questions or reporting or recordkeeping requirements imposed on ten or more persons, and the information collected is not used for general statistical purposes. Therefore, the Paperwork Reduction Act of 1980 does not apply to this action.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures.

PART 1—ADMINISTRATIVE REGULATIONS

Accordingly, 7 CFR Part 1, Subpart H is amended as follows:

Subpart H—Rules or Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

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

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 1592, 1624(b), 2151, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740.

2. Section 1.142 is amended by revising paragraphs (a)(1), (a)(3), (b), and (c) to read as follows:

§ 1.142 Post-hearing procedure.

(a) *Corrections to transcript.* (1) Within the period of time fixed by the Judge, any party may file a motion proposing corrections to the transcript.

* * * * *

(3) As soon as practicable after the close of the hearing and after consideration of any timely objections filed as to the transcript, the Judge shall issue an order making any corrections to the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions, orders, and briefs.* Prior to the Judge's decision, each party shall be afforded a reasonable opportunity to submit for consideration proposed findings of fact, conclusions, order, and

brief in support thereof. A copy of each such document filed by a party shall be served upon each of the other parties.

(c) *Judge's decision.* (1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within a reasonable time after the closing of the hearing.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript of the record, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in § 1.147.

(4) The Judge's decision shall become effective without further proceedings 35 days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.145; *Provided, however,* that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

Done in Washington, DC, this 19th day of February 1988.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 87-4769 Filed 3-4-87; 8:45 am]

BILLING CODE 3410-01-M

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its interim rule published December 2, 1987 (52 FR 45807). This action amends FmHA Section 502 Rural Housing (RH) loan regulations which establish the requirements for a dwelling to be financed by the agency. FmHA had issued regulations which prohibited financing the construction or purchase of a new home with both a basement and a garage, regardless of climatic conditions; however, implementation drew Congressional concern about the hardships placed on FmHA borrowers, and resulted in a statutory requirement prohibiting the use of funds to implement the provision. This action will permit the agency to resume financing the construction or purchase of a new home with both a basement and a garage where it is customary and, because of severe weather, living in a home without both a basement and a garage would be a hardship for the occupant.

EFFECTIVE DATE: March 7, 1988. Interim rule is effective December 2, 1987.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Loan Specialist, Single Family Housing, Processing Division, Farmers Home Administration, USDA, Room 5336, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone: (202) 382-1474 or (FTS) 382-1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. FmHA published this as an interim rule at 52 FR 45807-45808, effective December 2, 1987 since it involved an emergency situation. The comment period expired on February 1, 1988, and no comments were received.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10410. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program". It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs, Housing and community development, Low and moderate-income housing, Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

PART 1944—[AMENDED]

Accordingly, the interim rule amending 7 CFR Part 1944, Subpart A which was published at 52 FR 45807-45808 on December 2, 1987, is adopted as a final rule without change.

Dated: February 9, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-4855 Filed 3-4-88; 8:45 am]

BILLING CODE 3410-07-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Financial Reporting Requirements for Futures Commission Merchants and Introducing Brokers; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects and clarifies the amendatory language describing recent amendments to § 1.10(d) promulgated under the Commodity Exchange Act (7 U.S.C. 1 *et seq.* (1982)). That rules set forth the required contents of financial reports which must be filed under the rules of the Commodity Futures Trading Commission ("Commission"). For the convenience of the reader, the Commission is also publishing herein the full text of Rule § 1.10(d) (1) and (2). The rule amendments were published in the **Federal Register** on Wednesday, February 17, 1988, beginning at 53 FR 4606 and the amendatory language which is being corrected appeared at page 4611 in the first column. The regulatory text and the preamble discussion which appears in that adopting release are correct.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Deputy Director, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581, telephone: (202) 254-8955, or Henry J. Matecki, Branch Chief, Central Region, Audit and Financial Review Unit, Division of Trading and Markets, 233 South Wacker Drive, Suite 4600, Chicago, Illinois 60606, telephone: (312) 353-6642.

The following correction is made in FR Doc. 88-3133, which was published in the issue of Wednesday, February 17, 1988, beginning at page 4606:

§ 1.01 [Corrected]

1. On page 4611, first column, the paragraph numbered 2 of the amendatory language should read as follows:

2. Section 1.10 is amended by adding a new paragraph (a)(1), by removing paragraph (d)(i)(iv), by redesignating paragraph (d)(i)(iii) as paragraph (d)(i)(iv), by adding a new paragraph (d)(1)(iii), by revising paragraphs (d)(1)(v), (d)(2)(ii) and (d)(2)(iv), by removing paragraph (d)(2)(v), by redesignating paragraphs (d)(2)(vi) and (d)(2)(vii) as paragraphs (d)(2)(v) and (d)(2)(vi), by revising paragraphs (g)(1) and (g)(2), and by adding a new paragraph (k) to read as follows:

For the convenience of the reader, the Commission is republishing the full text of § 1.10 (d)(1) and (d)(2), and it should read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(d) *Contents of financial reports.* (1) Each Form 1–FR filed pursuant to this § 1.10 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) A statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iii) A statement of changes in liabilities subordinated to claims of general creditors for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iv) A statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made;

(v) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter as of the date for which the report is made; and

(vi) In addition to the information expressly required, such futher material information as may be necessary to make the required statements and schedules not misleading.

(2) Each Form 1–FR filed pursuant to this § 1.10 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) Statements of income (loss), cash flows, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made: *Provided*, That for an applicant filing pursuant to paragraph (a)(2) of this section the period must be the year ending as of the date of the statement of financial condition;

(iii) A statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made;

(iv) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter as of the date for which the report is made;

(v) Appropriate footnote disclosures; and

(vi) In addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

* * * * *

Issued in Washington, DC on March 2, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–4874 Filed 3–4–88; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Parts 1, 5, and 31

Fees for Exchange Rule Enforcement and Financial Reviews, Applications for Contract Market Designation, and Leverage Commodity Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs for rule enforcement and financial reviews (17 CFR Part 1, Appendix B), contract market designation applications (17 CFR Part 5, Appendix B) and registration of leverage commodities (17 CFR Part 31, Appendix A). The following fee schedule for FY 1988 reflects the cost to the Commission of providing those services during fiscal years 1985, 1986 and 1987. Accordingly, the fee for applications for contract market designation is being lowered from $17,000 to $16,000 the fee for registration of a leverage commodity is being raised from $3,000 to $4,500, and a new schedule of fees is being issued for rule enforcement and financial reviews.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for exchange rule enforcement and financial reviews, contract market designation applications and registration of leverage commodities should be adjusted.

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, conducting exchange rule enforcement and financial reviews and registering leverage commodities, the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on each project under the BAC system. The Commission then adds an overhead factor for benefits, including retirement,

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1985—98%; FY 1986—104%; FY 1988—101%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1985, FY 1986 and FY 1987 are averaged. This results in a calculation of the average annual cost for each project over the three-year period, which is the basis for the fee.

II. Exchange Rule Enforcement and Financial Reviews

On December 4, 1987, the Commission published a final rule which provides that the annual fee for rule enforcement and financial reviews should be calculated by computing the average annual cost of reviewing each exchange over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest multiple of $100. (See 52 FR 46070.) As a result of applying this formula, the Commission has established the following rule enforcement and financial review fees for FY 1988. The FY 1988 fee for each exchange is due 90 days after publication of this notice.

[By fiscal year]

	Actual average costs—1985–87	1988 fee
Chicago Board of Trade	$187,094	$121,600
Chicago Mercantile Exchange	213,120	138,500
Commodity Exchange, Inc	95,732	62,200
Coffee, Sugar & Cocoa Exchange	56,047	36,400
New York Mercantile Exchange	76,448	49,700
New York Cotton Exchange	81,253	52,800
Kansas City Board of Trade	46,266	30,100
New York Futures Exchange	74,264	48,300
Minneapolis Grain Exchange	30,335	19,700
Philadelphia Board of Trade	5,034	3,300
Amex Commodities Corp	7,030	4,600
Total	872,623	567,200

As in the calculation of the FY 1986 and FY 1987 fee, the FY 1988 fee for the Chicago Board of Trade includes the fees for the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

III. Applications for Contract Market Designation

A review of actual costs of processing applications for contract market designation for FY 1985, FY 1986 and FY 1987 revealed that the average cost for review of an application for contract market designation over the three year period was $16,315. Therefore, the Commission is lowering the fee for applications for contract market designation from $17,000 to $16,000, in accordance with the formula in the Commission's regulations (17 CFR Part 5, Appendix B). The new fee will be effective 90 days from publication of this notice and is due with each application.

IV. Leverage Commodity Registration

The Commission reviewed actual costs for leverage commodity registration (17 CFR Part 31, Appendix A) for FY 1985, FY 1986 and FY 1987 and determined that the actual average cost for such registrations was $4,974. Therefore, the Commission is raising the fee for registration of a leverage commodity from $3,000 to $4,500, effective 90 days after publication of this notice.

V. Regulatory Flexibility Act

The fees implemented in this release affect contract markets (also referred to as "exchanges") and leverage transaction merchants. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Leverage transaction merchants are also not considered "small entities" by the Commission because of the minimum financial requirements for registration. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or leverage transaction merchants. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on March 2, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88–4875 Filed 3–4–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Permanent Regulatory Program; Approval of Amendments and Extension of Deadlines for Required Amendments

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of proposed amendments submitted by the Commonwealth of Virginia as modifications to its permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The required amendments consist of changes in the Virginia program to meet those requirements placed on the Virginia program in the November 25, 1986 **Federal Register** (51 FR 42548–42555) at 30 CFR 946.16(a), (b), (c), (d), (e), (f), and (g).

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior granted conditional approval of the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15 and 946.16.

II. Submission of Proposed Amendment

On November 8, 1985, Virginia submitted proposed regulations to the Director, OSMRE, which would effectively replace those then found in the approved Virginia program. This submittal (Administrative Record No. VA 571) was in response to OSMRE's regulatory reform effort. The Director

approved these regulations, in part, on November 25, 1986, but required that seven additional amendments be placed upon the Virginia program. On September 1, 1987, Virginia submitted a proposal (Administrative Record No. 646) to address these additional required amendments.

The Virginia proposal included the following: As required by 30 CFR 946.16(a), revisions to the Virginia coal surface mining reclamation regulations at section 480–03–19.789.1(e) to provide for the award of appropriate costs and expenses (including attorney's fees) from the Commonwealth to any person who makes a substantial contribution to a full and fair determination of the issues in any administrative proceeding and who at least partially prevails on the merits of the issues.

As required by 30 CFR 946.16(b), revisions to proposed ground cover measurement techniques for small areas.

As required by 30 CFR 946.16(c), submission of proposed sampling techniques to be used to measure the productivity of grazing land, pasture land, and crop land.

As required by 30 CFR 946.16(d), revisions to Virginia's coal surface mining reclamation regulations at section 480–03–19.842.15 to provide that the State Director's decisions on a citizen's request for review of an inspector's decision not to inspect or enforce with respect to any violation alleged by that citizen are subject to administrative appeal.

As required by 30 CFR 946.16(e), a revision to Virginia's coal surface mining reclamation regulations at 480–03–19.843.12 to specify that the State Director's decision on whether to allow an extension of the abatement period for a violation beyond 90 days is subject to administrative appeal.

As required by 30 CFR 946.16(f), a revision to Virginia's coal surface mining reclamation regulations at 480–03–19.843.15 to provide that a notice or order ceasing mining shall not expire after 30 days if the permittee or operator waives his or her right to an informal hearing or consents to holding the hearing more than 30 days after issuance of the notice or order.

As required by 30 CFR 946.16(g), a revision to Virginia's coal surface mining reclamation regulations at 480–03–19.845.17(b) and 480–03–19.845.18(b)(1) to specify that failure of the Division to serve any proposed assessment or to hold any requested assessment conference within the prescribed time limits shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty is assessed can prove actual prejudice as a result of the delay and unless that person makes a timely objection to the delay.

OSMRE announced receipt of the proposed amendments in the October 2, 1987 **Federal Register** (52 FR 36959–36961) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their substantive adequacy.

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 proposed amendments submitted to OSMRE by the Commonwealth of Virginia on September 1, 1987. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or provide for recodification of the Chapter and do not adversely affect other aspects of the program.

1. Award of Costs and Fees

Virginia added proposed language at section 480–03–19.789.1(e)(3) of its coal surface mining reclamation regulations to provide for an award of appropriate costs and fees (including attorney's fees) from the Commonwealth to any person who initiates any or participates in any administrative proceedings under the Act (Virginia Coal Surface Mining Control Reclamation Act), if a determination is made that that person made a substantial contribution to a full and fair determination of the issues and the person at least partially prevails on the merits of the issue.

The Director finds that this proposed amendment is substantively similar to and thus no less effective than 43 CFR 4.1294(b) as referenced by 30 CFR 840.15, and that this proposal satisfactorily addresses the required amendment at 30 CFR 946.16(a). This provision will provide additional incentive for public participation in the development, revision and enforcement of the Virginia program consistent with criteria established at 30 CFR 732.15(b)(10) governing approval of state programs.

2. Revegetation

In the findings published in the **Federal Register** dated November 25, 1986 (52 FR 42551) the Director determined that Virginia had submitted sufficient statistically valid sampling techniques for measuring ground cover, production, and stocking as required by 30 CFR 816.116(a)(1) and 817.116(a)(1) with two exceptions. Virginia's proposal for measuring ground cover on small areas did not identify the number of transects to be taken, how the number of transects would be determined, or how the transects would be located. The proposal for measuring productivity of grazing land, pasture land, and crop land identified no procedures, methods, or techniques to be used for this purpose. The Director was, therefore, unable to evaluate the validity of that proposal.

In response to the required amendment at 30 CFR 946.16(b), Virginia decided to withdraw its proposal for measuring ground cover on small areas, and to adopt the cross-hair sighting tube point-frequency method approved by the Director on November 25, 1986, to determine ground cover on all areas.

In response to the required amendment at 30 CFR 946.16(c), Virginia proposes to use the sampling methods and techniques contained in the OSMRE publication entitled "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II," for measuring productivity of grazing land, pasture land, and crop land. After reviewing these methods and techniques, the Director finds that they provide a statistically valid means of measuring productivity. The referenced document also contains performance standards which have been superseded and are no longer valid. Therefore, this finding applies only to the sampling methods and techniques contained within the referenced document and does not apply, either implicity or explicitly, to any of the performance standards contained therein.

The Director finds that, with the methods for determining ground cover, stock rates, and productivity approved on November 25, 1986, and those submitted in this proposal, Virginia's program is no less effective than the Federal requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1). Virginia's

proposal satisfies the requirements found at 30 CFR 946.16 (b) and (c).

In this submittal, Virginia stated that it is continuing to develop additional methods of measuring productivity of grazing land, pasture land, and crop land. Upon submittal of additional methods, OSMRE will consider their adequacy in accordance with 30 CFR Part 732.

3. Administrative and Judicial Review

(a) To satisfy the requirements of 30 CFR 946.16(d), Virginia has proposed to add language to the Virginia coal surface mining reclamation regulations at section 480–03–19.842.15(d) to provide that the the State Director's decisions on citizen requests for review of an inspector's decision not to inspect or enforce with respect to any violation alleged by that citizen are appealable under section 45.1–249 of the Virginia Act and section 480–03–19.843.16 of the Virginia regulations.

Section 45.1–249 of the Virginia Act and section 480–03–19.843.16 of the Virginia regulations are highly specific to appeals involving cessation orders and notices of violation and are not readily applicable to other actions of the State Director. Therefore, by letter dated November 3, 1987 (Administrative Record No. VA 657), OSMRE requested that Virginia consider language such as that of section 480–03–19.845.19(c) of the Virginia regulations, concerning appeals on proposed civil penalties, which specifically references the broadly applicable Virginia Administrative Process Act.

Virginia responded by letter dated November 13, 1987 (Administrative Record No. VA 661), that it would change the references to section 45.1–249 of the Virginia Act and section 480–03–19.843.16 of the Virginia regulations as found in proposed section 480–03–19.842.15(d) to a reference to the Virginia Administrative Process Act. However, the Commonwealth separately expressed a desire that action on the other amendatory materials submitted on September 1, 1987, not be delayed until this revision could be made.

Since Virginia has stated that it is preparing a replacement rule, the Director is deferring action on proposed section 480–03–19.842.15(d) and is revising 30 CFR 946.16(d) to provide Virginia additional time to submit revised language that would provide for appeals in accordance with the Virginia Administrative Process Act.

(b) To satisfy the requirements of 30 CFR 946.16(e), Virginia has proposed to add language to its coal surface mining reclamation regulations at section 480–03–19.843.12(j) to provide any decision of the State Director extending the abatement period for a notice of violation beyond 90 days is subject to formal appeal under section 480–03–19.843.16. However, the referenced appeal provisions are specific to cessation orders and notices of violation and are not readily transferable to decisions concerning the extension of abatement dates. Therefore, by letter dated November 3, 1987 (Administrative Record No. VA 657), OSMRE requested that Virginia adopt language referencing the more broadly applicable Virginia Administrative Process Act.

In its November 13, 1987 response (Administrative Record No. VA 661), Virginia agreed to revise proposed 480–03–19.843.12(j) to include a reference to Virginia's Administrative Process Act. Virginia separately expressed the desire that action on the other amendatory materials submitted September 1, 1987, not be delayed until this change could be made.

Since Virginia stated that it is preparing a replacement rule, the Director is deferring action on proposed section 480–03–19.843.12(j) and is revising 30 CFR 946.16(e) to provide Virginia additional time to submit revised language that would provide for an appeals procedure in accordance with the Virginia Administrative Process Act.

(c) To satisfy the requirements of 30 CFR 946.16(f), Virginia has proposed to add language to its coal surface mining reclamation regulations at section 480–03–19.843.15 to provide that a notice or cessation order shall not expire after 30 days if the person to whom the notice or order was issued waives his or her right to an informal public hearing. The proposed language also describes the conditions under which the informal public hearing will be deemed to have been waived and establishes the process whereby the person is to be informed of his or her right to such hearing.

The Director finds that the Virginia program as revised at 480–03–19.843.15 is no less effective than the Federal rule at 30 CFR 843.15. Virginia's proposal satisfies the required amendment found at 30 CFR 946.16(f).

(d) Virginia has added proposed language to its coal surface mining reclamation regulations at sections 480–03–19.845.17(b) and 480–03–19.845.18(b)(1) which provides that the failure of DMLR to serve any proposed assessment or hold any assessment conference within the time limits prescribed by those sections shall not be grounds for dismissal of all or part of any assessment unless the person against whom the proposed penalty was assessed can prove actual prejudice as a result of the delay, and unless that person makes a timely objection to the delay.

The Director finds that the Virginia program as revised at 480–03–19.845.17(b) and 480–03–19.845.18(b)(1) is consistent with, and no less effective than, the Federal rules at 30 CFR 845.17(b)(2) and 845.18(b)(1). Virginia's proposal satisfies the required amendment found at 30 CFR 946.16(g).

IV. Public Comment

There were no comments received before or after November 2, 1987, the closing date of the public comment period announced by the Director in the October 2, 1987 **Federal Register** (52 FR 36959–36961). Since no one requested an opportunity to testify at a public hearing, the hearing scheduled in that notice was canceled.

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i), the Director also provided various Federal agencies the opportunity to comment on the proposed amendment. The U.S. Fish and Wildlife Service, Mine Safety and Health Administration, the Bureau of Mines, and the U.S. Army Corps of Engineers responded that they had no comments. No other agencies provided a response.

V. Director's Decision

Based upon the above findings, the Director is approving the proposed amendments submitted by Virginia on September 1, 1987, with the exception of those discussed in Findings 3(a) and 3(b), and is removing the required amendments listed at 30 CFR 946.16. For the reasons explained in Findings 3(a) and 3(b), he is deferring action on proposed sections 480–03–19.842.15(d) and 480–03–19.843.12(j) and is extending the deadline for submission of amendments satisfying 30 CFR 946.16(d) and (e) to allow Virginia to revise these proposed State rules. Pursuant to 30 CFR 732.17, the Director has notified the Commonwealth that these revisions will be necessary. This final rule is being made effective immediately to expedite that State program amendment process. The Federal rules at 30 CFR 946 are being amended to implement this decisions.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require

that any alternation of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Dirctor. The Federal regulations at 30 CFR 732.17(g) prohibit unilateral changes to approved State programs. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials and will only require the enforcement by Virginia of approved provisions.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

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

2. Compliance with Executive Order No. 12291

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

3. Compliance with the Regulatory Flexibility Act

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

4. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 946

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

Date: February 25, 1988.

James W. Workman,

Deputy Director, Operations and Technical Services.

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 946—VIRGINIA

1. The authority citation for Part 946 is revised to read as follows:

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

2. In § 946.15, a new paragraph (w) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(w) The following amendments to the Virginia program, as submitted by letter dated September 1, 1987, are approved effective March 7, 1988.

(1) Revisions to the Virginia coal surface mining reclamation regulations at section 480–13–19.789.1(e) to allow for payment from the Commonwealth of expenses and fees (including attorney's fees) to any person who makes a substantial contribution to a full and fair determination of the issues in an administrative proceeding and who at least partially prevails on the merits of the issue;

(2) Deletion of measurement techniques for determining ground cover on small areas;

(3) Addition of sampling techniques contained in the OSMRE publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II" for measuring productivity of grazing land, pasture land, and crop land.

(4) Revision to the Virginia coal surface mining reclamation regulations at section 480–03–19.843.15 to provide that a notice or order ceasing mining shall not expire after 30 days if the operator or permittee waives the informal minesite hearing; and

(5) Revisions to the Virginia coal surface mining reclamation regulations at sections 480–03–19.845.17(b) and 480–03–19.845.18(b)(1) to provide that failure to serve any proposed assessment or to hold any requested assessment conference within the time limits prescribed within these sections is not grounds for dismissal of all or any part of the proposed assessment unless the person against whom the proposed penalty is assessed can prove actual prejudice as a result of the delay and makes a timely objection to the delay.

3. Section 946.16 is amended to remove and reserve paragraphs (a), (b), and (c), revise paragraphs (d) and (e), and remove paragraphs (f) and (g) as follows:

§ 946.16 Required program amendments.

* * * * *

(a)—(c) [Reserved]

(d) By April 6, 1988, Virginia shall submit revisions to its coal surface mining reclamation regulations at section 480–03–19.842.15 or otherwise propose to amend its program to provide that the Director's decisions on citizen requests for review of an inspector's decision not to inspect or take enforcement action with respect to any violation alleged by that citizen are appealable in accordance with section 9–6.14:12 of the Virginia Administrative Process Act.

(e) By April 6, 1988, Virginia shall submit revisions to its coal surface mining reclamation regulations at section 480–03–19.843.12 or otherwise propose to amend its program to specify that the Director's decision on whether to allow the extenstion of the abatement period for a violation beyond 90 days is formally appealable in accordance with the Virginia Administrative Process Act.

[FR Doc. 88–4850 Filed 3–4–88; 8:45 am]

BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Parts 2 and 21

Veterans Education; Administrative Review for Employers

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: Some employers have sought administrative review by the Board of Veterans Appeals of decisions regarding the disapproval or withdrawal of approval of training programs under the Veterans' Job Training Act (VJTA). Some have also sought review of decisions concerning payments made to them under the Act. Although the Veterans Administration (VA) will continue to permit employers to have administrative personnel within the VA's Department of Veterans Benefits to review these questions, after careful consideration, the VA has decided to provide employers with the same case review as that provided to veterans, namely appeal to the Board of Veterans Appeals. The Board's decisions shall be final.

EFFECTIVE DATE: February 12, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 19890 and 19891 of the **Federal Register** of May 28, 1987, (52 FR 19890–19891), there was published a notice of a proposed change to 38 CFR Parts 2 and 21 to provide employers with the right to appeal certain decisions made under the VJTA to the Board of Veterans Appeals. Interested people were given 30 days to submit comments, objections or suggestions.

The VA received two letters concerning the proposal. Both were from service organizations, and both objected to making the proposal final. The objections raised were as follows:

Both writers stated that the appeals process was too slow. By the time the Board of Veterans Appeals ruled in a case an employer might lose interest in hiring a veteran-trainee. One letter writer did not think that the payments made to employers under VJTA constituted a benefit as that term is used in 38 CFR 19.2, and so did not think that the Board of Veterans Appeals could take jurisdiction in this matter.

A second objection was that the VA was giving to employers a right that veterans did not have. The writer did not think that veterans could appeal to the Board of Veterans Appeals an adverse action taken under the VJTA.

The third objection was that the limitation on payments to attorneys found in 38 U.S.C. 3404(c)(2) would be difficult to enforce if an employer filed an appeal. The VA has responded to each of these objections below.

Although these amended regulations no longer provide that personnel within the VA's Department of Veterans Benefits are the final arbiters when employers wish an administrative review of questions arising from the VJTA, employers will still have the right to request such a review. The Deputy Chief Benefits Director for Program Management and the Director, Vocational Rehabilitation and Education Service, stand ready to give immediate attention to such requests. This will probably result in many instances where these questions are settled promptly on the basis of this review, precluding the need for further appeal to the Board of Veterans Appeals.

Nevertheless, the VA's administrative experience with the system which was in place before the amended regulations has convinced the Agency that it is far better to have the Board of Veterans Appeals assigned the responsibility to make the final decision on all VJTA appeals, both those of veterans and those of employers.

The question of whether or not a payment to an employer under VJTA is a benefit or not does not affect whether the Board of Veterans Appeals can consider an appeal resulting from that payment. Both the law (38 U.S.C. 4004) and the Code of Federal Regulations (38 CFR 19.2) state that all questions on claims involving benefits administered by the VA shall be subject to appeal to the Board of Veterans Appeals. However, neither the law nor the Code of Federal Regulations prevents the Board from considering appeals on other questions.

In this instance the Administrator is exercising the authority provided in 38 U.S.C. 210 to assign administrative functions to elements of the VA. In order to assure consistent decisions regarding similar questions raised by both veterans and employers concerning the same training program these amended regulations grand the employer the right to appeal to the Board of Veterans Appeals.

The VA considers payments under the VJTA to be a benefit to the veteran. Hence, under 38 U.S.C. 4004 and 38 CFR 19.2 the veteran may appeal decisions made under VJTA to the Board of Veterans Appeals. An additional regulation is not needed to give the veteran this right. Providing the veteran with a right of appeal has been VA policy since the beginning of the program. Current instructions to claims examiners who process claims under VJTA reminds them of the veteran's right to appeal.

Since the Administrator is exercising the authority to assign administrative functions to elements of the VA, the provisions of 38 U.S.C. Chapter 59 do not apply to employers under VJTA who are appealing to the Board of Veterans Appeals. Hence, the limitation on payments to attorneys found in 38 U.S.C. 3404(c)(2) does not apply to an employer seeking a review by the Board of Veterans Appeals. The Agency will not have to enforce this limitation.

However, in reviewing these regulations the Agency noted that through an oversight a cross-reference was made to regulations which indicate that the limitation exists for employers. The Agency has made a change in § 21.4646 to show that the limitation does not apply.

The VA is making the proposal final with the addition of a technical change in § 21.4622(b) and the change to § 21.4646(b).

The VA has determined that these final regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The final regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the final regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of section 603 or section 604.

This certification can be made because the final regulations establish a single appellate review process for VA determinations under the Veterans' Job Training Act. Simplifying the Agency's administrative review process in this manner will not have a significant impact on any small entity.

(The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.121)

List of Subjects

38 CFR Part 2

Authority delegations (government agencies).

38 CFR Part 21

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

Approved: February 12, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 2, *Delegations of Authority*, and Part 21, *Vocational Rehabilitation and Education*, are amended to read as follows:

PART 2—[AMENDED]

1. Section 2.66a is added to read as follows:

§ 2.66a Delegation of authority to the Chairman and Vice Chairman, Board of Veterans Appeals, to assume appellate jurisdiction of decisions concerning approval, disapproval and withdrawal of approval of job training programs under the Veterans' Job Training Act and decisions concerning payments to employers under that Act.

This delegation is described in § 21.4646(b) of this chapter.

(Authority: 38 U.S.C. 210, 212(a))

2. Section 2.99 is added to read as follows:

§ 2.99 Delegation of authority to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Vocational Rehabilitation and Education Service of the Department of Veterans Benefits designated by him or her, to make findings and decisions of the Veterans Administration under Pub. L. 98-77, as amended, and the applicable regulations, precedents and instructions, as to programs authorized by §§ 21.4600 through 21.4644.

This delegation is described in § 21.4646(a) of this chapter.

(Authority: 38 U.S.C. 212(a))

PART 21—[AMENDED]

3. In § 21.4622(b)(1) introductory text, (b)(1)(iv), (b)(2) introductory text, and (b)(3), remove the words "Education Service" where they appear and add, in their place, the words "Vocational Rehabilitation and Education Service".

4. In § 21.4622, paragraph (b)(5) is added and paragraph (c) is revised to read as follows:

§ 21.4622 Employer applications for approval.

* * * * *

(b) *Veterans Administration action upon receipt of the applications.*

* * * * *

(5) While a decision is being made on the employer's application, the employer has the same rights to a hearing as are provided VA claimants in § 3.103 (b), (c) and (e).

(Authority: 38 U.S.C. 212(a))

(c) *Appeal of a decision not to approve a program.* If an employer disagrees with a decision of a Director of a VA field station or the Director, Vocational Rehabilitation and Education Service not to approve the program, the employer may appeal that decision to the Board of Veterans Appeals. See § 21.4646(b).

(Authority: 38 U.S.C. 212(a))

5. Section 21.4624 is revised to read as follows:

§ 21.4624 Withdrawal of approval.

(a) *Approval may be withdrawn.* The Director of a Veterans Administration field station, or the Director, Vocational Rehabilitation and Education Service, as appropriate, may immediately disapprove the further participation in a job training program which has been previously approved when—

(1) The program ceases to meet the requirements of § 21.4620, or

(2) The Director finds that the employer's certification was false, or

(3) The employer refuses to make available to an authorized representative of the Federal Government those records which the employer is required to keep under § 21.4640.

(b) *Notification.* The Director of the Veterans Administration field station or the Director, Vocational Rehabilitation and Education Service, as appropriate, shall notify the employer and all veterans participating in the program that approval is being withdrawn. The notices shall be by certified or registered letter, return receipt requested, and shall include—

(1) A statement of the reasons for the withdrawal of approval, and

(2) Notice of the employer's or veteran's right to appeal to the Board of Veterans Appeals, and the right to a hearing. (Pub. L. 98-77, sec. 11, 38 U.S.C. 212(a))

6. In § 21.4632, paragraph (f) is added to read as follows:

§ 21.4632 Payments.

* * * * *

(f) *Disagreement concerning payment.* An employer who disagrees with a decision concerning the payments to that employer under the Veterans' Job Training Act may appeal to the Board of Veterans Appeals. See § 21.4646(b)

(Authority: 38 U.S.C. 212(a))

7. In § 21.4634, paragraph (g) is added to read as follows:

§ 21.4634 Overpayments.

* * * * *

(g) *Disagreements concerning overpayments.* An employer who disagrees with a decision concerning an overpayment made to the employer under the Veterans' Job Training Act, may appeal to the Board of Veterans Appeals. See § 21.4646(b).

(Authority: 38 U.S.C. 212(a))

8. Section 21.4646 has been revised to read as follows:

§ 21.4646 Delegations of authority.

(a) *Delegation of authority to the Department of Veterans Benefits.* In § 2.99 of this chapter the Administrator has delegated authority to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Vocational Rehabilitation and Education Service of the Department of Veterans Benefits, designated by him or her to make findings and decisions under Pub. L. 98-77, as amended, and the applicable regulations, precedents and instructions, as to programs authorized by §§ 21.4600 through 21.4644 of this part.

(Authority: 38 U.S.C. 212(a))

(b) *Delegation of authority to the Board of Veterans Appeals.* (1) in § 2.66a of this chapter the Administrator has delegated to the Chairman and Vice Chairman of the Board of Veterans Appeals authority to review on appeal the findings and decisions made under paragraph (a) of this section including—

(i) Approval and disapproval of job training programs,

(ii) Withdrawal of approval of job training programs, and

(iii) Payments and overpayments made to employers.

(2) Except for either those portions of § 19.152 through § 19.154 of this chapter which indicate that there is a limitation on payments made to attorneys or agents who may represent the employer on appeal or the cross-references contained in § 19.152 through § 19.154 of this chapter which indicate that such a limitation exists, § 19.1 through § 19.201 of this chapter apply to this appeal in the same manner as appeals involving benefits as provided in 38 U.S.C. 4004.

(Authority: 38 U.S.C. 212(a))

[FR Doc. 88-4830 Filed 3-4-88; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 17

Bereavement Counseling

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) has amended its regulation that provides for the furnishing of mental health services to the members of the immediate family or legal guardian of veterans. This regulation will allow the continuation of care for a limited period of time in cases where the veteran, family members, or others were receiving counseling or mental health services from the VA, or while participating in a VA hospice and the veteran dies unexpectedly.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Stuart Mount, Acting Chief, Policy and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2143.

SUPPLEMENTARY INFORMATION: A total of three comments were received concerning the proposed regulatory

changes published on pages 25254–25255 of the **Federal Register** of July 6, 1987 (52 FR 25254).

All three comments were from organizations supporting the regulation. One of the three comments, however, requested clarification concerning access of a veteran's "significant other" to bereavement counseling services since this would become of particular interest considering the growing concern about Acquired Immune Deficiency Syndrome (AIDS). The organization is concerned that a veteran's "significant other" has access to mental health services during the treatment phase of this terminal disease, as well as during the bereavement period.

As a result of this comment, the VA revised the regulation to clarify that only persons who were receiving mental health services or counseling in connection with treatment of the veteran prior to death are eligible, by law, to receive bereavement counseling after the veteran's death. A "significant other" could receive bereavement counseling only if, prior to death, that individual had been receiving VA services. Other provisions of the regulation were also revised, consistent with the statute, to provide greater clarity.

This final regulation is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will have no adverse effect 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 export markets.

The Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. It also will impose no regulatory, paperwork or administrative burdens on small entities since the change concerns the eligibility of individual veterans and VA beneficiaries for receiving bereavement counseling services from the VA.

(The Catalog of Federal Domestic Assistance number is 64.009.)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved February 12, 1988.

Thomas K. Turnage,

Administrator.

PART 17—[AMENDED]

38 CFR Part 17, *Medical*, is amended by revising § 17.60f to read as follows:

§ 17.60f Mental health services.

(a) Following the death of a veteran, bereavement counseling involving services defined in § 17.30(1)(2) of this part, may be furnished to persons who were receiving mental health services in connection with treatment of the veteran under §§ 17.47, 17.54, 17.57 or 17.60 (a), (b), or (f) of this part, prior to the veteran's death, but may only be furnished in instances where the veteran's death had been unexpected or occurred while the veteran was participating in a VA hospice or similar program. Bereavement counseling may be provided only to assist individuals with the emotional and psychological stress accompanying the veteran's death, and only for a limited period of time, as determined by the Medical Center Director, but not to exceed 60 days. The Medical Center Director may approve a longer period of time when medically indicated.

(b) For purposes of paragraph (a) of this section, an unexpected death is one which occurs when in the course of an illness the provider of care did not or could not have anticipated the timing of the death. Ordinarily, the provider of care can anticipate the patient's death and can inform the patient and family of the immediacy and certainty of death. If that has not taken place, a death can be described as unexpected.

(Authority: 38 U.S.C. 601(6)(B))

[FR Doc. 88–4831 Filed 3–4–88; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6664

[MT–930–08–4220–10; M–60957]

Withdrawal of Public Lands for Petroglyph Canyon and Weatherman Draw Archeological Sites; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 840 acres of public lands from surface entry and mining for 20 years to protect Petroglyph Canyon and Weatherman Draw Archeological Sites. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are withdrawn from settlement, sale, location, or entry, under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect valuable cultural and archeological resources:

Principal Meridian

T. 8 S., R. 24 E.,
Sec. 20, S½SE¼ and SE¼SW¼;
Sec. 29, E½ and E½W½.
T. 9 S., R. 26 E.,
Sec. 35, lots 2, 3, 6, 7, SW¼NE¼ and SE¼NW¼.

The areas described aggregate 840 acres in Carbon County.

1. The withdrawal made by this order does not alter the applicability of those public laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

February 25, 1988.

[FR Doc. 88-4796 Filed 3-4-88; 8:45 am]

BILLING CODE 4310-DN-M

43 CFR Public Land Order 6665

[MT-930-08-4220-10; W-88887]

Withdrawal of Public Land for Britton Springs Administrative Site and Crooked Creek Natural Area; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 180 acres of public lands from surface entry and mining for 20 years to protect a unique administrative site and exceptional paleontological find. Although the lands are actually located in Wyoming, they are administered by the Montana State Office under a Memorandum of Understanding as part of the Pryor Mountain Wild Horse Range. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Channel 2), but not from leasing under the mineral leasing laws, to protect an administrative site and natural area:

Sixth Principal Meridian

T. 58 N., R. 95 W.,
Sec. 20, N½SW¼NW¼;
Sec. 28, NW¼.

The areas described aggregate 180 acres in Big Horn County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

February 25, 1988.

[FR Doc. 88-4805 Filed 3-4-88; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401 and 2402

[Docket No. R-88-1360; FR-2422]

HUD Acquisition Regulations; Revised Definition of "Senior Procurement Executive"; Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on December 14, 1987 (52 FR 47395). The rule amended the HUD Acquisition Regulations (HUDAR) by revising the definition of "Senior Procurement Executive" in HUDAR 2402.101, by adding 2401.601-70 to the HUDAR, and by redesignating various sections in HUDAR Subpart 2401.6. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**.

Thirty calendar days of continuous session of Congress have expired in the present Congress since the rule was published.

DATES: The effective date for the final rule published December 14, 1987 (52 FR 47395), is March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Gladys G. Gines, Deputy Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755-5294. (This is not a toll-free number.)

Dated: March 2, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88-4888 Filed 3-4-88; 8:45 am]

BILLING CODE 4210-01-M

Proposed Rules

Federal Register
Vol. 53, No. 44
Monday, March 7, 1988

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 252

National Commodity Processing Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On August 15, 1986, the Department published proposed regulations to implement a National Inventory System Program which would have replaced the current National Commodity Processing (NCP) Program. The Department also conducted a pilot national inventory system. Based upon the results of the pilot project in six States and the comments received in response to the proposed National Inventory System rule, the Department has decided to propose amendments to the current NCP Program rather than implementing a new program. These proposed amendments will provide for increased State responsibilities in managing a restructured NCP sales verification effort; reduce reporting on End Product Data Schedules; add an "other" category of value pass-through systems; establish the exchange of recipient agency (RA) and processor information between State distributing agencies (SDA) and the Department; and establish a State agreement with the Department that requires the State distributing agency to declare their intention to participate in the NCP Program and perform those duties proposed in this rule.

DATES: To be assured of consideration, comments must be post marked on or before April 21, 1988.

ADDRESS: Comments should be sent to George C. Rogers, Chief, Speical Operations Branch, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive Room 602, Alexandria, Virginia 22302. All written submissions will be available for public viewing at the above address from 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Rogers at the above listed address or call (703) 756–3888.

SUPPLEMENTARY INFORMATION: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502), information collection requirements contained in the current interim rules have been approved by the Office of Management and Budget (OMB #02584–0325) for use through August 31, 1988. The additional record keeping and reporting requirements contained in these proposed rules are subject to review and approval by the Office of Management and Budget.

Classification

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

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29114), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Anna Kondratas, Administrator of FNS, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This action will ensure the availability of processed surplus commodities to eligible recipient agencies. The eligible recipient agencies include all outlets eligible for commodities under Parts 250 and 251.

Background

On August 15, 1986, FNS published the proposed National Inventory System (NIS) rule as a replacement for NCP. The NIS was pilot tested in six States. This pilot as well as comments received from the proposed NIS rule convinced the Department not to pursue the NIS at this time, but to incorporate some of the NIS concepts into NCP. On May 5, 1987, the Department published an interim rule extending the NCP Program until June 30, 1988, in order to promote a regular supply of processed end products to eligible recipient agencies for the 1987–88 agreement year.

Discussion of Proposed Rule

Herein is a description of the current interim rule and a discussion of the proposed modifications to the following areas of the interim NCP rule: Sales Verification; End Product Data reporting requirements; Value-Pass-Through Systems; Receipt Agency masterfile; Processor Listings; and State Distributing Agency Agreement and responsibilities.

Definition

A definition of "Refund" is being incorporated in § 252.3 under this proposed rule. "Refund" is defined as a credit or check which is issued to a distributor in an amount equal to the contract value of donated foods contained in end products which have been sold by the distributor to recipient agencies at a discount or a check issued to a recipient agency equal to the contract value of donated foods contained in end products which are sold under a refund system as defined in § 252.4.

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

of the credit given for the value of the donated foods.

Sales Verification

Section 252.4(c)(4)(ii)(B) of the current interim rule requires that processors must verify a statistically valid sample (at a 95 percent confidence level) of all sales reported through a distributor without dual billing for each quarter. Sales verifications must be performed at the end of each quarter and the sample must be taken from all sales reported within the quarter. Currently, processors must report to FNS the level of invalid or inaccurate sales for each quarter and must simultaneously submit a corrective action plan to correct problems identified in the verification effort. The processor must also immediately submit adjusted monthly performance reports to eliminate invalid sales. If FNS determines that end products have been improperly distributed, FNS may assert a claim against the processor.

In order to distribute sales verification responsibilities among the administrative levels most directly capable of the oversight activity, FNS proposes the following:

The monitoring of sales verification will be conducted by FNS and the State Distributing Agency (SDA). The monitoring will be designed to determine the efficacy of a processor's sales verification system; not as a reverification itself. FNS is proposing that processors provide to FNS the complete results of their sales verification efforts—not just invalid sales or inaccuracies—twice a year as opposed to the current quarterly requirement. Based on FNS experience with verification efforts, we believe that verification twice a year and subsequent data submission would reduce the processor's work load without compromising the monitoring goals of sales verification. Further, it should provide the State Distributing Agency with a manageable workload. All sales verification results shall be submitted to FNS in a format to be established by FNS. Only sales made under the discount through a distributor value pass-through (VPT) system will constitute the universe of sales under this proposed Federal-State monitoring system (§ 252.5(r)).

Rebate VPT systems and discount sales made directly by the processor establish an adequate audit trail and, consequently, do not require as stringent an oversight effort. The Department feels that the 1–3 year audit requirement § 252.5(p)) is sufficient to monitor these types of VPT systems and the regulations will continue to provide FNS with the authority to verify sales as it feels is necessary (§ 252.5(i)(4)).

As in the current interim rule, the statistical sample must produce a sales verification confidence level of 95 pecent. Additionally, the sample size for each processor's sales verification is to be based upon the processor's national sales of end products sold under a discount through a distributor VPT system for the preceding six month period.

In order to monitor the sales verification efforts by each processor, FNS will select a sub-sample of 10 percent of all sales verified and submitted to FNS by each processor. Each selected sub-sample will be sent to the appropriate SDA (where sales occurred) for reverification by contacting the recipient agency. Recipient agencies may be contacted by telephone or through the mail. Such a monitoring system can indicate the validity of a processor's sales verification efforts. This review process should effectively minimize each State's monitoring costs, yet provide FNS with the systematic monitoring of one of the NCP Program's more vulnerable area of accountability. Uncorrected or routinely poor processor performance may result in (1) a requirement that the processor discontinue use of the abused VPT system; (2) an FNS or State initiated audit or review that could result in disallowable sales; and/or (3) termination of the processor's NCP agreement.

End Product Data

Under this proposed rule non-donated food items must continue to be listed on the End Product Data Schedules (as per Part 250, which applies FDA labeling requirements). However, the Department is proposing that processors no longer be required to list specific amounts of these foods.

This change will provide FNS with information concerning products while ensuring that information considered "trade secrets" by some processors need not be disclosed.

Value-Pass-Through (VPT) Systems

FNS proposes to eliminate the "sale through a distributor with dual billing" VPT system as a specifically offered option. It has never been utilized since NCP's inception and is not included in the Part 250 regulations.

FNS proposes to add an "other" VPT category in order to encourage processors and other interested parties to submit for approval innovative VPT systems that are accountable and appealing to recipient agencies. This proposed "other" category could accommodate any dual billing system that is verifiable and easily monitored. Any processor using a VPT system approved under this category may be required by FNS to verify a statistically valid sample of those sales. The Department retains the authority to inspect and review all pertinent records regarding the sales under all VPT systems including the verification of a required statistically valid sample of sales.

Comments received regarding the previously proposed National Inventory System indicated that many commentors felt FNS should outline the minimum NCP contractual relationships that should be established between NCP processors and their distributors. NCP Program experience has established that all discount systems thrugh a distributor need firmly established contractual relationships between processors (who are obligated to FNS) and their distributors. FNS has determined, however, that the current NCP regulation suggestion that such a contract be established is sufficient. To prescribe in detail the requirements for such a contract would be unduly restrictive and difficult to monitor without resulting in greater accountability to FNS, since FNS has only a contractual relationship with each NCP processor through the NCP agreement.

All discount systems through a distributor would require the distributor to maintain invoices from recipient agencies (RAs) and provide them to processors as requested in order to significantly reduce the flow of paper between processor and distributor (§ 252.6(b)).

Recipient Agency Masterfile

FNS will establish a national masterfile of eligible recipient agencies for processor marketing efforts and reporting purposes.

This masterfile will include at a minimum the FNS identification number, the RA name, address, date of eligibility, contact person, phone number, participation data and State identification number. Except for the FNS identification number, each SDA will collect and send this masterfile information to FNS by April 1 of each year. The SDA will be required to update the masterfile as it is needed to account for new addtions to the program or to eliminate recipient agencies no longer eligible. FNS will distribute the masterfile to processors for marketing and reporting purposes (§ 252.3(e)). Comments regarding additional

elements for this file are being solicited from interested parties.

State Distributing Agency Information Dissemination

FNS would like to solicit from the States their specific needs concerning the nature of the processor data to be included in the processor information listing. FNS intends to include in the processor listing such information as the processor's name, address, telephone contact, phone number, products, VPT system(s), end product names and codes, refund/discount per case and geographic market. We are soliciting comments on other useful elements.

FNS proposes that a complete processor listing be distributed to RAs annually by each participating State Distributing Agency and that updates be distributed to RAs every 90 days as FNS provides SDA's additional listings.

There are times when other NCP Program information must be transmitted to the RAs or RAs must communicate with FNS. This communication may concern general NCP Program information or specifics concerning audits or reviews. It is proposed that all such communication between FNS and RAs will be handled through the SDA.

State Agreement

FNS proposes that each State Distributing Agency declare annually its intention to participate under NCP by completing an agreement provided by FNS. This agreement shall further state that the SDA agrees to perform the SDA's sales verification, processor information dissemination and RA registration requirements (§ 252.7(b)(c)(d)).

Audits

In order to clarify the intent of § 252.4(c)(17) of the current rules regarding the 1–3 year audit cycle, § 252.5(p) of this proposed rule states that for purposes of determining audit frequency, the value of donated food received shall be computed by adding the value of donated food a processor receives under State processing *and* NCP contracts. The same requirement is being proposed for inclusion in Part 250.

Renumbering of Proposed Regulation

A new § 252.6, "Value Pass Through Systems", is being added for ease in reference, since this area of the Program is frequently cited and discussed. This Section consists of the requirements currently contained in Section 252.4(c) of the current interim regulation as well as some amendments to those provisions being proposed in this rulemaking. Similarly, a new section 252.5, "Processor Requirements and Responsibilities" is added for ease of reference. This Section consists of the requirements in the current interim regulation Section 252.4(c)(4) as well as some amendments being proposed to these provisions in this rulemaking. A new Section 252.7, "State Agency Responsibilities", has been added, since this proposed rulemaking will expand the role of State Distributing Agencies their responsibilities should be clearly set out.

Substitution

Due to the renumbering of provisions in this proposed regulation, the interim provisions for substitutions of concentrated skim milk for nonfat dry milk which were published on July 2, 1987 have also been renumbered and reprinted unchanged in content. Comments received in response to the interim substitution rule are being reviewed and will be considered in developing the final rule. Since the substitution provisions are included here only for the purpose of renumbering, those provisions are not open for comment.

List of Subjects in 7 CFR Part 252

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

Accordingly, Part 252 is proposed to be amended as follows:

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

1. The authority citation for Part 252 continues to read as follows:

Authority: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

2. The table of contents is revised to read as follows:

Sec.
252.1 Purpose and scope.
252.2 Definitions.
252.3 Administration.
252.4 Application to participate and agreement.
252.5 Processor requirements and responsibilities.
252.6 Value pass-through systems (VPT).
252.7 State Distributing Agency (SDA) responsibilities and agreement.
252.8 Recipient agency responsibilities.
252.9 Miscellaneous provisions.
252.10 OMB Control number.

3. In 252.2, *Definitions*, a definition for "Refund" has been added as follows:

§ 252.2 Definitions.

* * * * *

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

* * * * *

4. In § 252.3, paragraph (e) as follows:

§ 252.3 Administration.

* * * * *

(e) *Recipient agency registration.* FNS will establish a national masterfile of recipient agencies (RAs) for processor reporting and marketing purposes. This masterfile information shall be sent to FNS by each State Distributing Agency (SDA) no later than April 1 of each year and updated as often as determined necessary by the SDA to account for new additions to the program or eliminate those RAs no longer eligible for program participation. This masterfile shall include at a minimum:

(1) FNS identification number;
(2) RA name;
(3) RA address;
(4) RA date of eligibility;
(5) Contact Person;
(6) RA phone number;
(7) Participation Data; and
(8) State identification number.

FNS will make available to food processors a list of registered eligible recipient agencies for reporting and marketing purposes. Any processor desiring more than one listing will be charged a fee in an amount determined by FNS.

5. In § 252.4 paragraph (b) is revised as follows and paragraph (c) is removed.

§ 252.4 Application to participate and agreement.

* * * * *

(b) *Agreement between FNS and participating food processors.* In order to be eligible for participation in the NCP Program each processor shall enter into an agreement with FNS. All agreements under the NCP will terminate on June 30 of each year.

* * * * *

6. Section 252.5 Recipient Agency Responsibilities is redesignated as § 252.8. A new § 252.5 is added as follows:

§ 252.5 Processor requirements and responsibilities.

In accordance with the following provisions and the NCP agreement, any processor participating in the NCP Program may sell to any eligible recipient agency nationwide an approved processed product containing the donated food received from FNS.

(a) The processor shall submit to FNS end product data schedules which include a description of each end product, the quantity of each donated food and the identification of any other ingredient which is needed to yield a specific number of units of each end product (except that FNS may permit the processor to specify the total quantity of any flavorings or seasonings which are or may be used without identifying the component ingredients of such flavorings or seasonings). The end product data schedule must also include the processors' free on board (FOB) plant price schedule for quantity purchases of processed products. The end product data schedule shall be made a part of the NCP agreement.

(b) When determining the value of the donated food, the processor shall use the agreement value of the donated food which shall be the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

(c) The processor shall demonstrate to the satisfaction of FNS that internal controls are in place to ensure that duplicate reporting of sales under the NCP Program and any other food distribution program does not occur.

(d) The processor shall furnish to FNS prior to ordering any donated food for processing, a surety bond obtained from surety companies listed in the current Department of Treasury Circular 570, an irrevocable letter of credit or an escrow account to cover the amount of inventory on hand and on order.

(e) The processor shall draw down inventory only for the amount of donated food contained in the end product. In instances in which concentrated skim milk is substituted for nonfat dry milk, the processor shall draw down donated nonfat dry milk inventory only in an amount equal to the amount of concentrated skim milk, based on milk solids content, used to produce the end product. Processors shall ensure that an amount equivalent to 100 percent of the donated food provided to the processor under the NCP Program is physically contained in end products. Additional commodities required to account for loss of donated food during production shall be obtained from non-donated food.

(f) The processor shall contact FNS for approval of any substitution of donated food. If approved, the processor shall substitute for donated food only like quantities of domestically produced commercial food of the same generic identity (i.e., cheddar cheese for cheddar cheese, nonfat dry milk, etc.) and of equal or better quality, except that donated nonfat dry milk may be replaced with an equivalent amount of milk solids content. When the processor seeks FNS approval to substitute donated nonfat dry milk with concentrated skim milk, an addendum must be added to the agreement which states:

(1) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(2) The weight ratio of concentrated skim milk to donated nonfat dry milk;

(i) The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk based on milk solids;

(ii) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(iii) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(3) The processor's method of verifying that the milk solids content in the concentrated skim milk is as stated in the agreement;

(4) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by an appropriate regulatory authority for the processing of Grade A milk products, and

(5) A requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of donated nonfat dry milk, based on the weight ratio of the two foods.

(g) The processor shall be liable for all donated food provided under the agreement. The processor shall immediately report to FNS any loss or damage to donated food and shall dispose of damaged or out-of-condition food in accordance with the requirements of Part 250 of this chapter.

(h) The processor shall submit to FNS monthly performance reports along with the food delivery unloading reports reflecting the sale and delivery of end products during the month.

(1) The processor shall ensure that the monthly performance report is postmarked no later than the last day of the month following the month being reported. The processor shall identify the month of delivery for each sale reported. The sale and delivery of end products for any prior month may be included on the monthly performance report. The processor monthly performance report shall include: (i) The donated food inventory at the beginning of the report month; (ii) Amount of donated food received from the Department during the report month; (iii) Amount of donated food transferred to and from existing inventory; (iv) A list of all recipient agencies purchasing end products and the number of units of end products delivered to each during the report month; (v) The net price paid for each unit of end product and whether the sale was made under a discount or refund system; (vi) When the sale is made through a distributor, the name of the distributor; (vii) the amount of inventory drawdown represented by reported sales; and (viii) the donated food inventory at the end of the reporting month.

(2) In addition to reporting the information identified in paragraph (h)(1) of this Section, processors substituting concentrated skim milk for donated nonfat dry milk shall report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to outlets which are not recipient agencies; and

(ii) The number of pounds of concentrated skim milk and the percent of milk solids contained therein, used in end products sold to recipient agencies.

(3) At the end of each agreement period, there will be a final 90 day reconciliation period in which processors may adjust NCP sales for any month. Each processor shall submit a final report for reconciliation pruposes by the end of the 90 days.

(i) The processor shall maintain complete and accurate records of the receipt, disposal and inventory of donated food including end products processed from donated food.

(1) The processor shall keep production records, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated food and the subsequent redelivery to an eligible recipient agency.

(2) The processor shall document that sales reported on monthly performance reports, specified in paragraph (g) of this section were made only to eligible recipient agencies and that the normal wholesale price of the product was

discounted or a refund payment made for the agreement value of the donated commodity.

(3) When donated food is commingled with commercial food, the processor shall maintain records which will permit an accurate determination of the donated commodity inventory.

(4) The processor shall make all pertinent records available for inspection and review upon request by FNS, its representatives and the General Accounting Office (GAO). All records must be retained for a period of three years from the close of the Federal fiscal year to which they pertain. Longer retention may be required for resolution of an audit or of any litigation.

(j) The processor shall obtain, upon FNS request, Federal acceptance service grading and review of processing activities and shall be bound by the terms and conditions of the grading and/or review.

(k) The processor shall indemnify and save FNS and the recipient agency free and harmless from any claims, damages, judgments, expenses, attorney's fees, and compensation arising out of physical injury, death, and/or property damage sustained or alleged to have been sustained in whole or in part by any and all persons whatsoever as a result of or arising out of any act or omission of the processor, his/her agents or employees, or caused or resulting from any deleterious substance, including bacteria, in any of the products produced from donated food.

(l) The processor shall be liable for payment for all food inventory remaining at agreement termination. In those instances in which the processors has entered into an NCP contract with FNS for the next year, the processors shall pay FNS for any donated food inventory in excess of the approved six month allowable inventory level established by FNS.

(1) When agreements are terminated at the request of the processor at FNS' request because there has been noncompliance on the part of the processor with the terms and conditions of the agreement, or if any right of FNS is threatened or jeopardized by the processor, the processor shall pay FNS an amount equal to the CCC unrestricted sales price, the cost to the CCC of replacement on the date the agreement is terminated, or the agreement value of donated commodities, whichever is highest, for the inventory, plus any expenses incurred by FNS.

(2) When the agreements are terminated at FNS' request where there has been no fault or negligence on the part of the processor, the processor shall pay FNS an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the donated commodities, whichever is highest, for the inventory unless FNS and the processor mutually agree on another value.

(m) The processor shall comply fully with the provisions of the NCP agreement and all Federal regulations and instructions relevant to the NCP Program.

(n) The processor shall label end products in accordance with § 250.15(j) and, when end products contain vegetable protein products, in accordance with 7 CFR 210, 225, or 226 Appendix A.

(o) The processor shall return to FNS any funds received from the sale of donated food containers and the market value or the price received from the sale of any by-products of donated food or commercial food which has been substituted for donated food.

(p) For any year in which a processor receives more than $250,000 in donated food, the processor shall obtain an independent audit conducted by a Certified Public Accountant (CPA) for that year. Processors receiving $75,000 to $250,000 in donated food each year shall obtain an independent audit conducted by a CPA every two years and those receiving less than $75,000 in donated food each year shall obtain an independent audit conducted by a CPA every three years. The total value of donated food received shall be computed by adding the value of food received under State processing and NCP contracts. Processors in the three year audit cycle shall move into the two year audit cycle when the value of donated food received reaches $75,000. Processors in the two year audit cycle shall move into the yearly audit cycle when the value of donated food received reaches $250,000. If the Department determines that the audit is not acceptable or that the audit has disclosed serious deficiencies, the processor shall be subject to additional audits by OIG at the request of FNS.

(1) Audits shall be conducted in accordance with the auditing provisions set forth under the *Standards for Audit of Government Organizations, Programs, Activities and Functions*, and the FNS Audit Guide for Multi-State Processors.

(2) The costs of the audits shall be borne by the processor.

(3) Audit findings shall be submitted to the processors and to FNS concurrently.

(4) Processors shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such responses shall include:

(i) Corrective action which has already been taken to eliminate the deficiency;

(ii) Corrective action which the processor proposes to take to eliminate the deficiency;

(iii) The timeframes for the implementation and completion of the corrective action;

(iv) A determination of what caused the deficiency; and

(v) Deficiencies which have been identified that the processor takes exception to and an explanation for the exception.

Processors shall submit written responses to FNS in accordance with timeframes established by FNS.

(5) Noncompliance with the audit requirement contained in this part will render the processor ineligible to enter into another processing agreement.

(q) The processor shall comply with the value pass through requirements specified in § 252.6 of this Part.

(r) Processors shall verify a statistically valid sample of all sales which were made under the sale through a distributor value pass through system described in § 252.6(b)(1). The following conditions must be met:

(1) The sample size must ensure a 95 percent confidence level;

(2) The processor shall provide FNS, twice yearly, the complete results of their sales verification efforts;

(3) The results are to be delivered to FNS in a format approved by FNS.

(4) The sample size for each processor's sales verification is to be based upon the processor's national sales universe for product(s) sold discount through a distributor for the preceding 6-month period.

(5) The processor shall provide FNS a corrective action plan designed to correct problems identified in the verification effort.

(6) The processor shall adjust performance reports to reflect any invalid sales found.

(s) Uncorrected or routinely poor processor performance regarding sales verification may result in:

(1) Discontinuance of the abused value pass through system;

(2) An FNS or State initiated audit or review that could result in disallowed sales; and/or

(3) Termination of a processor's NCP agreement.

§ 252.9 [Redesignated from § 252.6]

7. Section 252.6, *Miscellaneous Provisions* has been redesignated as § 252.9. A new § 252.6 is added to read as follows:

§ 252.6 Value Pass-Through systems (VPT)

The processor shall use a method of selling end products to recipient agencies which ensures that the price of each case of end product is reduced by the agreement value of the donated commodity and ensures proper accountability. In line with FNS guidelines and subject to FNS approval, the processor shall select one or more of the following donated food value return systems to use during the term of the agreement. Regardless of the method used, the processor shall ensure that the invoice clearly indicates the discount included or refund due on the end product and clearly identifies that the discount included or refund due is for the value of the donated food. Regardless of the method chosen for selling end products, the processor shall reduce his inventory only by the amount of donated food represented by the discount or refund placed on the end product.

(a) *Direct sale.* A direct sale is a sale by the processor directly to the eligible recipient agency. The following two methods of direct sales are allowed:

(1) *Discount system.* When the recipient agency pays the processor directly for an end product purchased, the processor shall invoice the recipient agency at the net case price which shall reflect the value of the discount established in the agreement.

(2) *Refund system.* The processor shall invoice the recipient agency for the commercial/gross price of the end product. The recipient agency shall submit a refund application to the processor within 30 days of receipt of the processed end product and the processor shall pay directly to the eligible recipient agency within 30 days of receipt of the refund application from the recipient agency, an amount equal to the established agreement value of donated food per case of end product multiplied by the number of cases delivered to and accepted by the recipient agency. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period.

(b) *Indirect sale.* An indirect sale is a sale by the processor through a distributor to an eligible recipient agency. Indirect sales can be made with or without dual billing. Dual billing VPT systems must be approved under § 252.6(c) "other" VPT Systems. Dual billing involves the processor billing the recipient agency for the end product and the distributor billing the recipient agency for the cost of services rendered in the handling and delivery of the end product. All discount systems through a distributor shall require the distributor to maintain invoices for RAs and to provide such invoices to the processor as requested. The following two methods of indirect sales are allowed:

(1) *Sale through distributor without dual billing.* When end products are sold to recipient agencies through a distributor without dual billing, processors shall provide refunds to the distributor and ensure that the distributor provides discounts of equal value to recipient agencies. Under this system, the processor shall sell end products to a distributor at the processor's commercial/gross price for the end product. The processor's invoice shall reflect the value of commodities contained in the end product as established by the agreement. The processor shall ensure that the distributor submits a refund application to the processor within 30 days after the eligible recipient agency receives the processed end product. The processor shall ensure that the refund application includes documentation of the purchase of end products by the eligible recipient agency through substantiating invoices and that the recipient agency has purchased the end product at the net case price which reflects the value of the discount established by the agreement. Within 30 days of the receipt of the refund application, the processor shall issue payment/credit directly to the distributor in an amount equal to the stated agreement value of the donated food contained in the purchased end products covered by the application. In no event shall refund applications for purchases during the period of agreement be accepted by the processors later than 60 days after the close of the agreement period. The processor shall verify a statistically valid sample of discount sales made by distributors without dual billing in a manner consistent with the provisions of Part 252.5(r).

(2) *Sale through distributor with a refund.* Under the refund system, processors shall sell end products to distributors at the commercial/gross price of the end product. Distributors shall sell end products to recipient agencies at the commercial/gross price of the end products. Processors shall ensure that their invoices and the invoices of distributors identify the value of the donated food contained in the product as established by the agreement. Recipient agencies shall submit refund applications to processors within 30 days of receipt of the processed end product. Within 30 days of the receipt of the refund application from the recipient agency certifying actual purchases of end products from substantiating invoices maintained by the recipient agency, the processor shall compute the amount and issue payment of the refund directly to the recipient agency. In no event shall refund applications for purchases during the period of the agreement be accepted by the processor later than 60 days after the close of the agreement period.

(c) *Other value pass-through systems.* Processors may submit to FNS for approval any proposed VPT system not identified in this section. The "other" VPT system must, in the judgment, of FNS be verifiable and easily monitored. Any VPT system approved under this Part must comply with the sales verification requirements specified in § 252.5(r) or an alternative verification system approved by FNS. If an alternative system is approved, FNS will notify the States in which the system will be used. The Department retains the authority to inspect and review all pertinent records under all VPT systems, including the verification of a required statistically valid sample of sales.

§ 252.10 [Redesignated from § 252.7]

8. Section 252.7, OMB Control Number, has been redesignated as § 252.10. A new § 252.7 is added to read as follows:

§ 252.7 State Distributing Agency (SDA) responsibilities and agreement.

(a) *NCP participation.* By January 31 of each year each SDA must declare their intention to participate in the NCP Program by completing an agreement provided by FNS stating that the SDA agrees to perform the responsibilities regarding sales verification (§ 252.7(b)), recipient agency registration (§ 252.7(c)) and processor information dissemination (§ 252.7(d)). The agreement shall be valid for a period of one year and shall be effective from July 1 through June 30 of each agreement year.

(b) *Sales verification responsibilities.* FNS will select a sub-sample (10 percent) of sales verified and submitted to FNS by each processor pursuant to § 252.5(r). Each sale selected from the sub-sample will be sent to the appropriate SDA (where the sale occurred) for reverification by contacting the recipient agency by phone or through the mail and obtaining supporting documentation (e.g., signed

invoices, etc.). The SDA shall return the reverification results to FNS within 90 days of receipt of the sub-sample from FNS.

(c) *Recipient Agency (RA) registration.* By April 1 of each year each SDA shall provide to FNS a list of all eligible RAs for inclusion in FNS' RA masterfile. This listing shall include at a minimum items enumerated under § 252.3(e), "Recipient Agency Registration".

(d) *Information dissemination.* Each SDA shall disseminate to its eligible RAs the processor information as compiled by FNS. This dissemination shall occur within 30 days after receipt from FNS. Updates received from FNS shall be collated and disseminated to the SDA's eligible RAs every 90 days. Other appropriate communications involving FNS and RA's shall be transmitted through the SDA.

9. Newly redesignated § 252.8 is revised to read as follows:

§ 252.8 Recipient agency responsibilities.

(a) *Recipient agency records.* Each recipient agency shall maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any funds which arise from the operation of the distribution program.

(b) *Refunds.* A recipient agency purchasing end products under the NCP Program from a processor utilizing a refund system shall submit a refund application supplied by the processor to the processor within 30 days of receipt of the end products. Recipient agencies must ensure that any funds received as a result of refund payments be designated for use by the food service department.

(c) *Verification.* If requested by FNS or the SDA, each recipient agency shall cooperate in the verification of end product sales reported by processors under the NCP Program. The recipient agency may be requested to verify actual purchases of end products as substantiated by the recipient agency's invoices and may also be requested to verify that the invoice correctly identifies the discount included or refund due for the value of the donated ingredient contained in the end product.

Anna Kondratas,

Administrator.

Date: March 1, 1988.

[FR Doc. 88-4815 Filed 3-4-88; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 933

[Docket No. AO F&V 87-1]

Strawberries Grown in Florida; Recommended Decision and Opportunity To File Written Exceptions to the Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes a marketing agreement and order to help finance production, varietal and market research and promotion for strawberries grown in Florida. It provides interested persons with the opportunity to file written exceptions and comments concerning this recommended decision and issues discussed herein. The proposed order would establish a committee composed of 12 strawberry growers to administer the program. The program would be financed by assessments levied on handlers of strawberries grown in Florida. The assessment rate would be recommended by the committee and approved by the Secretary.

DATE: Written exceptions to the recommended decision must be received by April 6, 1988.

ADDRESSES: Four copies of written exceptions should be sent to the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC 20250. The copies will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, P.O. Box 96456, Room 2525, South Building, Washington, DC 20090-6456; telephone (202) 475-3930.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include the following. The Notice of Hearing was issued May 6, 1987, and published in the **Federal Register** (52 FR 17581) on May 11, 1987. An Extension of Time for Filing Briefs was issued July 13, 1987 and published in the **Federal Register** (52 FR 27369) on July 21, 1987.

Preliminary Statement

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

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order for fresh strawberries grown in Florida, hereinafter referred to as the proposed order.

This recommended decision is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing formulation of marketing agreements and marketing orders (7 CFR 900.1 through 900.18). The proposed marketing order was submitted by the Florida Strawberry Growers Association (FSGA) which represents a sizable portion of the industry.

The proposed marketing agreement and order was formulated on the record of a public hearing held in Valrico, Florida, May 27-29, 1987. During the public hearing on the order, a number of witnesses, including producers, handlers, scientific researchers and State marketing specialists testified in favor of the order. Proponents emphasized that Florida producers need a marketing order if they are to survive and grow. They offered evidence in support of their position. Opponents to the proposed order also testified at the hearing.

In general the proponents testified that Florida strawberry producers, in order to remain competitive, i.e., reduce their costs and increase their sales, with strawberry producers in other areas of the United States, must develop a new variety, or varieties, of plants that would increase yields and be more resistant to adverse weather, harmful insects and disease conditions found in the State. Witnesses testified that additional funding of a University of Florida's plant research center would hasten the development of such a new plant variety. Producers now rely on plant varieties developed in other regions in the United States and shipped to Florida. These varieties are developed for less humid conditions and are not well-suited for growing conditions in Florida. Proponents testified that the royalties currently paid for these seedlings benefit the competing industry whereas the funds could be, and should be, put into the State's research efforts which would clearly benefit Florida producers. In addition, proponents believe that increased promotion efforts outside the State would result in greater demand, and thus an increase in consumption, for Florida strawberries.

Opposition to the program came from some producers who argued that the assessment would be passed on to them and that they could not afford any additional production costs. Opponents

generally believe that growing conditions in Florida already prevent the industry from ever being truly competitive with strawberry industries in other States. They also testified that research efforts to date have not been successful and it is the State government's responsibility to continue funding strawberry research.

Small Business Consideration

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et. seq.*), the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed order, are defined as those with gross annual revenues of less than $3.5 million.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such action in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Interested persons were invited to present evidence at the hearing on the reporting requirements and probable economic impact that the proposed order would have on small businesses. The record indicates that most, if not all, handlers regulated under this program would meet the SBA definition of small agricultural service firms. Marketing orders and rules proposed herein are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are usually compatible with respect to small business entities.

This proposed order would authorize the collection of assessments on first handlers of strawberries grown in Florida. Assessment funds could be used to help finance production research for a new strawberry plant variety or varieties that would be better suited for growing conditions found in the State. Assessment funds could also be used to promote Florida strawberries through market research and product promotion programs. The Act limits paid advertising only to those commodities specified in section 8c(6)(I). Strawberries are not specified in that section. The order would be administered by a committee composed of strawberry producers nominated by their peers in the State and selected by the Secretary. Daily administration of the order would be carried out by a staff of employees hired by and responsible to the committee. The proposed order would not regulate the growing of strawberries and would place no restrictions on quality or quantity of strawberries produced and handled in the production area. The order also would not regulate container shape or size or the pack of strawberries.

Testimony indicates that the Florida strawberry industry is composed of between 130 and 160 strawberry producers and 15 to 20 strawberry handlers. Testimony indicates that at one time or another during the production season, a significant number of producers are also handlers of their own strawberries. An undetermined number of producers also produce other crops in addition to strawberries. Some producers operate roadside stands in addition to selling their strawberries to handlers.

The principal requirements of the order which would affect handlers are: (1) A mandatory assessment to fund research and promotion programs and (2) associated reporting and recordkeeping requirements.

The amount of the assessment is not specified in the proposed order but would be recommended by the committee to the Secretary for approval. Testimony does indicate that an assessment in the range of three to five cents per flat of strawberries would be an appropriate, acceptable amount to accomplish the purposes of the order. A flat is a standard unit of measurement and contains 12 pints of strawberries. Based upon 1984–85 production of 8,835,100 flats of strawberries, it is estimated that at that collection of assessments would range from $265,000 to $442,000 if an assessment in the range of three to five cents was adopted. This would represent less than one percent of a handler's or producer's income if strawberries were selling at 1984–85 prices.

Handler testimony was divided on how much impact the projected assessment would have on their operations. Proponent handlers who are also members of the FSGA said that an assessment would not be burdensome because they already voluntarily contribute two cents per flat to the association. Proponent handlers testified that a three to four cent assessment on handlers should not represent a significant financial burden on handler operations. The record indicates that FSGA assessments for research and promotion activities would not be continued if the proposed order is enacted.

Handlers opposed to the order testified that an extra assessment would severely hurt their businesses. Some testified that even a one cent per flat assessment would force them out of business. However, the proposed order is intended to increase the sales of strawberries and thereby offset any assessment obligation.

The average producer price of a flat of strawberries varies significantly. Data from the 1980/81 season through the 1984/85 season shows prices ranging from a high of $13.00 f.o.b. (free on board) in December to around $4.50 in April and May. Thus, an assessment of four cents per flat would be less than one percent at any time throughout the harvest season, and could be as low as one third of one percent during the early part of the season.

Under the Act and the proposed order, it is the handler's responsibility to pay the assessment recommended by the committee and approved by the Secretary. Testimony suggests that handlers may pass all, or a portion of, the assessment obligation back to the producer. Suggestions were also made in briefs that assessments could be passed forward. While the scope of such passing forward or back of assessments is not clear, any such actions whether by agreement or otherwise are private business decisions between the parties involved.

Testimony indicates that 12 of the 15 major handlers in the State also produce strawberries. Such producer/handlers would thus pay assessments on those strawberries they produce and handle, as well as those strawberries they handle for other producers. Only three of the major handlers (representing approximately half of the production) act only as handlers and do not produce any strawberries.

Proponent handlers testified that requirements under the proposed order would not be a burden on their businesses because they already maintain such records, or could easily compile them in the normal operation of their business. Opponent handlers testified that new report and recordkeeping requirements under such an order would force the hiring of additional staff and would be a burden on their businesses. The requirements in the proposed order are comparable to the reporting requirements for similar marketing orders in other commodity industries, and such requirements are not considered burdensome on handlers in those industries. Therefore, the approved reporting and recordkeeping

requirements would not require any significant additional costs or effort for handlers.

Terms of the proposed order should be administered in an efficient and economical manner in order to effectuate the declared policy of the Act. All entities, small and large, should be subject to minimal regulatory requirements as a result of the proposed order.

In determining that the proposed order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions were carefully reviewed and every effort was made to minimize any unnecessary costs or requirements. Although, the order would impose some additional costs and requirements on handlers, and possibly some producers, it is anticipated that the programs under the proposed order would help to increase demand for strawberries. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

Accordingly, it is determined that the proposed provisions of the order would not have a significant impact on handlers or producers.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the reporting and recordkeeping provisions that are included in the proposed order will be submitted for approval to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

Material Issues

The material issues presented on the record of the hearing are as follows:

1. Whether the handling of strawberries grown in Florida is in interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

2. Whether the economic and marketing conditions of strawberries grown in Florida justify the need for a production research and market development Federal marketing order and whether such a program would tend to effectuate the declared policy of the Act.

3. What specific terms and provisions of the proposed order should include:

(a) The definition of terms used in the proposed order which are necessary and incidental to attain the declared policy and objectives of the order and the Act.

(b) The establishment, composition, maintenance, powers, duties and operation of the Florida Strawberry Committee (hereinafter referred to as the "committee") which shall be the local administrative agency of the proposed order.

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses.

(d) The authority to establish, or provide for the establishment of, and finance research and development including production and marketing research projects to promote strawberries.

(e) The establishment of requirements for handler reporting and recordkeeping.

(f) Additional terms and conditions as set forth in § 933.70 through § 933.92 of the Notice of Hearing.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

1. The Handling of Strawberries Is in Interstate or Foreign Commerce or Directly Burdens, Obstructs or Affects Such Commerce

The record evidence shows that an average of 52 percent of Florida strawberries produced between 1981 and 1985 were marketed outside the State. Because there is little processed product industry for Florida strawberries, the remainder of the State's production is marketed within the State including roadside stands and you-pick operations.

The harvest season usually begins in December when less than five percent of total interstate supplies are shipped. It reaches a peak in March when over 50 percent of the season's total interstate commerce shipments are shipped, and declines to less than five percent of the remaining supplies shipped in May.

Interstate shipments are made by handlers of Florida strawberries in the production area and are received by commissioned merchants and wholesalers of chain store buyers. Testimony indicates that there are 25 to 30 buyers who operate in terminal markets in major northeastern and midwestern cities. The record includes a USDA report of Florida strawberry interstate and foreign shipments that shows approximately four percent of such production was shipped to West Coast cities during the 1984–85 season. Nine percent of total shipments were exported to Canada. The remainder of the interstate shipments were directed to other U.S. markets. Almost all shipments are destined for fresh market sales and few, if any, are intended for processing.

Strawberries are shipped to northeastern and midwestern markets primarily by truck. According to the record, air transport may be used during December and January to ship small loads to some cities. One handler testified that such air shipments do not cost more than shipping by truck or rail.

The record indicates that prices received for Florida strawberries will vary depending on the time of shipment and the supply from other producing regions in the country. Shipments in December and January will bring two and a half to three times the selling price that a shipment will bring later in the season. Central Florida is the only U.S. supplier during the first two months of the season. However, when California and other production regions begin their harvests, prices drop considerably because of competitive forces in the marketplace. According to the record, handlers are in daily telephone contact with their buyers in northern cities during the peak production months of March and April.

Testimony of handlers shows that strawberries lose their identity of origin once they are unloaded at destination points. The consumer cannot distinguish between the same variety of strawberries produced, for instance, in Florida and those produced in California. However, one handler pointed out that some terminal market buyers are beginning to ask for certain varieties of strawberries.

When so requested by a handler or buyer, strawberries are often inspected using U.S. grade standards at terminal markets by Federal-State fresh fruit inspectors. According to the record, if a shipment of strawberries does not meet the requirements of the U.S. No.1 Grade, it may be sold at lower prices. Handlers often have more than one buyer at each terminal market so that the handler may negotiate for the best price at that market.

The record indicates that strawberries are imported primarily from Mexico. These supplies are usually available during the early part of the season and compete with the available supply of domestic strawberries. Imports also originate in New Zealand and in countries south of Mexico. According to the record, Chile is beginning to develop an export market to the United States.

The record evidence shows that any handling of Florida strawberries in fresh market channels, including intrastate shipments, exerts an influence on all other handling of strawberries in the State. Sellers of strawberries, as with other commodities, try to conduct their businesses so as to obtain maximum returns for the product they have for sale. Handlers and other sellers such as brokers, commission agents and

wholesalers continually survey all accessible markets so that they may take advantage of the best possible prices available.

Therefore, it is hereby found that handling of strawberries grown in Florida is either in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Hence, all handling of strawberries grown in Florida should be subject to the proposed order.

2. Economic and Marketing Conditions Justify a Need for the Order

Commercial production of strawberries grown in Florida began in the 1880s. The record indicates that the size of the industry has fluctuated during the last 25 years from between 1200 acres to its present size of around 5000 acres. The industry expanded in the late 1970's when producers began using plant varieties developed in California.

Eighty-five percent of the planted strawberry acreage in the State is in the two-county, west-central area outside Tampa. Presently there are between 130 and 160 producers in the State. The average farm size is 21 acres. Approximately one-third of the farms are larger than 35 acres. Very few farms are less than five acres and less than 10 percent are over 75 acres. The record indicates that strawberry production is capital and labor intensive. The need for substantial capital and the ability to manage relatively large numbers of laborers act to constrain farm size.

In terms of Florida's agricultural economy, strawberries rank as the fifth most important agricultural commodity in cash receipts. Testimony indicates that sales have averaged $50 million over the last five years, and the total economic impact of the industry is estimated at $100 million annually.

Florida is the second largest strawberry producing State, providing roughly one-sixth of the U.S. fresh strawberry production. However, the industry finds itself in unfavorable economic and marketing situations when compared to the largest-producing State, California, which dominates the national market with over three-fourths of the country's total fresh strawberry production. The remainder of the national strawberry crop is produced in other States, but is available for market only in the late spring and early summer.

The record shows that one advantage Florida currently has is its ability to harvest a crop in December and January, early in the season. This is a time when the Florida industry is the only major producer of strawberries in the country, and prices can be as much as 300 percent higher than in April and May when the other major producing regions in the country begin their harvests. However, early season production risks are higher and yields lower due to occasional adverse weather conditions. Consequently, an average of less than 20 percent of Florida production is harvested in the first two months of the season. During the 1985–86 season, for instance, Florida strawberries averaged $12 a flat in December and January. These prices declined steadily over the next few months to around $4.50 f.o.b. in April and May when large quantities of strawberries from other sources enter the national market. March is usually the month of highest production and the two months of March and April usually account for approximately 75 percent of the total annual Florida strawberry sales. Testimony indicates that if producers in other regions are able to develop earlier harvesting varieties a major advantage that Florida producers now have in the marketplace would be lost. If a new variety could be developed that would be more tolerant of adverse weather conditions, Florida strawberry producers would be better able to compete during the entire marketing season.

During the peak of the season selling prices, yields and quality of production have consistently been below those of other producing regions even though Florida producers use the same plant varieties developed in California. Moreover, production costs are higher in Florida. Ironically, even though the California varieties do not produce well in Florida, they do produce better than varieties developed so far by Florida researchers. Humid growing conditions, abrupt changes in temperatures and generally poorer soils in Florida prevent the currently used varieties from producing the higher yields and better qualities attained in California. Opponent testimony pointed out that California production is higher per acre because those producers plant up to 50 percent more seedlings per acre than producers in Florida. However, growing conditions dictate cultural practices, and because of humid conditions and threats from the spread of diseases, Florida producers must employ different cultural practices.

Testimony indicates that because the production of strawberries is both labor and capital intensive, production costs may sometimes exceed the producer's average selling price to first handlers. Strawberries must be replanted each year in order to obtain maximum yields per plant. New seedlings, or transplants as they are called in the industry, represent one of the largest pre-harvest production cost items. Each acre requires about 23,000 new transplants every season at an average cost of over $1,000 per planted acre. With 5000 acres planted, this means that $5 million is paid for seedlings. Testimony indicates that once a new plant variety is developed for Florida, the cost for new seedlings should decrease. In addition, a seedling industry could be developed in the State.

The seedlings used in Florida are raised in nurseries in California and in a few other States licensed by the University of California. Testimony indicates that supply of such seedlings could possibly be disrupted through disease or insect quarantines. Moreover, there could be a natural shortage of seedlings if a specific variety favored by Florida producers unexpectedly became popular in several different regions of the country and in California. Proponents pointed to these possibilities as further need for a new plant variety specifically suited to Florida. The industry would be in a more secure position if it controlled or had better access to the production and distribution of the nursery stock of such a new variety. One focus of the research program currently being conducted at the State funded research facility in Dover, Florida is the development of more disease resistant varieties to withstand the high humidity and fungus problems prevalent in the State. The proposed order would support such research. With a strawberry seedling more suited to local conditions, Florida producers should not have to apply chemicals as frequently.

According to testimony, Florida's strawberry crop also faces a quantity and quality image problem when compared to production in other regions of the country. According to testimony presented at the hearing for the 1983–84 season, Florida's yield was approximately one third of California's, at 1417 flats to 3821 flats per acre, respectively. Likewise, because of lower qualities, prices are consistently below prices for the same varieties of strawberries grown elsewhere at the same time of the season. The record indicates that the f.o.b. price differential in 1983–84 season was about 10 percent.

The record indicates that f.o.b. prices for fresh strawberries during the peak production period do not consistently react to Florida production level changes, but are determined by a complicated set of national-level supply and demand factors. Prices vary from year to year and from month to month

within the marketing season. For instance, the record indicates that the average Florida strawberry price in the 1979–80 season was $7.06 per flat, but dropped to $4.98 per flat in 1980–81. Prices per flat have averaged in a narrow $5.00 to $6.00 range through the 1980's.

The Florida strawberry industry is at a marketing disadvantage with other producing regions in the country. While weather and other growing conditions are the leading causes for the unfavorable situation, proponents believe increased production research would shorten the time needed to develop improved plant varieties. The sooner the industry is able to develop its own plant variety, the sooner it should be able to improve the current disorderly marketing conditions and increase returns to its producers.

Testimony indicates that the Florida strawberry industry has great potential for a vast increase in market value and volume of production. This potential could be reached if a new Florida-specific variety could be developed.

Another benefit of a more disease resistant variety should be an increase in field-labor efficiency. Testimony indicates that laborers would not have to sort out disease infected strawberries during the picking process. Picking and harvesting costs are approximately $1.45 per flat, or around $2,400 an acre, and now represent 44 percent of the harvesting and marketing costs. While no estimates were given of the actual labor savings, it is evident that some labor costs could be saved.

Finally, an ancillary benefit of production research would be improved cultural practices that could be developed through additional production research efforts. Such cultural practices as new planting methods, more efficient irrigation systems, better freeze control, or improved chemical application processes could result from the production research.

Opponent testimony indicates that research has not provided producers with valuable assistance in the past. However, opponents acknowledge that production research has been responsible for many improvements in the cultural practices and disease and pest control. The record indicates that such improvements should continue to be made by the research scientists. The impact of additional improvements for all producers in the State could be substantial if existing research efforts receive added support to expand or intensify current efforts.

Production research is currently being carried out by the State government primarily at the University of Florida's agricultural research facilities in Dover. However, over 200 commodities are produced in Florida and testimony by State government and university personnel indicate that additional State research funds are not likely to be allocated to the strawberry research program in the foreseeable future. University officials testified that additional funding to an existing facility could have a direct effect on the timing and quality of research results. It could shorten the time needed to improve present varieties and to develop a successful new plant variety. For instance, the Dover facility, which is almost totally dedicated to strawberry research, has a current annual budget of about $400,000. If an additional $100,000 or $200,000 were provided from assessments, this would represent a significant increase in the research program. This would allow the facility to operate at an increased efficiency and thus hasten results of the research effort.

Since its establishment in 1969, the Dover facility has had plant pathologists and entomologists on staff, but it was not until mid-1987 that the first, experienced, plant breeder joined the staff. Testimony indicates that any advances in strawberry research would most probably be developed at a facility like Dover with an existing research program, rather than at a new research facility.

There has been little or no private contributions to Florida's strawberry research facilities other than FSGA's contributions. There are no producers, handlers or processors in the Florida strawberry industry who can afford to conduct their own research programs. The record indicates that several producers do assist the research staff by running field trials and taking part in other experimental studies conducted by the staff. The record shows also that the only substantial, additional, funding source for the Dover station has been the FSGA, which has contributed $22,000 in 1986 and a total of approximately $50,000 over the last five years. Part of the salary of the newly hired plant breeder is paid by FSGA. While these contributions have been helpful in supporting research, more is needed if the research program for strawberries is to be enhanced.

FSGA is a voluntary organization. However, its members do agree to remit a two cent per flat assessment for both producers and handlers. In 1985 the Association had over 100 members. Attrition in membership has been caused by several factors since that time. A major attrition factor has been dissatisfaction among some association members that they are unfairly carrying the research and promotion burden for others who refuse to join the association, but continue to receive its benefits. Several have subsequently quit their membership. FSGA membership now stands, according to the record, at about 80 producers representing slightly over half of the State's volume of production.

The record shows that one of the primary objectives of the proponents of the order is to unify the industry and give all of its members an opportunity to participate in determining the future direction of research and to share in the costs of that work. Several witnesses testified that an association based on voluntary membership will never have the support of the entire industry and that without such support, a program of research and promotion will never be entirely successful. The testimony indicated that a mandatory assessment program is therefore needed.

Alternatives to the proposed order have been considered by members of the industry. In 1979 a USDA marketing order containing grade and quality standards was considered but not pursued by the industry. A cooperative association was also considered and discarded. The Florida State government has a marketing order program that requires enabling legislation. According to testimony, proponents considered a State order at one time but decided against it because individual industries do not have control over the expenditure of funds collected under their own State marketing order, and because an administrative fee is charged to the industry. According to proponents, the only alternative left to the industry is the proposed Federal research and development marketing agreement and order.

Testimony was also provided on the need for additional promotional activities to increase the demand for Florida strawberries. Currently only a limited amount of promotional activities are carried out by the Florida Fruit and Vegetable Association (FFVA), an agricultural trade association of producers, shippers and processors of Florida agricultural commodities. FFVA is paid $5,000 to $6,000 annually by the FSGA to promote all Florida strawberries in northeastern and midwestern metropolitan markets. Due to a lack of funds, this effort is limited to one month during the peak production period around March. According to testimony this effort will never be sufficient to establish a viable marketing program for Florida strawberries.

A promotional program carried out with additional funds, as generated under the proposed order, could cover a longer period of time during the production season. Promotional programs could develop point-of-purchase materials for use extensively in out-of-State markets. Recipes and other information on the commodity could be distributed to food editors of magazines and newspapers. Testimony indicates that such a program could be successful without using paid advertising, which is not provided for in the proposed order.

In view of the foregoing, it is concluded that there is a need for production research and that such research could assist in the development of improvements in existing varieties or the development of new varieties of strawberries better suited for growing conditions in Florida. Such improvements would tend to improve the marketing position and thus increase the demand for Florida strawberries. It is also concluded that the proposed order would tend to improve the marketing efforts currently being carried out for Florida strawberries by increasing the funds available for such efforts. It is concluded that the proposed order would meet the needs of the industry and would tend to effectuate the declared policies of the Act.

3. Specific Terms and Provisions of the Proposed Order

Certain terms and provisions of the proposed order should be defined and explained for the purpose of designating specifically their applicability and limitations whenever they are used.

(a) Definitions

The definition of terms used in the proposed order is necessary and incidental to attain the declared policy and objectives of the order and Act.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States or any other officer or employee of the United States Department of Agriculture who may now, or who may hereafter, be authorized to act for the Secretary.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed program is to be operative and avoids the need for referring to the citation throughout the proposed order.

The definition of "person" should follow the definition of that term as set forth in the Act. This will insure that the term will have the same meaning in the proposed order as it has in the Act.

The order should include "production area" to mean the entire State of Florida as the smallest practicable geographic region to operate the proposed program. Record evidence indicates that given the State's history of shifts in production densities in southern, central and northern regions of the State, it is appropriate to include the entire State of Florida. The development of a new strawberry variety especially suited for growing conditions in the State could attract more production in the State, opening up areas that may not currently produce strawberries. Such new areas would benefit from continued production and market research and market promotion. Therefore, in order to include potential growth of the industry, the entire State should be included in the production area.

The record provides ample information on the west-central production region outside Tampa, Florida, covering Hillsborough and Manatee counties. Three other counties in the same region—Pasco, Polk and Santa Rosa—are also mentioned in testimony as having members on the Florida Strawberries Grower Association (FSGA) and as being areas of potential growth. Record evidence shows that from the 1980 to 1985, Hillsborough and Manatee counties were the two largest strawberry producing counties in the State, producing 87.2 percent of the State's total strawberry production. Dade County in southern Florida and Brevard County in the northeast section of the State combined to produce 3.4 percent, while 9.4 percent was produced in the remainder of the State. While two counties presently account for a substantial portion of production, the research and promotion projects contemplated under the proposed order would benefit all growers in the State of Florida. Further, the marketing of strawberries grown in one part of Florida affects the marketing of strawberries grown in another. Therefore, it is concluded that the State of Florida is the smallest regional production area that is practicable and consistent with carrying out the declared policy of the Act.

The term "strawberries" should be defined in the proposed order to identify the commodity to be covered, and, as used in the proposed order, refers to all varieties of the fruit classified botanically as roseaceous genus "Fragaria". The definition of strawberries should include varieties that may be developed and produced in the production area. Strawberries are distinguishable from other fruits, and the term has a specific meaning to all producers and handlers.

A definition of the term "varieties" was included in the Notice of Hearing. However, based on testimony at the hearing, and the definition of strawberries which refers to all varieties, the term is unnecessary in carrying out the administration of this program and should be deleted from the proposed order.

The term "fiscal period" should be synonymous with "fiscal year." This period should be established so as to allow sufficient time prior to the time strawberries are first shipped in order to give the committee an opportunity to organize and develop information necessary for its functioning during the ensuing season. However, the committee should minimize incurring expenses during a fiscal period prior to the time assessment income becomes available. The Notice of Hearing proposed that "fiscal period" mean the 12-month period beginning January 1 and ending the following December 31. However, fresh market shipments of Florida strawberries begin in December and continue through the following May. The fiscal period should cover the complete marketing season to avoid the possibility of different assessment rates being applied to shipments within the same season. A fiscal year of January 1 through December 31, is not a viable time period because it would cover two marketing periods. Thus, the fiscal period should be established for a 12-month period beginning December 1 through November 30 of the next year. However, if necessary to improve the committee's management or for other reasons, based on experience if the proposed order is established, it may be desirable to establish a fiscal period other than one ending November 30, and authority should be included in the proposed order to provide for the establishment of a different fiscal period if recommended by the committee and approved by the Secretary. In any event, the beginning date of any new fiscal period should be sufficiently in advance of the harvesting season to permit the committee to perform its administrative functions. Also, it should be recognized that if at some future date there is a change in the fiscal period, such change could result in a transition year being more or less than 12 months. Also, if an order were to be issued after December 1, but made effective in time to be applicable to the 1988–89 crop, the initial fiscal year should end on November 30, 1989, so that subsequent fiscal period would begin December 1, 1990.

The term "committee" should be defined to identify the administrative agency—the Florida Strawberry Committee—established under the provisions of the proposed order. Such a committee is authorized by the Act, and this definition is merely to avoid the necessity of repeating the full name each time the committee is referred to.

The term "producer" should be synonymous with grower and should be defined in the proposed order to identify those who are eligible to vote for, and serve as, producer members or alternates on the committee and to vote in any referendum. The term should mean any person who produces strawberries in the production area for the fresh market and has a proprietary (financial) interest in the crop. Each business unit (such as a corporation, partnership, or community property arrangement) should be considered a single producer and should have a single vote in nomination proceedings and referenda. This term should include any person who owns or shares the ownership of strawberries, such as the landowner, landlord, tenant or sharecropper. The person who owns and farms land resulting in that person's ownership of strawberries produced on such land should be considered a grower. The same is true with respect to the person who rents and farms land resulting in that person owning all or a part of the strawberries produced thereon.

Likewise a person who owns land, which that person does not farm, but as rental for such land obtains the ownership of a portion of the strawberries produced thereon, should be regarded as a producer of that portion received as rent, and the tenant on such land should be regarded as a producer for the remaining portion produced on such land.

The term "handler" is synonymous with "shipper" and should be defined to identify the person who handles fresh strawberries and thus would be subject to the proposed order, including payment of assessments. Such term should apply to any person, except a common or contract carrier transporting strawberries owned by another person, who performs any of the activities within the scope of the term "handle", as hereinafter defined. The Florida strawberry industry is unique in that 80 percent of its handlers are also producers. These persons should be considered handlers when performing handling activities as defined in the order. In their capacities as handlers, they would be required to conform with the assessment and recordkeeping provisions of the proposed order.

The term "handle" should be defined to identify those activities which should be identified in order to effectuate the declared policy of the Act. Such activities include selling strawberries in the current of commerce within the production area or from the production area to any point outside the production area. The performance of one or more activities such as selling or consigning by any other person, either directly or through others, should constitute handling. However, the definition has been clarified by excluding the transportation of strawberries within the production area.

(b) Authority for the Establishment, Composition, Maintenance, Powers, Duties and Operation of the Florida Strawberry Committee

Pursuant to the Act, it is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the declared policy of the Act. The term "Florida Strawberry Committee" is a proper identification of the agency and reflects the character thereof. It should be composed of 12 members and 12 alternate members. A committee of this size should be sufficiently large that adequate and equitable representation could be provided for all strawberry producers in all growing areas of Florida. At the same time, the expense involved in connection with meetings of a committee of this size would be reasonable. Only handlers may be regulated under the provisions of the Act. Record evidence indicates that since any rules and regulations issued under the order would affect strawberry handlers, and since many strawberry producers handle their own and others' strawberries, it is reasonable to expect that handler view points be provided through the producer membership on the committee. Because producers and handlers are not mutually exclusive, and because many individual firms are involved in both the production and handling of Florida strawberries, it is more than likely that most handlers would be represented on the committee either by themselves in their capacity as producers or by a producer whose strawberries they handle. Also, in other marketing order programs, committees are made up exclusively of producers.

It is recognized that some producers are incorporated, and they should not be excluded from serving on the committee. A company which is classified as a producer may be represented on the committee by one of its officers or employees.

The producer members and their alternates should be selected from the production area at large. This is appropriate since it would be beneficial to the committee that its members represent a wide range of interests. Hearing testimony indicated that persons selected as committee members or alternates shall be individuals who are producers, or officers or employees of a corporate producer, and who are residents of the production area. However, a residency requirement would limit participation on the committee. Therefore, such residency should not be a requirement for committee membership and has been deleted from the proposed order.

The term of office of committee members and alternates should be four years beginning on September 1 of the year of selection and ending on August 31 four years later, or at the time their successors have been selected. These dates have been changed from those listed in the Notice of Hearing to coincide with the change in the fiscal period. The term of office of committee members and alternates starting September 1 will allow the committee to organize and start operating in advance of the marketing season for strawberries.

While it is important to provide a constant infusion of new members to the committee, it is equally important to provide continuity and experience. For these reasons the terms of office should be staggered, with one quarter of the membership to be nominated and selected each year. To begin this process, one fourth of the initial members shall serve one-year terms; one fourth of the initial members shall serve two-year terms; one fourth of the initial members shall serve three-year terms, and one fourth of the initial members shall serve four-year terms. Thus, nine of the 12 initial committee members nominated would be elected for shortened terms. Each subsequent year, three members of the committee would be persons other than incumbents.

The lengths of the terms of office for the initial nominees will be determined in the following manner. Such provisions have been added to the proposed order. The nominees receiving the highest number of votes would serve the longest terms. The three nominees receiving the three highest number of votes would serve four-year terms. Nominees receiving the next three highest number of votes would serve three year terms, and so on. For the initial members, a portion of a year should not count as a year in calculating the term of office.

This procedure should accomplish the intent of maintaining continuity of the committee.

Committee members and alternates shall serve during the term of office for which they have qualified and are selected. Once the committee is established, i.e., after the first election, the term of office should be for a total of four years. In order to promote wider industry participation and involvement in the administration of the proposed marketing order, the consecutive terms of office a member may serve should be limited to one term. Any member serving on the Florida Strawberry Committee, including initial members, would not be eligible for renomination as a member for a period of one year. However, alternates to the committee would be eligible for renomination at the end of their term as alternate. It would therefore be possible for an alternate to serve as an alternate and then serve a full term as a member of the committee before being ineligible for renomination for one year. It appears reasonable that the period of ineligibility for retiring committee members be one year because the pool from which the committee is derived may be limited by the number of qualified strawberry producers in the production area willing to serve. Also, retiring committee members may provide a level of expertise and advisory talent that cannot be replaced over an extended period of time.

The proposed order should provide that only producers, including duly authorized officers or employees of producers, who are present at a nomination meeting may participate in the nomination of committee members and their alternates. If more than one meeting is held, i.e., in separate regions of the production area, a slate of candidates could be developed which encourages committee representation from throughout the production area. This may require advanced notification of producers to solicit candidates who agree to serve as members and alternates. Other nomination procedures, acceptable to the Secretary, may also be used.

Each producer should be allowed to cast one vote for each nominee position to be elected. Only one person may vote on behalf of each corporate producer or other producer business unit. All strawberry producers in the production area should be given an opportunity to vote.

For the initial nomination process, the composition of the first committee and its alternates would be determined by the number of votes received by each nominee. The 12 individuals receiving the 12 largest number of votes would serve as committee members. The second 12 individuals receiving the next largest number of votes would be the respective alternate members. Thus, the 24 nominees who receive the largest number of votes would serve as members or alternates on the committee.

Alternate members of the committee should be designated to serve as alternates for specific members of the committee. This designation would be determined by the number of votes each alternate receives when elected. To determine the initial alternate-member match-ups, the nominee who receives the 13th largest vote total would be the alternate for the committee member who receives the largest number of votes. The nominee who receives the 14th largest vote total would be the alternate for the committee member who receives the second largest number of votes, and so on. Such provisions have been added to the proposed order.

The committee, with the approval of the Secretary, should develop nomination procedures for subsequent elections. For example, it may be appropriate to permit producers the option of being candidates for only alternate positions. Also, it may be necessary to refine the nomination process to better facilitate production area-wide representation on the committee.

In order to provide strawberry producers with an opportunity to nominate committee members, the record evidence indicates that the initial producer members and alternates should be nominated and elected at a meeting or meetings held in the production area. The meeting dates and locations would be announced by the Secretary as soon as possible after the proposed marketing order would become effective, and would be made to provide as wide a participation by producers in the production area as possible. Announcements of such meetings should be made throughout the production area to insure that all strawberry producers in the State would be aware of the meetings and the nomination process.

After the first nominations are held to elect the initial members and alternate members, future nomination meetings should be announced and conducted by the committee. The number, dates and locations of such meetings each year should be determined by the committee so as to provide all producers with the greatest opportunity to participate in the process. If nominations are not completed as prescribed, the Secretary may select members on the basis of representation provided in § 933.20 of the recommended order without regard to nominations.

The testimony indicates that the committee, because of its knowledge of the industry, would be in the best position to select the most advantageous times to conduct such nomination meetings. However, the nomination meetings should be held prior to July 15 of each year so that the nominations may be submitted to the Secretary no later than August 1. This would facilitate the selection of members for the new term of office prior to the beginning of that term.

Since it is possible that the new committee members may not be appointed immediately upon the expiration of the term of existing members, or that some may fail to qualify immediately, provisions should be made for members to continue to serve until their successors have qualified and are selected. This is necessary to insure continuity of committee operations.

In order that there will be an administrative committee in existence at all times to administer the proposed order, and the Secretary not be limited as to nominees from which to select the committee membership, the Secretary should be authorized to select committee members and alternate members without regard to nominations if, for some reason, nominations are not submitted in conformance with the procedure prescribed in the order and regulations. Such selection should, of course, be on the basis of the representation provided in the order so that the composition of the committee will at all times continue as prescribed in the order. Each person nominated as a committee member or alternate should, prior to selection by the Secretary, qualify by filing with the Secretary a written acceptance of a willingness to serve in such capacity.

The proposed order should provide for the filling of any vacancies on the committee. If such nominations are not made as prescribed, selection may then be made by the Secretary without regard to nominations, so that full membership of the committee may be maintained.

The proposed order should provide that an alternate member should be nominated and selected for each member of the committee in order to insure that there is adequate representation at meetings. Each alternate who is selected should have the same qualifications for membership as the member. In the event any member is absent, dies, resigns, is removed from office, or is disqualified, the alternate

member should serve in such member's place so that representation on the committee would remain unchanged. The alternate should serve until a successor to such member has been appointed and has qualified. Also, since an alternate may be more familiar with a particular issue before the committee than the alternate's respective member, the proposed order should provide that the member may designate the member's alternate to serve as member at such meeting notwithstanding the presence of the member. The proposed order should provide that in the event both a member and that member's alternate are unable to attend a meeting, the committee members present may designate any other alternate to serve in such member's place at the meeting.

The committee should be given those specific powers which are set forth in section 8c(7)(C) of the Act. Such powers are: (a) To administer the provisions of this part in accordance with its terms; (b) to receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; (c) to make and adopt rules and regulations to effectuate the terms and provisions of this subpart; and (d) to recommend to the Secretary amendments to this subpart. Such powers are necessary to enable an administrative agency of this character to function.

The committee's duties, as set forth in the proposed order, are necessary for the discharge of its responsibilities. These duties are similar to those specified for administrative agencies under other programs of this character. It is intended that any activities undertaken by the members of the committee will be confined to those which are reasonable and are necessary for the committee to carry out its responsibilities as prescribed in the marketing order. Also, the committee investigates compliance with the proposed order and it acts as an intermediary between the Secretary and any producer and handler. The committee should cause its books to be audited by a certified public accountant of its choosing.

The specified duties addressed above are not necessarily all-inclusive. Other duties could be developed that the committee may need to perform.

The proposed order should provide that seven members of the committee or alternates acting for members, are necessary to constitute a quorum, and any action should require at least seven concurring votes. It is very desirable that a majority of the committee membership be present and agree to any action so as to obtain the necessary support of the industry.

The proposed order should authorize the committee to vote by telephone, telegraph, or other means of communication when a matter to be considered is so routine that it would be unreasonable to call an assembled meeting or when rapid action is necessary because of an emergency. Any votes cast by telephone should be confirmed promptly in writing to provide a written record of the votes so cast. In the case of an assembled meeting, however, all votes should be cast in person.

The proposed order should provide that members and alternates of the committee, may be reimbursed for reasonable out-of-pocket expenses incurred when performing committee business.

Primarily, most expenses would be incurred in attending committee and sub-committee meetings, but there may be instances when a member or alternate would be assigned specific duties by the committee or sub-committee, and would incur expenses in performance of such duties. In any such case, the same reimbursement of expenses that is available to members should be made available to alternate members when they are requested to attend such meetings.

(c) Authority to Incur Expenses and Levy Assessments

The committee should be authorized under the proposed order to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal year. The major expenditure of assessment funds by the committee should be for production research and market promotion programs. Other expenditures are necessary to assure the maintenance and daily functioning of the committee, and any committee activities as the Secretary may determine to be appropriate. Necessary expenses include, but are not limited to, such items as: Employee salaries and benefits; establishment of an office and equipping such office; purchasing office products such as paper and other supplies; telephone and mail services; and business related transportation for the committee staff. Another expense would be the cost of reimbursing committee members and alternates for expenses incurred when they attend committee meetings. All such expenses would be incurred on an ongoing basis. No testimony was provided as to the cost of such administrative expenses.

The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the proposed order during a fiscal year. The budget, including an analysis of its component parts, should be submitted to the Secretary for approval prior to the beginning of each fiscal year. Such timely submission should include a recommendation to the Secretary of a rate of assessment designed to secure the income required for such fiscal year. The Act authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and states that the order must contain provisions requiring handlers to pay their share of such expenses based on the amount of produce handled by each handler.

The rate of assessment on strawberries handled should be established by the Secretary on the basis of the committee's recommendation, and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay for the approved expenses, the committee should be authorized to recommend to the Secretary an amended budget including an increase in the rate of assessment in order to secure sufficient funds. The Secretary may approve the amended budget and assessment rate increase and such increase would apply to all strawberries shipped in the fiscal year to which that assessment rate applies.

The order should provide for the assessment of the handler who first handles strawberries for maintenance and functioning of the committee throughout the time when the order is in effect, irrespective of whether particular provisions of the order are suspended or are inoperative.

If a handler does not pay any assessment by the date it is due, the order should provide that the late assessment may be subject to an interest charge at a rate set by the committee with the Secretary's approval. This interest charge would represent normal, good business practice. This authority is intended to encourage prompt payments by handlers, and to compensate the committee for the loss of the assessment funds when they are not paid on time.

The committee should be authorized to accept advanced payment of assessments so that it may pay expenses which may become due before assessment income is received. This would give the committee more flexibility in paying obligated expenses, particularly in the first part of a fiscal year before assessment funds are received. Such advanced assessment payments should be based on the first

handler's best estimates of future quantities of strawberry shipments to be handled, and should, for accounting purposes, be limited to the current season's production. The committee may also borrow money to meet administrative expenses that would be incurred before assessment income is normally received. The committee should not borrow money to pay obligations if sufficient funds already exist in committee reserve funds or in other committee accounts.

The committee may also receive voluntary contributions from persons other than those assessed under the order for the payment of production research or promotional marketing activities as described under § 933.50. Such contributions should be received by the committee without any obligations to the donor. The expenditure of such contributions should also be under the complete control of the committee. It should not receive a voluntary contribution from any person if that contribution could represent a conflict of interest.

The assessment rate would be approved by the Secretary, based on recommendation of the committee. The assessment should be based on a flat of strawberries. A flat is a container which holds 12 pints (approximately 12 pounds) of strawberries. The record indicates that an assessment in the range of three to five cents per flat would currently provide sufficient funds to meet the administrative expenses of the committee and the staff and to carry out production and market research and market promotion activities as provided for in the proposed order. If the proposed order is enacted, handler assessment payments should be made on demand of the committee. The timing and frequency of such payment would be determined by the committee.

The record shows that an undetermined amount of production is marketed through "you-pick" operations and roadside stands. Thus, the record evidence indicates that there may be situations where the collection of assessments and the enforcement of recordkeeping requirements would be difficult or uneconomical to administer. Such a situation could involve the sale of strawberries at roadside stands or "you-pick" operations where no standard size containers or units of sale are used. The order should therefore contain the authority to exempt from payment of assessments and reporting requirements, strawberries in certain minimum quantities, in types of shipments as may be prescribed, or for certain uses. Thus the committee, with the approval of the Secretary, should be given the flexibility to exempt such marketing outlets from the proposed order's requirements when the committee deems such exemptions would be appropriate.

To prevent possible abuse of the exemption provisions, the committee should have authority, with the approval of the Secretary, to prescribe appropriate rules, regulations, and safeguards to prevent strawberries handled under exemption from entering the channels of commerce for fresh strawberries or for some purpose other than the specific purpose authorized. Such safeguards could include, but are not limited to, a certification by the handler or producer/handler that the strawberries will not be used for any unauthorized purpose.

The record indicates that funds collected through assessments placed on handlers should be used only for the purposes set forth in the proposed order; that is to meet administrative expenses incurred under the proposed order and to conduct production research and market research promotion programs as specified by the proposed order. To ensure proper oversight, the Secretary should have the authority to review all committee accounts, and the accounts of employees, agents or contractors of the committee, to account for all disbursements, funds, property or records for which such persons are responsible. Likewise, any such person who ceases to be a member, agent or contractor of the committee should account for all receipts, disbursements, funds, property or records of the committee for which they have been responsible. Such accounting should be made to the person's successor, the committee or to a designated representative of the Secretary. If there is any period when the proposed order would not be in effect, the committee could appoint, with the approval of the Secretary, one or more trustees for holding records, funds, or other property of the committee. The trustee or trustees may be a member of the committee or any other persons.

At the discretion of the Secretary, the committee should be authorized to carry over any excess assessment funds into a subsequent fiscal year as a monetary reserve. If such excess funds are not carried over as a reserve, handlers would be entitled to a refund proportionate to the assessments each handler paid.

It is expected that during the initial year most of the assessment funds would be obligated to start-up costs. Research and promotion expenses are generally incurred at the beginning of the season; therefore, funds are collected one year and spent the next. Until assessments are received, they cannot be spent. Since most handling for this program is done in the Spring, the committee would not have much money until late in the season. Thus, the record indicates that any such funds that are in excess of committee expenditures should be carried over in an operating monetary reserve. The monetary reserve should not be allowed to exceed approximately two fiscal years' expenses. This reserve would also be intended to provide for continuance of production research and market promotion and for stability in the administration of the proposed order during years of poor production. It could also be used to cover necessary liquidation expenses of the committee in the event the proposed order is terminated.

(d) Authority To Establish Production Research and Market Research and Promotion Programs

The proposed order should authorize the committee to provide for production and varietal research and market research and promotion that would promote the efficient production, marketing and promotion of fresh strawberries grown in Florida. The committee should be authorized to carry out such programs by entering into contracts using funds collected under the proposed order.

The committee should have the authority to negotiate new production research projects and to contribute to research currently taking place. Research on a new strawberry variety has been carried out since 1969 by the University of Florida. The record indicates that the development of a successful new plant variety could take 10 years. Following such development, at least five years of trials would be needed to improve the variety and develop a seedling stock. Research is an on-going process to improve and modify the existing varieties to better withstand common or new diseases, insect pests and weather conditions. According to testimony, the research currently taking place could be within two years of developing a successful new strawberry plant variety.

Any plant varieties that may be developed as a result of research funded under the proposed order and for which patents are issued or any other research from which other patents, plant materials, copyrights, trademarks, inventions or publications are developed through use of funds collected under the

provisions of this proposed order should be the property of the U.S. Government as represented by the committee. The committee may, with the approval of the Secretary grant shared rights to the appropriate research institutions for any rents, royalties, residual payments, or income from the rental, sale, leasing, franchising, or other uses of such patents, plant materials, copyrights, inventions or publications. The terms of any research agreements between the committee and any research organization should specify the conditions applicable to the use and ownership of such patents, plant materials, copyrights, trademarks, inventions or publications. In addition, the terms and conditions applicable to any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such property should be specified. This should ensure the committee that it would be able to exercise control over any new developments that may result from its funding of research projects.

The committee should be authorized to establish, or provide for the establishment of, marketing research and promotion programs designed to assist, improve or promote the marketing, distribution and consumption of fresh strawberries grown in Florida. The committee should consider all factors in developing a marketing plan which will include a comprehensive evaluation of the overall supply and market outlook for fresh strawberries. The committee should have the authority to enter into contracts with trade or promotional firms or organizations to carry out such market research and promotion programs. All such projects should be submitted to the Secretary for approval. No funds shall be expended for such projects until they are approved by the Secretary.

The committee should distinguish between promotional programs which are allowed under the Act, and paid advertising, which is not allowed (7 U.S.C. 608c(6)(I)). Paid advertising is not allowed under a Federal marketing order unless so specified for that commodity in the Act. The committee should not authorize a contractor or other client firm to initiate paid advertising, on behalf of the industry, which is paid for with assessment funds collected under the order.

Market promotion programs for Florida strawberries carried out with funds collected under the proposed program must be generic in nature and should not use particular brand names, handler or producer names, or favor any particular producing regions of the State. In addition, such programs should not use false or unwarranted promotional or advertising claims on behalf of Florida strawberries or which disparage other agricultural commodities.

The committee should have the responsibility for reporting on the conclusion of such production research and market research and promotion programs. It should also report, at least annually, on the progress of such programs. Such reports should be made available to industry members and to the Secretary.

The record does not indicate the amount of assessment funds that would be allotted for production research programs and how much would be allotted for market research and promotion programs. The committee should have the responsibility to determine the amount of funds spent on each program each year. Such determination should be based on the needs of each program each year, and would depend on the assessment rate for that year and the projected total income that would be generated by the assessment rate. The proposed funding levels for each program should be determined by the committee and recommended to the Secretary for approval.

(e) The Authority To Establish Handler Reporting and Recordkeeping Requirements

The committee should have authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as the committee may need to perform its functions and fulfill its responsibilities under the proposed order. The record indicates that in the normal course of business, strawberry handlers collect and record information that would be needed by the committee. In addition, members of the FSGA testified at the hearing that they currently compile, report and maintain similar information voluntarily for the FSGA. They believe the reporting requirements of the proposed order should not constitute an undue burden on handler businesses.

Reports could be needed by the committee for such purposes as: collecting assessments; collecting statistical data for use in evaluating marketing development projects; making recommendations for production research; and determining whether handlers are complying with order requirements. The record indicates that a handler, or an employee of a handler, can normally complete any such required reports under the proposed order.

The record evidence indicates that to the extent necessary for the committee to perform its functions, handlers should provide certain information on each quantity of strawberries handled. This information would include such items as: The name of handler and shipping point; the quantities of strawberries shipped by variety; the date of departure, and the destination of such shipments. This should not be construed as a complete list of information the committee might require, nor should it be assumed that all of the above will necessarily be required of handlers. There may be other reports or kinds of information which the committee may find necessary for the proper conduct of its operations under the proposed order. Therefore, the committee should have the authority, with the Secretary's approval, to require each handler to furnish such information as it finds necessary to perform its duties under the proposed order.

Each handler should maintain such records of strawberries received and disposed of as may be necessary to verify the reports that the handler should submit to the committee. All such records should be maintained for two fiscal years after the fiscal year in which the transactions occurred.

All reports and records submitted by handlers would be required to be kept confidential and the contents disclosed to no person other than the Secretary and persons designated by the Secretary. Under certain circumstances, the committee may authorize the release of composite information compiled from many or all reports. Such composite information could be helpful to the committee and to the industry in planning operations under the proposed order or in promoting the industry as a whole unit. Any release of composite information should not disclose the identity of the persons furnishing the information or such person's individual operation.

(f) Authority To Establish Miscellaneous Provisions

The provisions of §§ 933.70 through 933.92 of the proposed order, as contained in the Notice of Hearing and set forth in this recommended decision, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the Act, and are necessary to effectuate the other provisions of the proposed order and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provisions as proposed in the Notice of Hearing. Those

miscellaneous provisions which are applicable to both the proposed marketing agreement and order, identified by section number and heading, are as follows:

§ 933.70 Compliance;
§ 933.71 Right of the Secretary;
§ 933.72 Effective time;
§ 933.73 Termination;
§ 933.74 Proceedings after termination;
§ 933.75 Effect of termination or amendment;
§ 933.76 Duration of immunities;
§ 933.77 Agents;
§ 933.78 Derogation;
§ 933.79 Personal liability;
§ 933.80 Separability, and
§ 933.81 Amendments.

Those provisions applicable to the marketing agreement only are:

§ 933.90 Counterparts;
§ 933.91 Additional parties, and
§ 933.92 Order with marketing agreement.

The Secretary is charged with administrative oversight of the proposed order, and must ensure that such administration effectuates the declared policy and provisions of the Act, and is in accordance with Department policy. The Secretary has the continuing right to disapprove any committee action. Thus, the proposed order should require the submission to the Secretary for approval of all programs or projects, rules and regulations, reports or other substantive actions proposed and prepared by the committee.

The Secretary shall terminate the proposed program when termination is favored by a majority of producers who, during that current marketing season, produced more than 50 percent of the volume of strawberries which were produced within the production area for shipment in fresh form. Such termination shall be effective only if it is announced on or before November 30 of the same fiscal period. The criteria for termination is identical to that contained in the Act and should be adopted.

The proposed order should also provide that the Secretary conduct a continuance referendum of strawberry producers within 10 years after the effective date of the proposed order. Proponents testified that a 10 year period may be needed to allow for the development of a new Florida strawberry variety and the conducting of field trials. Subsequent continuance referenda should be scheduled every six years thereafter. In any continuance referendum, the criteria to determine continuance would be determined by the Secretary.

Reserve funds would be used to cover necessary liquidation expenses of the committee in the event the proposed order is terminated. The committee should have the authority to provide that funds may be disposed of in such a manner as the Secretary determines to be appropriate. To the extent practicable, any such funds shall be returned pro rata to the handlers from whom such funds were collected. However, should the proposed order be terminated after a number of years of operation, it may be difficult to accurately determine handler equities, and the disposition of remaining funds and committee assets should be determined by the Secretary.

Committee members and employees should not be held personally responsible for honest mistakes or errors of judgement that were unintentionally committed during the time of their service on the committee. However, committee members, alternates or employees should be accountable for intentional acts of willful misconduct. The record shows that the committee should report any known, intentional acts of willful misconduct of committee members or employees to the Secretary for appropriate legal action.

Sections 933.90 through 933.92 would be contained in the proposed marketing agreement for the benefit of handlers in the industry, giving them an opportunity to show agreement with the purposes and provisions of the proposed order by signing the marketing agreement, if it is approved in referendum and is put into effect by the Secretary. Failure to sign the marketing agreement would not relieve a handler from the responsibilities of complying with the provisions of the proposed order if it becomes effective.

Miscellaneous changes have been made in the proposed order provisions for clarity.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed July 13, 1987 as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing. On July 2, 1987, at the request of both proponents and opponents, the Judge extended the final date to July 27, 1987. The following persons submitted documents: Roger Blanco, Michael A. Linsky and Sam I. Reiber, Charles F. Hinton and Robert D. Henry, Frances Williamson and Homer Wall. In addition, 46 copies of a letter in opposition to the proposed order were also received from strawberry producers.

Roger Blanco, a producer and handler, Frances Williamson, a producer, and Homer Wall, a producer, submitted briefs in opposition to the proposed order. Michael A. Linsky and Sam I. Reiber, counsel for opponents, submitted a brief in opposition to the proposed order. This brief basically summarized the views of all those opposed to the order who submitted documents. The points raised included:

(a) An increase in costs to the producer, if the assessment rate is passed down by the handler, would make the growing of strawberries even less viable and could force some producers out of business;

(b) If handlers pass the assessment on to buyers and wholesalers in the marketplace, the increased costs would raise the selling price, making Florida strawberries uncompetitive in the marketplace;

(c) It is unrealistic to believe that a new "Florida" strawberry variety can be developed that would withstand all of the negative growing factors faced in Florida;

(d) California's strawberry research programs are recognized throughout the world; and

(e) Since the proposed order does not provide for quality and quantity regulation it fails to effectuate the objective of the Act and it should not be approved.

The brief in support of the order on behalf of the Florida Strawberry Growers Association (FSGA) filed by Charles F. Hinton, president of the FSGA, and their counsel Robert D. Henry reaffirmed the testimony submitted at the hearing. It presented the position that the order is essential if Florida strawberry growers are to survive and thrive in the future.

These briefs, proposed findings and conclusions, and the testimony in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that any suggested findings or conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

Upon the basis of the evidence introduced at the hearing, and the record of the hearing, it is found that:

(1) The marketing agreement and order, and all of its terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The said marketing agreement and order regulate the handling of strawberries grown in the production

area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of strawberries in the production area which make necessary different terms and provisions applicable to different parts of such area; and,

(5) All handling of strawberries grown in the production area, as defined in said marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 933

Marketing agreement and order, Strawberries, Florida

Recommended Marketing Agreement and Order

The following marketing agreement and order is recommended as the detailed means by which the foregoing conclusions may be carried out.

7 CFR Part 933 is added to read as follows:

PART 933—STRAWBERRIES GROWN IN FLORIDA

Definitions

Sec.
933.1 Secretary.
933.2 Act.
933.3 Person.
933.4 Production area.
933.5 Strawberries.
933.6 Fiscal period.
933.7 Committee.
933.8 Producer.
933.9 Handler.
933.10 Handle.

Administrative Body

933.20 Establishment and membership.
933.21 Term of office.
933.22 Nomination.
933.23 Selection.
933.24 Failure to nominate.
933.25 Acceptance.
933.26 Vacancies.
933.27 Alternate members.
933.28 Powers.
933.29 Duties.
933.30 Procedure.

Sec.
933.31 Expenses and compensation

Expenses and Assessments

933.40 Expenses.
933.41 Assessments.
933.42 Accounting.
933.43 Excess funds.
933.44 Special purpose exemptions

Research and Development

933.50 Research and development.
933.51 Patents, plant materials, copyrights, inventions and publications.

Reports and Records

933.60 Reports.
933.61 Records.

Miscellaneous Provisions

933.70 Compliance.
933.71 Right of the Secretary.
933.72 Effective time.
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933.74 Proceedings after termination.
933.75 Effect of termination or amendment.
933.76 Duration of immunities.
933.77 Agents.
933.78 Derogation.
933.79 Personal liability.
933.80 Separability.
933.81 Amendments

Marketing Agreement

933.90 Counterparts.
933.91 Additional parties.
933.92 Order with marketing agreement.

Authority: 7 U.S.C. 601–674.

Definitions

§ 933.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 933.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*; 68 Stat. 906, 1047).

§ 933.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 933.4 Production area.

Production area means the State of Florida.

§ 933.5 Strawberries.

Strawberries means all varieties of the edible fruit belonging to the roseaceous genus "Fragaria" commonly known as strawberries and grown within the production area.

§ 933.6 Fiscal period.

Fiscal period means the period beginning December 1 and ending the following November 30, or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 933.7 Committee.

Committee means the Florida Strawberry Committee, established pursuant to this order.

§ 933.8 Producer.

Producer is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of fresh strawberries for market.

§ 933.9 Handler.

Handler is synonymous with "shipper" and means any person who sells or handles fresh strawberries or causes fresh strawberries to be handled.

§ 933.10 Handle.

Handle or *ship* means to sell, consign, transport, deliver, or in any other way to place fresh strawberries within the production area or between the production area and any point outside thereof: *Provided*, That the term "handle" shall not include the transportation within the production area of strawberries from the field where grown to a handling facility located within such area for preparation for market.

Administrative Body

§ 933.20 Establishment and membership.

(a) The Florida Strawberry Committee, consisting of 12 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a corporate producer.

(c) The composition of the committee, as much as is feasible, will represent the industry it serves. Handler representation through grower members on the committee will be a consideration for nomination.

§ 933.21 Term of office.

The term of office of committee members, and their respective alternates, shall be four (4) years, beginning on September 1 and ending on August 31 four years later: *Provided*, That (a) The term for one fourth of the initial members shall be for one (1) year;

the term for the second fourth of the initial members shall be two (2) years; the term for the third fourth of the initial members shall be three (3) years; and the term for the final fourth of the initial members shall be four (4) years.

(b) Committee members and alternates shall serve during the term of office for which they have qualified and are selected, or during that portion thereof beginning on the date on which they are selected during such term of office and continuing until the end thereof, and until their successors have qualified and are selected.

(c) Any member serving on the Florida Strawberry Committee will not be eligible for renomination to the committee for a period of one (1) year. Alternate members are not limited in the number of consecutive terms they may serve.

(d) The term of office of the initial committee members shall be: The three nominees receiving the three highest number of votes would serve four-year terms; the three nominees receiving the next highest number of votes would serve three-year terms; the three nominees receiving the next highest number of votes would serve two-year terms; and the three nominees receiving the next highest number of votes would serve one-year terms.

§ 933.22 Nomination.

The Secretary shall select the members of the committee and alternates from nominations which shall be made in the following manner:

(a) A meeting or meetings of producers shall be held in the production area to nominate members and alternates for the committee. The committee shall hold such meetings or cause them to be held prior to July 15 of each year preceding the beginning of a new term of office or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(b) At each such meeting at least one nominee shall be designated for each committee member and alternate whose term expires November 30 of the same year.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as may be recommended by the committee and approved by the Secretary, not later than August 1 of each year preceding the beginning of a new term of office, or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(d) Only producers may participate in the nomination process.

(e) For the initial nomination process, the twelve individuals receiving the twelve largest number of votes would serve as committee members and the second twelve individuals receiving the twelve largest number of votes would be the respective alternates.

§ 933.23 Selection.

The Secretary shall select all members of the committee and their respective alternates, from nominations made pursuant to § 933.22, or from other qualified persons.

§ 933.24 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 933.22, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in § 933.20.

§ 933.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary in writing that such person agrees to serve in the position for which nominated for selection.

§ 933.26 Vacancies.

To fill any vacancy, occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in a manner specified in §§ 933.22 and 933.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representstion provided for in § 933.20.

§ 933.27 Alternate members.

(a) An alternate member of the committee shall act in the place and stead of the member for whom that individual is an alternate, during the member's absence. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act until a successor of such member is selected.

(b) If both a member and a respective alternate are unable to attend a committee meeting, the committee may designate any other alternate present to serve in place of the absent member.

§ 933.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 933.29 Duties.

It shall be, among other things, the duty of the committee:

(a) Prior to the beginning of each fiscal year, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to strawberries, and report to the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(g) Prior to the beginning of each fiscal period as determined by the Secretary, and as may be necessary thereafter, to prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall submit such budget for approval to the Secretary with an accompanying report showing the basis for its calculations; and

(h) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers.

§ 933.30 Procedure.

(a) Seven members of the committee, including alternates acting for members, shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

(c) The committee shall give the Secretary the same notice of meetings as is given to the members thereof.

§ 933.31 Expenses and compensation.

Members of the Committee, their alternates, subcommittees including any special subcommittees, shall serve without compensation but shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

Expenses and Assessments

§ 933.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired as described in § 933.41, or from other sources approved by the Secretary.

§ 933.41 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by levying assessments upon handlers as provided in this subpart. The means for collecting said assessments shall be as follows: Each handler who first handles strawberries shall pay to the committee the pro rata share, based on the volume of strawberries handled by such handler, of the expenses which the Secretary finds will be incurred by the committee.

(b) Assessments shall be levied at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendation, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all strawberries which are handled under this part during that fiscal year.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or otherwise become inoperative. If a handler does not pay said assessment within the time prescribed by the committee, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee subject to approval of the Secretary.

(e) In order to provide funds for the administration for the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance and may also borrow money for such purpose.

(f) The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 933.50. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use. The committee may not receive contributions from any person whose contributions would constitute a conflict of interest.

§ 933.42 Accounting.

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or an alternate, such person shall account to the successor member, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which such person is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, the committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 933.43 Excess funds.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, to the extent practicable it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used: (i) To defray any expenses authorized under this part, (ii) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (iii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iv) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and (v) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation, shall be disposed of in such manner as the Secretary may determine to be appropriate, if after reasonable effort by the committee, it is found impracticable to return such funds on a pro rata basis to the persons from whom such funds were collected.

§ 933.44 Special purpose exemptions.

(a) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may exempt from any and all requirements under, or established pursuant to, §§ 933.41, 933.60, and 933.61, the handling of strawberries in such minimum quantities, or for such specified purposes as the committee, with approval of the Secretary, may prescribe.

(b) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent strawberries handled under the provisions of this section from entering the channels of trade for other than the specified purpose authorized by this section. Such rules, regulations and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle strawberries pursuant to this section.

Research and Development

§ 933.50 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects, including production research, varietal research, and marketing research to promote efficient production of strawberries, as well as development projects and marketing promotion, designed to assist, improve, or promote the marketing, distribution, and consumption of fresh strawberries. The expenses of such projects shall be paid from funds collected pursuant to this part. Upon conclusion of each program, but at least annually, the committee shall summarize and report on the program status and accomplishments to industry members and the Secretary. A similar report to the committee shall be required of any contracting party on any such project.

§ 933.51 Patents, plant materials, copyrights, inventions, and publications.

Any patents, plant materials, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this part shall be the property of the U.S. Government as represented by the committee, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, plant materials, copyrights, inventions, or publications, accrue to the benefit of the committee. Upon termination of this part, § 933.74 shall apply to determine disposition of all such property.

Reports and Records

§ 933.60 Reports.

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the quantities of strawberries received by a handler and the quantities sold or otherwise disposed of by such handler.

(b) All reports and records furnished or submitted by handlers to, or obtained by the employees of the committee, which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall, at all times, be kept in the custody and under the control of one or more employees of the committee who shall disclose such information to no person other than the Secretary.

§ 933.61 Records.

Each handler shall maintain for at least two succeeding years such records of the strawberries received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 933.70 Compliance.

Except as provided in this part, no handler shall handle strawberries except in conformity to the provisions of this part.

§ 933.71 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 933.72 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 933.73 Termination.

(a) The Secretary may, at any time, terminate this subpart.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever it is found that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of the growers of strawberries, who, during such fiscal period, have been engaged in the area in the production of strawberries for market: *Provided*, That such majority have produced for market during such period more than 50 percent of the volume of strawberries produced for market in the area; but such termination shall be effective only if announced on or before November 30 of that fiscal period.

(d) Ten years from the effective date of this subpart the Secretary shall conduct a referendum to ascertain whether continuance of this subpart is favored by growers. Subsequent referenda to ascertain whether continuance of this subpart is favored by the growers shall be conducted every six years after the date of the preceding referendum.

(e) The provisions of this subpart shall terminate, in any event, whenever the provisions of the act authorizing the same, cease to be in effect.

§ 933.74 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and

disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 933.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 933.76 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 933.77 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this subpart.

§ 933.78 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 933.79 Personal liability.

No member or alternate of the committee nor any employee or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any grower, handler, or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 933.80 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 933.81 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

§ 933.90 Counterparts.[1]

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 933.91 Additional parties.[1]

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 933.92 Order with marketing agreement.[1]

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of fresh Florida strawberries in the same manner as is provided for in this agreement.

[1] These paragraphs apply only to the Marketing Agreement and will not appear in the **Federal Register** at the time the final order is published.

Signed at Washington, DC on March 1, 1988.

William T. Manley,

Acting Administrator.

[FR Doc. 88-4772 Filed 3-4-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1032

Milk in the Southern Illinois Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites public comment on a proposal that would suspend, for March and April 1988, the limits on the amount of milk that may be delivered directly from the farms of producers to nonpool plants and still be pooled and priced under the Southern Illinois order. The action was requested by the National Farmers Organization (NFO), a cooperative association that represents producers who supply milk to this market. NFO contends that the action is necessary because the cooperative recently lost a fluid-use account in the market. Thus, NFO claims that this action is necessary to assure that its member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's Class I sales during March and April 1988.

DATE: Comments are due on or before March 14, 1988.

ADDRESS: Comments (two copies) should be filed with USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 477-2089.

SUPPLEMENTARY INFORMATION: 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 proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers who regularly have supplied the market's fluid needs would continue to have their milk pooled and

priced under the order during the months of March and April 1988 and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois marketing area is being considered for March and April 1988:

1. In § 1032.13(b)(2), the words, "or an other order plant, on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer";

2. In § 1032.13, paragraph (b)(3) in its entirety.

All pesons who want to send written data, views or arguments about the proposed suspension should send two copies of them to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March in the suspension period if that is found to be appropriate.

The comments that are received will be made available for public inspection in the Dairy Division office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

This proposal for March and April 1988 would suspend the limits on diversions of milk to nonpool plants. Under the current order, not more than 8 days of a producer's milk production may be diverted to unregulated manufacturing plants in each such month. Also, not more days of a dairy farmer's milk production may be diverted to manufacturing plants regulated under other Federal orders than is physically received at pool plants from such dairy farmer.

The National Farmers Organization (NFO), a cooperative association that represents dairy farmers who regularly have supplied milk for the market, asked that the limits on milk movements to these types of nonpool plants be suspended. The cooperative states that this action is needed because NFO recently lost a Class I milk account. NFO claims that the milk it supplied to a pool distributing plant in the St. Louis area has been replaced by receipts from another market supplier. Thus, NFO contends that it will be unable to qualify for pool participation the milk of producers who have regularly supplied the market's fluid needs without the suspension action.

In view of the foregoing, it may be appropriate to suspend the aforesaid provisions for the months of March and April 1988.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

PART 1032—[AMENDED]

The authority citation for 7 CFR Part 1032 continues to read as follows:

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

Signed at Washington, DC, on: March 2, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–4908 Filed 3–4–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

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

ACTION: Reopening and extension of public comment period.

SUMMARY: OSMRE is reopening the period for review and public comment on the substantive adequacy of program amendments submitted by the State of Colorado to modify the Colorado Permanent Regulatory Program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to exemptions, prime farmlands, bonding and insurance requirements, lands unsuitable, and inspection and enforcement. OSMRE is reopening the comment period because the State has made revisions to the proposed amendments and submitted clarifying statements regarding the amendments since OSMRE announced receipt of the original proposed amendments in the June 29, 1987, **Federal Register.**

DATE: Written comments not received on or before 4:00 p.m. March 22, 1988, will not necessarily be considered in the Director's decision to approve or disapprove the amendment.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102.

Copies of the Colorado program, the proposed amendments to the program, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES.** The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486;

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 L Street, NW., Washington, DC 20240, Telephone: (202) 343–5492; and

Colorado Mined Land Reclamation Division, 423 Centennial Building, 1313 Sherman Street, Denver, CO 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background for the Colorado State Program, including the Secretary's findings, the disposition of comments and detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (FR 45 82173).

Subsequent actions concerning the conditions of approval and program amendments are included in 30 CFR 906.11 and 906.15.

II. Proposed Amendments

On June 1, 1987 Colorado submitted proposed amendments to the Colorado program for OSMRE's review and approval (Administrative Record No. CO–336). OSMRE published a notice in

the **Federal Register** announcing receipt of the proposed amendments to the Colorado program on June 29, 1987, and invited public comment on the adequacy of the proposed amendments (52 FR 24173, Administrative Record No. CO–343). After reviewing the proposed amendments and all comments received, OSMRE notified Colorado by letter dated October 15, 1987 of several provisions in its proposal that appeared to be inconsistent with the Federal Regulations (Administrative Record No. CO–357). By letter dated December 17, 1987, Colorado provided clarification of the amendment contents (Administrative Record No. CO–360). These proposed changes at Colorado Rules 1.05.1(2); 2.06.6(2)(a); 3.02.2(4) (a) and (b); 2.07.6(2)(d)(iii)(E); 5.03.3(5); and 5.04.3 (2)(c) and (3)(c) pertain to exemptions, prime farmlands, bonding and insurance requirements, lands unsuitable, and inspection and enforcement, respectively. Colorado decided to withdraw the proposed amendment on revegetation at Rule 4.15.1; 4.15.2; 4.15.7(1); 4.15.7(2)(d) (ii) and (vi); 4.15.7(2)(c); 4.15.8(9); 4.15.7; 4.15.8(7); and 4.15.9 and resubmit it later. Due to the changes in the proposed amendments, OSMRE is reopening and extending the comment period to allow the public an opportunity to comment on the additional material. The full text of the proposed program amendments and subsequent clarification submitted by Colorado is available for public inspection at the locations listed under **"ADDRESSES,"** or a copy of the proposed amendments and subsequent clarification can be obtained from the OSMRE Albuquerque Field Office as explained under **"ADDRESSES."**

The Director is seeking public comment on the adequacy of these proposed amendments. If OSMRE finds the amendments to be no less stringent than SMCRA and no less effective than the Federal regulations, OSMRE will approve them and they will become part of the Colorado program.

III. Written Comments

Written comments on the issues proposed in this rulemaking should be specific, pertain only to the issues proposed, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSMRE Albuquerque Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

List of Subjects in 30 CFR Part 906

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

Date: February 22, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–4849 Filed 3–4–88; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 917

Kentucky; Proposed Regulatory Program Amendment; House Bill 869

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSMRE is reopening the public comment period on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky to modify the Kentucky permanent regulatory program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a resubmittal of House Bill 869 and further justification of the Natural Resources and Environmental Protection Cabinet's (NREPC) ability to have adequate resources to handle the appeals of orders of the Secretary. The amendment pertains to making orders of the Secretary of NREPC appealable to Circuit Courts in the county where the violation occurred rather than Franklin County. At the request of OSMRE, the NREPC has provided additional materials on the resources to handle the appeals of orders of the Secretary.

This notice sets forth the times and location that the Kentucky program, the proposed amendment, and the additional materials on the resources to handle the appeals of orders of the Secretary will be available for public inspection. This notice contains the comment period during which interested persons may submit written comments on the proposed amendment and/or any additional material in the Administrative Record.

DATE: Written comments relating to Kentucky's proposed modification to its program not received on or before April 6, 1988, will not necessarily be considered in the decision process.

ADDRESSES: Written comments should be mailed or hand-delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the Kentucky program, the amendment, additional material, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Lexington Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Dirve, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On April 13, 1982, the Secretary approved the Kentucky program. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435). Information pertinent to the general background on the Kentucky program, including the Secretary's findings, disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, **Federal Register** notice. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of the Proposed Amendment

By letter dated April 29, 1986 (Administrative Record No. KY–703), Kentucky submitted to SSMRE pursuant to 30 CFR 732.17, certain revisions to the

Kentucky program contained in a number of House and Senate bills. The bills were passed by the 1986 General Assembly with an effective date of July 15, 1986. This submittal contained House Bill 869 that amends Kentucky Revised Statutes (KRS) 350.032 to provide that final orders of the Secretary of NREPC would be appealable to Circuit Courts of the county where the violation occurred rather than Franklin County.

On June 9, 1986, OSMRE notified NREPC that prior to approval of House Bill 869 as an amendment, NREPC must submit an effective plan as to how the program will be implemented (Administrative Record No. KY–709). NREPC responded to the letter with a statement of anticipated costs, organizational considerations, programmatic considerations, and resource descriptions (Administrative Record No. KY–710). On July 18, 1986, OSMRE published in the **Federal Register** (51 FR 26002–26008) the disapproval of the amenement to KRS 350.032 based upon the fact that House Bill 869 did not provide for additional funding and/or staffing for the extra workload that would likely result from its passage (Administrative Record No. KY–718). By a letter dated May 18, 1987 (Administrative Record No. KY–738), Kentucky resubmitted to OSMRE pursuant to 30 CFR 732.17, House Bill 869 with further justification of how NREPC expects to manage the workload associated with the purposed revision to the Kentucky program.

On July 13, 1987, OSMRE published a notice of the **Federal Register** (51 FR 26158–26159) announcing receipt of the resubmitted amendment and inviting public comment on its adequacy. The public comment period ended August 12, 1987. The public hearing for August 7, 1987, was not held because no one requested an opportunity to testify.

On January 22, 1988, OSMRE notified NREPC that prior to approval of House Bill 869 as an amendment, NREPC must submit additional materials on the workload associated with all appeal cases that were filed in local circuit court rather than Franklin Circuit Court (Administration Record No. KY–788). On February 4, 1988, NREPC provided additional information on the number and status of local appeals, the resource and travel time expended on local appeals, associated costs, decisions enjoining the Cabinet from enforcing sections of the law, and results (Administrative Record No. KY–791).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment or any additional material satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered in the final rulemaking, or included in the Administrative Record.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

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

2. Executive Order No. 12291

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

3. Compliance with the Regulatory Flexibility Act

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

4. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 917

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

Date: February 25, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR. Doc. 4851 Filed 3–4–88; 8:45 am]

BILLIND CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–3336–5]

Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of Roane County for Sulfur Dioxide

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On July 7, 1986, the State of Tennessee requested redesignation of Roane County from unclassified to attainment for sulfur dioxide. On September 4, 1986, the State submitted additional support information. Today EPA is proposing approval of the change in attainment status.

DATE: To be considered, comments must reach us on or before April 6, 1988.

ADDRESSES: Written comments should be addressed to Rosalyn Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Environmental Protection Agency, Air Programs Branch—Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

FOR FURTHER INFORMATION CONTACT: Rosalyn Hughes, EPA Region IV Air Programs Branch, at the address listed above, and phone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On July 7, 1986, the State of Tennessee requested redesignation of Roane County from unclassified to attainment for sulfur dioxide. EPA policy allows such redesignations if the previous eight quarters of air quality monitoring data shows no violations of the National Ambient Air Quality Standards (NAAQS) and if air quality dispersion modeling predicts attainment of the NAAQS.

It was determined by Tennessee that Roane County had only two major sulfur

dioxide sources, Clinch River Corporation (formerly Harriman Paperboard Company) and the Kingston Steam Plant of the Tennessee Valley Authority (TVA). After reviewing the monitoring data, no violations were found since 1980. Three violations occurred before 1980 and all had been either justified or remedied. One of these violations was due to terrain induced air flow disturbances around TVA's short stacks. Strong northwestly winds created a turbulent wake which brought the emissions to ground level around the monitoring site. TVA constructed taller stacks which reduced the terrain effects and alleviated the downwash. Another violation was recorded near Harriman Paperboard; this was remedied by restricting Harriman's boilers to natural gas instead of #6 fuel oil. The last violation in the area was near the TVA steam plant. However, TVA was not at fault this time. A review of the records showed that fluoride emissions from the Department of Energy's Gaseous Diffusion Plant at Oak Ridge interfered with the monitors. The monitor in question used a bromide reagent which was affected by the fluorides. This problem should not happen again, since the Gaseous Diffusion Plant has all but closed.

Section 123(a) of the Clean Air Act specifically exempts the stack at TVA's Kingston Steam Plant from stack height requirements. However, the modeling which was performed in 1977 to establish the present emission limit used the "good engineering practice" (GEP) stack height for the source. The conservative results from this analysis were reviewed as part of the redesignation process and found to be acceptable.

Proposed Action

EPA has reviewed the submitted material and found it to meet present EPA requirements. Therefore, EPA is today proposing to approve the redesignation of Roane County from unclassified to attainment for sulfur dioxide and is soliciting public comment on it.

For further information on EPA's analysis, the reader may consult a Technical Support Document (TSD) which contains a detailed review of the technical justification, including monitoring data analysis and modeling analysis. The TSD is available at the Region IV office listed above. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of publication of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Date: January 13, 1988.

Lee A. DeHihns III,

Deputy Regional Administrator.

[FR Doc. 88–4863 Filed 3–4–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 86–10; FCC 88–37]

Common Carrier Services; WATS-Related and Other Amendments of the Access Charge Rules

AGENCY: Federal Communications Commission.

ACTION: Supplemental Notice of Proposed Rule Making.

SUMMARY: The Commission issued a Supplemental Notice of Proposed Rule Making seeking additional comment on issues pertaining to the provision by local exchange carriers of access for 800 service.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Supplemental Notice of Proposed Rule Making in CC Docket 86–10, adopted February 2, 1988, and released February 17, 1988. The full text of this Notice 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.

Summary of Supplemental Notice of Proposed Rule Making

1. On January 14, 1986, the Commission adopted a Notice of Proposed Rulemaking ("*Notice*"), CC Docket 86–10, 102 FCC 2d 1387 (1986), published January 30, 1986 (51 FR 3808), to consider the long-term obligations of local exchange carriers ("LECs") under the Communications Act of 1934, as amended (the "Act"), to provide access services to interexchange carriers ("IXCs") for their provision of 800 service. The Commission tentatively concluded in the *Notice* that the "data base plan" of 800 access being developed by the Bell Operating Companies ("BOCs") and other LECs was substantially superior to other forms of 800 access and that it should require its implementation.

2. Although the parties filing comments generally supported implementation of the data base plan, they did not address all of the specific issues raised in the *Notice*. Moreover, subsequent to the formal closing of the record, certain new issues have been raised as to the desirability of the data base plan, or certain features of it, and the manner in which the BOCs and other LECs will implement and charge for this form of 800 access service. Accordingly, the Commission issued this Supplemental Notice of Proposed Rulemaking ("*Supplemental Notice*") seeking comment and information on the issues described below.

3. First, the Commission seeks comments on various cost issues including: (1) The estimated total costs of implementing the data base plan and projected annual revenue requirements, with detailed explanation of the assumptions upon which these estimates are based; (2) the services, in addition to 800 access services, that will be provided with the data base systems during their initial years of operation, as well as future services that will or might be offered with these systems; (3) the relative size of the interstate and intrastate 800 markets in terms of minutes, messages, and revenues; (4) the extent to which data base system costs should be allocated to basic ten-digit screening capabilities, on the one hand, and the various optional 800 access services, on the other; (5) the manner in which interstate and intrastate costs will be separated under the Part 36 Separations Manual; (6) an estimate of the jurisdictional allocation of data base system costs, with detailed explanation of the assumptions upon which such estimate is derived; and (7) the appropriate accounting procedures,

including amortization schedules, that should govern the recovery of data base system costs.

4. The Commission also invites further comment on the benefits of the data base plan. In the *Notice*, the Commission tentatively concluded that "the BOC data base plan appears to have substantial benefits for 800 subscribers." None of the comments disputed this tentative conclusion. At the same time, however, little hard evidence was offered to substantiate or quantify these benefits. For example, none of the parties offered empirical evidence on the actual value of number portability of 800 subscribers. Presumably, subscribers that use commercially valuable 800 numbers or that extensively market their 800 numbers would be substantially impeded from changing IXCs if such a change required them to abandon their 800 number. But no information was offered as to the number of 800 subscribers that are included in these groups or the amount of 800 traffic they represent. Nor was information provided as to the value of number portability to subscribers that do not use commercially valuable 800 numbers and do not market their 800 number. In light of these considerations, the Commission now invites further information and comment on the benefits of the data base plan, including the value of number portability to 800 subscribers and to a competitive 800 interexchange market, and the value of the various optional functions that the BOCs expect to provide with their data base systems.

5. The Commission also seeks further comment as to whether, assuming that the data base plan is found to be in the public interest, it should require the LECs to implement it, or defer to market forces to accomplish its implementation. Some of the parties argued in their initial comments that Commission intervention was necessary to ensure that the data base plan was implemented on a nationwide basis. Conversely, some parties argued that negotiations between the BOCs and GTE and the smaller ITCs were ongoing and that these negotiations would ensure that all LECs would be able to participate in the data base plan without Commission involvement on either side. Still other parties asked us to impose regulatory obligations on the BOCs and larger ITCs to ensure that these negotiations resulted in smaller ITCs being able to access their data base systems on reasonable terms and conditions. The Commission is interested in updated information on the status of these negotiations, and in particular, whether all LECs appear willing and reasonably able to offer 800 access through a data base system without regulatory intervention.

6. A related issue about which the Commission also seeks comment is whether, assuming it either permits or requires LECs to provide 800 access through a data base system, it should require LECs to continue offering an NXX option to IXCs and/or individual 800 subscribers. The availability of both of these systems simultaneously would, in theory, allow market forces to control the choice between them. However, the data base plan and the NXX screening system may be incompatible making an unbiased market test impossible. The Commission is interested in comments on whether it would be desirable or possible to offer a choice of NXX and data base system screening simultaneously to IXCs or 800 subscribers, and the manner in which such a dual system could be offered.

7. The Commission also requests further information and comment on "post-dialing delay" issues. AT&T maintains that the data base plan would significantly increase call set-up time for 800 calls, and that a limited continuation of NXX access would allow certain 800 service subscribers to avoid this increase without compromising the number portability benefits of the data base system or otherwise degrading data base access service. AT&T proposes that one to three currently unassigned NXXs be reserved to each IXC for this purpose. Ameritech and Bell Atlantic claim that the data base plan will not increase call set-up time by as much as AT&T claims, that this increase will be substantially reduced by 1990 and eliminated altogether thereafter, and that a limited NXX option would be inefficient, and indeed, would increase post dialing delay for all non-NXX 800 calls. Because this matter was not raised in the *Notice* or comments, most of the parties have not had the opportunity to respond to AT&T's assertions or its proposal, and there is very little record upon which to weigh the conflicting *ex parte* allegations of AT&T and the responding BOCs. Accordingly, the Commission seeks further comment on the following matters relating to this issue: (a) Call set-up times under the NXX system and under the data base systems as they will be initially implemented (a description of the various technical configurations that will be used in implementing the data base systems and their impact on call set-up time should be included; the time increments attributable to each discrete step in connecting an 800 caller to the appropriate IXC should be identified); (b) the prospects for reducing call set-up time under the data base systems, including the time frame for, and cost of, such reductions; (c) the degree to which 800 callers or particular service usages are sensitive to call set-up delays, and the alternatives available to them; (d) the extent, if any, to which AT&T's proposal to continue a limited NXX option would increase call set-up time for data base system calls; and (e) the extent to which there would be other costs or inefficiencies associated with maintaining NXX access as a limited option, as AT&T proposes.

8. Allegations that certain aspects of the BOC data base plan are anticompetitive also warrant comment. For example, some of the IXCs have expressed concern over the manner in which 800 subscribers would be able to order or change their 800 service under the BOC plan, as well as the manner in which service orders would be transmitted to the Service Management System or SMS (the centralized data base that will contain current and past 800 service information). Some IXCs have also asserted that BOC information requests for the SMS are overbroad in some cases and extend to sensitive proprietary information for which the BOCs have no legitimate need. This problem is exacerbated, according to MCI, since a BOC affiliate—Bellcore—is administrator of the SMS and assignor of all 800 numbers. The BOCs have stated that the information they are requesting is necessary in order for them to identify their own intraLATA 800 calls when subscribers utilize the same 800 number for interLATA and intraLATA 800 service. The Commission finds that since these issues have taken on some importance since the close of the formal record in this proceeding, it should seek further comment on them in this *Supplemental Notice*.

9. Finally, the Commission seeks comment on the manner in which 800 directory assistance ("DA") should be offered in a multi-carrier 800 environment. While AT&T's monopoly on 800 DA service may have been appropriate when AT&T was the sole IXC providing 800 service, the Commission is concerned that in a multi-carrier environment, current arrangements for the provision of this service might not be consistent with the public interest. In particular, while AT&T might offer "listing" opportunities to OCCs' susbscribers, if it did not do so, these carriers would either have to market 800 service without a DA offering, or provide their own 800 DA service. If OCCs did not offer their own

DA service, they would be at a serious disadvantage in competing for many 800 service subscribers. On the other hand, if OCCs provided their own DA service, callers would be forced to try multiple DA services in order to obtain the 800 number they were seeking, which would be both confusing and inconvenient. In addition, it might well be unreasonable for one IXC to utilize the current 800 DA service number, (800) 555–1212, for its 800 DA when others could not do so. Thus, it might be necessary to introduce new 800 DA numbers altogether, thereby heightening public confusion. Furthermore, IXC-specific DA service might well provide AT&T with an undue competitive edge in the 800 market, since subscribers might anticipate that callers would try the largest carrier first. While these problems might be alleviated if AT&T offered "listing opportunities" to OCCs for their 800 subscribers, this option raises questions as to the potential for discriminatory treatment of OCCs' subscribers.

10. A possible alternative to the current system would be for the Commission to require the BOCs to offer 800 DA service, presumably on a tariffed basis, to all IXCs. However, this might not be desirable from the standpoint of IXCs, such as AT&T, that have developed their own 800 DA capabilities. Another alternative would be for the Commission to require the BOCs to provide listing information necessary to operate an 800 DA service to those IXCs, or perhaps independent firms, that wished to offer a comprehensive DA service. This approach would seem to address some of the Commission's concerns about customer confusion and competition, although difficulties (*e.g.* the assignment of the 800–555–1212 number) would appear to remain.

11. All interested persons may file comments on the issues and proposals discussed herein not later than March 24, 1988, and reply comments may be filed not later than April 22, 1988. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR § 1.419, an original and five copies of all statements, briefs, comments, or replies shall be filed with the Federal Communications Commission, Washington, DC 20554, and all such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC office.

12. The Commission determined that the *ex parte* rules described in the *Notice* continue to apply in this proceeding.

13. The Commission determined that the Regulatory Flexibility Act is not applicable to the rule changes proposed in this proceeding. In accordance with the provisions of section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of this *Supplemental Notice* in the **Federal Register**. As part of the Commission's analysis of the proposed rules described in this Order, however, this Commission has and will continue to consider the impact of this rulemaking on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines. The data base proposal contained herein should not adversely impact such small telephone companies since, if adopted, small telephone companies would be able to participate in the data base plan without substantial cost by routing 800 traffic to larger telephone companies.

Ordering Clauses

14. Accordingly, *It is ordered*, that pursuant to the provisions of sections 1, 4(i), 4(j), 201–205, 218, 220, 303(g), 303(r), 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 220, 303(g), 303(r), 403 and 404, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, *Notice is hereby given* of the proposed adoption of new or modified rules, in accordance with the discussion and delineation of issues in the Supplemental Notice of Proposed Rulemaking and on the basis of previous notices and filings in this proceeding.

15. *It is further ordered*, that the petition for reconsideration filed by GTE Sprint (now US Sprint) on March 3, 1986, *Is denied*.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–4819 Filed 3–4–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–262; RM–5295; RM–5344]

Radio Broadcasting Services; Cape Vincent, NY; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On February 25, 1988 at 53 FR 5576, the Commission published a Final Rule in this proceeding regarding an FM channel allotment to Cape Vincent, NY. This document corrects the date on which the period for filing applications will close.

DATES: The correct window closing date in May 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634–6530.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–4818 Filed 3–4–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–46, RM–5919; RM–6103

Radio Broadcasting Services; Pueblo and Fountain, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately-filed, mutually-exclusive proposals, seeking the allotment of FM Channel 241. The first, filed by Dr. Ronald A. Johnson, seeks the allotment of Channel 241C2 to Pueblo, CO (RM–5919), as that community's eighth local FM service. The second proposal, filed by Express Communications, seeks the allotment of Channel 241A to Fountain, CO (RM–6103), as that community's first local broadcast service.

DATES: Comments must be filed on or before April 21, 1988, and reply comments on or before May 6, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Dr. Ronald A. Johnson, 1665 Briargate Blvd., Colorado Springs, CO 80918 (Petitioner—Pueblo, CO); and David Honig, Esq., 6032 Ocean Pines, Berlin, MD 21811 (counsel—Express Communications).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–46, adopted January 27, 1988, and released March 1, 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.

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* contacts 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

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88–4891 Filed 3–4–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–51, RM–6076]

Radio Broadcasting Services; Evans, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Evans Broadcasters which proposes to allot Channel 299A to Evans, Georgia, as a first FM service.

DATES: Comments must be filed on or before April 21, 1988, and reply comments on or before May 6, 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: Stanley G. Emert, Jr., Watson, Erickson and Emert, 2108 Plaza Tower, Post Office Box 131, Knoxville Tennessee 37901 (counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–51, adopted January 26, 1988, and released March 1, 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.

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* contacts 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

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88–4894 Filed 3–4–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–47, RM–5977, RM–6148]

Radio Broadcasting Services; Oakdale and Tioga, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive petitions proposing the allotment of Channel 253C2 to Tioga, Louisiana or Channel 254C2 to Oakdale, Louisiana. The first petition by Cavaness Broadcasting, Inc. ("Cavaness"), licensee of Station KISY(FM), Channel 252A, Tioga, Louisiana, seeks the substitution of Channel 253C2 for Channel 252A at Tioga and modification of the station license to specify operation on the higher class channel (RM–5977), as that community's first wide coverage area FM station. A site restriction of 13.1 kilometers (8.1 miles northeast of the city is required. The second petition by Oakdale Limited Partnership ("Oakdale Limited"), licensee of Station KICR–FM, Channel 285A at Oakdale, Louisiana, requests the substitution of Channel 254C2 for Channel 285A and modification of its license accordingly (RM–6148), as a first wide coverage area FM service. A site restriction of 7.5 kilometers (4.6 miles) northeast of Oakdale is required.

DATES: Comments must be filed on or before April 21, 1988, and reply comments on or before May 6, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Stuart A. Shorenstein, Esq., Friedman, Leeds, Shorenstein & Armenakis, 655 Third Avenue, New York, New York 10017 (Counsel to Petitioner); and Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue NW., Washington, DC 20036–5339 (Counsel for Oakdale Limited Partnership).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–47, adopted January 27, 1988, and released March 1, 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.

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* contacts 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

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88–4896 Filed 3–4–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-49, RM-5866]

Radio Broadcasting Services; Gladstone, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by David C. Schaberg, permittee of Channel 288A, Gladstone, proposing the substitution of Channel 288C1 for Channel 288A, and modification of the permit to specify operation on Channel 288C1. There is a site restriction 31.9 kilometers north of the community. Canadian concurrence will be obtained for the allotment of Channel 288C1 at Gladstone. The site coordinates are 46-07-50; 86-56-52.

DATES: Comments must be filed on or before April 21, 1988, and reply comments on or before May 6, 1988.

ADDRESSES: 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: David C. Schaberg, P.O. Box 11101, Lansing, Michigan 48901.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-49, adopted January 26, 1988, and released March 1, 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.

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* contacts 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

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88-4892 Filed 3-4-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-50, RM-6105]

Radio Broadcasting Services; Ontonagon, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Ontonagon County Broadcasting, Inc., proposing the substitution of FM Channel 266C2 for Channel 252A at Ontonagon, Michigan, and modification of its license for Station WONT(FM), to reflect the new channel. Concurrence of the Canadian government is required for this allocation.

DATES: Comments must be filed on or before April 21, 1988, and reply comments on or before May 6, 1988.

ADDRESSES: 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: Richard S. Becker, James S. Finerfrock, Richard S. Myers, Becker & Finerfrock, P.C., 1915 Eye Street NW., Eighth Floor, Washington, DC 20006 (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-50, adopted January 26, 1988, and released March 1, 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.

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* contacts 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

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88-4893 Filed 3-4-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-48, RM-5772, RM-5941]

Radio Broadcasting Services; Arlington and McKinney, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Statewide Broadcasting, Inc., licensee of Station KHYI(FM), Channel 235C1, Arlington, Texas, proposing the substitution of Channel 235C for 235C1 at Arlington and modification of its license to specify operation on the higher class co-channel. In order to accomplish the substitution at Arlington the proposal requires the substitution of Channel 295A for Channel 237A at Mckinney, Texas. In order for Channel 295A to avoid a short spacing to vacant Channel 294C at Granbury, Texas, we are also proposing the imposition of a site restriction 32.4 kilometers (20.1 miles) southwest of Granbury on the vacant allotment (33-15-49 and 96-35-54). In addition, we are entertaining a mutually exclusive petition by Isaac H. Blevins and Jack Sellmeyer d/b/a McKinney Broadcasting Company, proposing the allotment of Channel 295A to McKinney, Texas, as that community's second FM service. Channel 295A at McKinney, as an additional FM service requires a site restriction of 1.1 kilometer (0.7 miles) northwest of the community (33-12-20 and 96-37-33).

DATES: Comments must be filed on or before April 21, 1988, and reply comments on or before May 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eric L. Bernthal, Esquire, James F. Rogers, Esquire, Steven E. McCowin, Esquire, Latham & Watkins, 1333 New Hampshire Avenue NW., Suite 1200, Washington, DC 20036 (Counsels for Statewide Broadcasting, Inc.) J.S. Sellmeyer, P.E., P.O. Box 205, McKinney, Texas 75069 (Mckinney Broadcasting Company).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–48, adopted January 27, 1988, and released March 1, 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.

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* contacts 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

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 88–4895 Filed 3–4–88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 53, No. 44
Monday, March 7, 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.

ACTION

Agency Information Collection Request Under OMB Review

AGENCY: ACTION.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Need and Use: The VISTA Volunteer application and attendant reference forms are the documents by which essential information is gathered on every VISTA applicant. The data submitted on these forms by applicants and those indentified as references by the applicant will be used by ACTION to evaluate the skills, experience, motivation, and suitability of individuals for full-time, full-year VISTA volunteer service pursuant to the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113.

To Obtain Information About or to Submit Comments on This Proposed Information Collection, Please Contact Both: Melvin E. Beetle, ACTION Clearance Officer, ACTION, Room M–601, 806 Connecticut Avenue NW., Washington, DC 20525. Tel: (202) 634–9318; and James Houser, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503. Tel: (202) 395–7316.

Office of ACTION issuing the Proposal: Domestic Operations/VISTA.

Title of Form: VISTA Volunteer Application and Reference Forms.

Type of Request: Revision to a previously existing form.

Frequency of Collection: Once; at the time of initial applicant recruitment.

General Description of Respondents: VISTA Volunteer applicants, VISTA project sponsors, and references identified by the VISTA applicant.

Estimated Number of Annual Responses: 8800 from all respondents.

Estimated Annual Reporting or Disclosure Burden: 9350 hrs for applicants and references.

Respondent's Obligation to Reply: Required in order to enroll as a VISTA Volunteer.

Melvin E. Beetle,

ACTION Clearance Officer.

Date: March 1, 1988.

[FR Doc. 88–4838 Filed 3–4–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Conduct of Futures and Options Trading Pilot Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Conduct of Futures and Options Trading Pilot Program.

SUMMARY: An educational program will be conducted in which producers in 40 designated counties may participate in the trading of wheat, corn, soybeans, and cotton on commodity futures or options markets in a manner designed to protect and to maximize the return to producers with respect to the marketings of commodities they produce.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Bailey, Pilot Program Executive Secretary, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, or call 202/447–7583.

SUPPLEMENTARY INFORMATION: Section 1743 of the Food Security Act of 1985, as amended (Pub. L. 99–198), provides that the Secretary of Agriculture is to conduct an educational commodity futures and options trading pilot program with respect to wheat, corn, soybeans, and cotton in at least 40 counties which actively produce reasonable quantities of such commodities and to assure participating producers a net return for the agricultural commodities allocated to the program of not less than the price support loan level established for such commodities for the county where the commodities were produced.

Section 1743 also provides that the Secretary in conducting the program is to utilize the services of an advisory panel selected by the Secretary consisting of producers, processors, exporters, and futures and options traders on organized futures exchanges. Based upon the advisory panel's recommendations, regional dispersion, and likelihood of producer participation, the following counties will be used in implementing the pilot program:

Arizona, Maricopa; California, Fresno, Tulare; Georgia, Washington; Idaho, Latah; Illinois, Champaign, McLean, Morgan, Stark; Indiana, Clinton, Knox; Iowa, Benton, Hardin, Monona, Washington; Kansas, Meade, Sumner; Louisiana, Morehouse; Michigan, Gratiot, Huron; Minnesota, Polk, Swift; Mississippi, Leflore, Sunflower; Missouri, Lafayette, New Madrid; Montana, Chouteau; Nebraska, Lincoln, Saunders; North Dakota, Cass; Ohio, Allen, Darke; Oklahoma, Garfield; South Dakota, McCook; Texas, Hansford, Hidalgo, Lubbock, Lynn; Virginia, Southampton; Wisconsin, Dane.

Dated: March 1, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–4857 Filed 3–4–88; 8:45 am]

BILLING CODE 3410–05–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting; Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on March

21, 1988 at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 25, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–4800 Filed 3–4–88; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Public Meeting; Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Voting Rights Subcommittee of the Missouri Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on March 17, 1988, at the Drury Inn—St. Louis Airport at Lambert International, St. Louis, Missouri. The purpose of the meeting is to review information concerning the selection process for voter registration sites and the use of punch cards in the voting process. The Subcommittee will also discuss future program plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Joanne M. Collins, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 26, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–4801 Filed 3–4–88; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Public Meeting; Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on March 24, 1988, at the Radisson Hotel Duluth, 505 W. Superior, Duluth, Minnesota. The purpose of the meeting is to provide orientation for the rechartered SAC and discuss plans for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge L. Bartelle, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253 (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 26, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–4802 Filed 3–4–88; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Public Meeting; Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Nevada Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on March 25, 1988, at the Alexis Park, 375 East Harmon, Las Vegas, Nevada 89109. The purpose of the meeting is to discuss activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth C. Nozero, or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 26, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–4803 Filed 3–4–88; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Public Meeting; Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Texas Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:00 p.m. on March 25, 1988, at the Corpus Christi Marriott, 707 North Shoreline Boulevard, Corpus Christi, Texas 78401. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of Texas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adolfo Canales or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 26, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–4804 Filed 3–4–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 11-88]

Foreign-Trade Zone 33, Allegheny County, PA; Application for Subzone for Verosol Window Shade Fabric Processing Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania (RIDC), grantee of FTZ 33, requesting special-purpose subzone status for the window shade fabric manufacturing plant of Verosol USA, Inc.a (Verosol), Kennedy Township, Allegheny County, Pennsylvania, within the Pittsburgh Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 22, 1988.

The company has been operating (120 employees) under zone procedures in FTZ 33 (Findlay Township, Allegheny County) since 1982, but plans to relocate its operations to a larger facility located at 215 Beacham Drive in Kennedy Township (7.6 acres). The company's operation involves the processing of polyester fabric for window shades. The activity involves the inspection, sizing, pleating, cutting to width, and packaging of foreign and domestic polyester fabric (TSUS 356.00 and 338.50) for shipment to fabricators of window shades.

The company uses zone procedures to defer Customs duty payments until the finished fabric leaves its plant, and to avoid duties on scrap and material shipped abroad. It would continue using zone procedures in a similar manner at the new site.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Deputy Assistant Regional Commissioner, U.S. Customs Service, 10 Causeway St., Room 801, Boston, Massachusetts 02222; and Colonel Richard A. Rothblum, District Engineer, U.S. Army Engineer District Pittsburgh, William S. Moorehead Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 8, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 2002 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: February 29, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-4901 Filed 3-4-88; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-588-801]

Initiation of Antidumping Duty Investigation; Certain All-Terrain Vehicles From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain all-terrain vehicles (ATVs) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry, or that the establishment of a U.S. industry is materially retarded. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 25, 1988. If that determination is affirmative, we will make a preliminary determination on or before July 18, 1988.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Gregory G. Borden or Michael Ready, Office of Investigations, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–3003 or 377–2613.

SUPPLEMENTARY INFORMATION:

The Petition

On February 9, 1988, we received a petition in proper form filed by Polaris Industries L.P. on behalf of the U.S. industry producng all-terrain vehicles. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of certain ATVs from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry, or that the establishment of an industry in the U.S. is materially retarded.

United States Price an Foreign Market Value

Petitioner based United States price on retail list prices of Japanese ATVs.

Petitioner based foreign market value on retail list prices of Japanese ATVs in a third country market, Canada, as petitioner believes that sales in the home market would not form an adeuate basis for determining foreign market value.

Based on a comparison of United States price and foreign market value, petitioner alleges dumping margins of between 8.6 and 41.9 percent.

By using the retail list prices provided by the petitioner and other publicly available information, we calculated estimated f.o.b. Japan prices for Japanese ATVs in both the U.S. and Canadian markets. Comparisons of these estimated f.o.b. prices reveal dumping margins of 2.5 to 37.1 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on ATVs from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain all-terrain vehicles from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by July 18, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on

the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain all-terrain vehicles, assembled or unassembled, currently provided for under TSUSA item number 692.1090 and currently classifiable under HS item number 8703.21.0000.

Certain all-terrain vehicles (ATVs) are motor vehicles designed for off-pavement use by one operator and no pasengers and contain internal combustion engines of less than 1000cc. cylinder capacity. The ATVs under investigation are non-amphibious, have three or four wheels and weigh less than 600 pounds. They have a seat designed to be straddled by the operator and handlebars for steering control.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 25, 1988 whether there is a reasonable indication that imports of certain ATVs from Japan materially injure, or threaten material injury to, a U.S. industry, or that the establishment of a U.S. industry is materially retarded. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

February 29, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–4902 Filed 3–4–88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Application for Marine Mammals Permit; Marine World Foundation (P172C)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Marine World Foundation, Marine World Parkway, Vallejo, California 94589.

2. *Type of Permit:* Public Display.

3. *Name and Number of Marine Mammals:* Pacific False Killer Whale (*Pseudorca crassidens*)

4. *Type of Take:* Live import.

5. *Location of Activity:* Japan.

6. *Period of Activity:* 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Commission of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Adminstrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7515.

Dated: March 1, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–4924 Filed 3–4–88; 8:45 am]

BILLING CODE 3510-22-M

Application for Marine Mammals Permit; National Oceanic and Atmospheric Administration, National Ocean Survey (P415)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (59 CFR Parts 217–222).

1. *Applicant:* a. Mr. Paul Becker, Ocean Assessments Division, National Ocean Survey, National Oceanic and Atmospheric Administration, 701 C Street, Box 56, Anchorage, Alaska 99513.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:*

Bearded seal (*Erignathus barbatus*)	50
Bowhead whale (*Balaena mysticetus*)	50
Largha seal (*Phoca largha*)	50
Pacific harbor seal (*Phoca vitulina richardii*)	50
Ribbon seal (*Phoca fasciata*)	50
Ringed seal (*Phoca hispida*)	50
White whale (*Delphinapterus leucas*)	50

4. *Type of Take:* The applicant requests to take up to 10 tissue samples,

each year for a period of 5 years, from the species listed above taken during subsistence harvest and from beached and stranded animals.

5. *Location of Activity:* Alaska.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. These individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Date: March 2, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-4925 Filed 3-4-88; 8:45 am]

BILLING CODE 3510-22-M

Application for Marine Mammals Permit; Dr. Howard E. Winn (P12H)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permit (50 CFR Parts 217-222).

1. *Applicant:* Dr. Howard E. Winn, Graduate School of Oceanography, University of Rhode Island, Kingston, Rhode Island 02881.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:*

Right Whale (*Eubalaena glacialis*).....30
Fin Whale (*Balaenoptera physalus*).....30
Humpback whale (*Magaptera novaeangliae*).....30
Sei whale (*Balaenoptera borealis*).....30

4. *Type of Take:* To tag over a 5-year period the endangered whales listed above. Tagging includes using implantable radio and acoustic telemetry tags, satellite, and suction cup radio tags, TDR, and Cyalume tags.

5. *Location of Activity:* Western North Atlantic.

6. *Period of Activity:* 5 years.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC.

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930.

Dated: February 26, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-4926 Filed 3-4-88; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of open meeting, Frequency Management Advisory Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:00 p.m. on March 28, 1988, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC. (Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Conference preparation for the ITU Plenipotentiary Conference.

(2) Spectrum Management—Alternatives for the Future.

(3) NTIA policy on Federal Government trunked land mobile radio.

(4) High Definition Television (HDTV).

(5) Radio frequency radiation exposure guidelines.

The meeting will be open to public obsevations. A period will be set aside for oral comments of questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before March 25, 1988. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to the Executive Secretary, FMAC, Mr. Michael W. Allen, National Telecommunications and Information Administration, Room 4706, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230, telephone 202–377–0805.

Dated: March 2, 1988.

Michael W. Allen,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 88–4899 Filed 3–4–88; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

March 2, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 8, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka.

On May 15, 1987, a notice was published in the **Federal Register** (52 FR 18413) which announced import restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988. Subsequent directives published on January 4, 1988 amended these limits for two separate periods which began on June 1, 1987 and extended through December 31, 1987 and on January 1, 1988 and extends through May 31, 1988.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka, and at the request of the Government of Sri Lanka, the limits for Categories 331, 333/633, 334, 337, 338, 340, 341, 350, 351, 359-C/659-C, 363, 442, 445/446, 631, 634, 635, 636/836, 640, 641, 642/842, 644, 645/646, 647 and 648 are being increased for carryover of shortfalls from the previous restraint period. The limits for the foregoing categories for the period June 1, 1987 through December 31, 1987 are being adjusted in a separate directive.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 2, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1988 and extends through May 31, 1988.

Effective on March 8, 1988, the directive of December 30, 1987 is amended to include the following adjusted limits, as provided under the terms of the bilateral agreement of May 10, 1983, as amended: [1]

Category	Adjusted 5-mo limit [1]
331	478,591 dozen pairs.
333/633	34,120 dozen.
334	134,473 dozen.
337	97,963 dozen.
338	129,345 dozen.
340	253,210 dozen.
341	251,826 dozen.
350	38,318 dozen.
351	73,775 dozen.
359-C/659-C [2]	1,327,233 pounds.
363	4,617,030 numbers.
442	10,710 dozen.
445/446	78,903 dozen.
631	325,910 dozen pairs.
634	107,767 dozen.
635	91,882 dozen.
636/836	95,817 dozen.
640	90,310 dozen.
641	250,789 dozen.
642/842	64,129 dozen.
644	165,792 numbers.
645/646	71,430 dozen of which not more than 49,778 dozen shall be in Category 646.
647	26,122 dozen.
648	90,559 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 359–C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222. In Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.8606, 384.8607 and 384.9310.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–4871 Filed 3–4–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations will meet in closed session on March 25 and May 5–6, 1988 at the Pentagon, Arlington, Virginia.

[1] The bilateral agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded by certain designated percentages of the square yard equivalent total, provided the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward; and (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the potential for achieving U.S. security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

March 1, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–4841 Filed 3–4–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

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

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

Dates of Meeting: 24 and 25 March 1988.

Time: 0800–1700 hours, 24 March; 0800–1200 hours, 25 March.

Place: Fort Monroe, VA.

Agenda: The Army Science Board Ad Hoc Subgroup on Close Combat Training Strategy for the 1990's will meet for the purpose of updating the members on the status of simulators, simulation, and other training devices in the U.S. Army. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–4793 Filed 3–4–88; 8:45 am]

BILLING CODE 3710-01-M

Army Science Board; Partially 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: Tuesday & Wednesday, 22–23 March 1988.

Time:

0830–1200, 22 Mar 88, General Membership Meetings, Closed
1300–1700, 22 Mar 88, Functional Subgroup Meetings, Open
0800–1615, 23 Mar 88, General Membership Meeting, Open

Place: Fort Monroe, VA

Agenda: The 1988 Army Science Board Spring General Membership Meeting program will include briefings of Ad Hoc Subgroups and will include five Functional Subgroup meetings. The open portions of the meeting are open to the public. Any person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are 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 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–4858 Filed 3–4–88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.142]

Notice Inviting Applications for New Awards Under the College Facilities Loan Program for Fiscal Year 1988

Purpose: Provide low interest loans to eligible undergraduate postsecondary institutions for the construction, reconstruction, or renovation of housing facilities, undergraduate academic facilities, and other educational facilities.

Deadline for Transmittal of Applications: May 16, 1988.

Applications Available: March 15, 1988.

Available Funds: The Congress authorized $62,231,000 for this program in fiscal year 1988.

Estimated Range of Awards: $250,000 to $3,000,000.

Estimated Average Size of Awards: $2,400,000.

Estimated Number of Awards: 27.

Projected Period: Until completion.

Priorities: The Secretary gives priority to loans for renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time. In order to accomplish this objective, $46,673,000 will be reserved for loans for the renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time, and $15,558,000 will be reserved for loans for housing facilities.

Deadline for Intergovernmental Review Comments: July 15, 1988.

Applicable Regulations: Final regulations governing the College Facilities Loan Program as codified in 34 CFR Part 614 were published in the **Federal Register** on August 14, 1987.

Technical Assistance Workshops:

Applicants are invited to participate in technical assistance workshops to be held in two locations to assist applicants in application preparation. The workshops will take place in Dallas, TX on March 30, 1988 and Washington, DC on April 5, 1988. For specific information on these workshops, please contact the Division of Higher Education Incentive Programs on (202) 732–4394.

For Applications or Information Contact: Sumner M. Bravman, U.S. Department of Education, 400 Maryland Avenue SW., Room 3514, ROB–3, Washington, DC 20202, Telephone: (202) 732–4394.

Program Authority: 20 U.S.C. 1132g–1132g–3.

Dated: February 26, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–4809 Filed 3–4–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No: 84.040]

Invitation for Applications Under the School Construction in Areas Affected by Federal Activities Program for Fiscal Year 1988.

Purpose: Notice is given that the Secretary of Education has established a cutoff date for the transmittal of applications for assistance under sections 5 and 9 of Pub. L. 81–815 based on increase periods ending June 1988 or

June 1989. (An increase period is a period of four consecutive regular school years during which a school district has experienced a substantial increase in school membership as a result of new or increased Federal activities.) This cutoff date also applies to applications for assistance under section 14 and for supplemental assistance under section 8 of Pub. L. 81–815. (Section 14 authorizes assistance for certain school districts which serve children residing on Indian lands, or which are significantly burdened by the presence of nontaxable Federal property. Section 8 authorizes assistance that supplements certain awards made under sections 5, 9, and 14 of Pub. L. 81–815.)

Approval of these applications is subject to availability of funds.

Deadline for Transmittal of Applications: June 30, 1988.

Deadline for Intergovernmental Review Comments: August 31, 1988.

Applications Available: Application forms may be obtained from the appropriate State educational agency which serves the applicant local educational agency.

Applicable Regulations: (a) The regulations governing the School Construction Program (34 CFR Parts 218 and 221), and (b) the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

For Information Contact: School Construction Branch, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2073, Washington, DC 20202–6272. Telephone: (202) 732–4660.

Program Authority: 20 U.S.C. 631–645.

Dated: March 1, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance No. 84.040 School Assistance in Federally Affected Areas—Construction)

[FR Doc. 88–4884 Filed 3–4–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement; Special Isotope Separation Project, Idaho National Engineering Laboratory, Idaho Falls, ID

AGENCY: Department of Energy.

ACTION: Amended notice of public hearings.

SUMMARY: The U.S. Department of Energy (DOE) published a notice in the **Federal Register** on February 19, 1988, (53 FR 5039) announcing the availability of a Draft Environmental Impact Statement (EIS) for the "Special Isotope Separation Project" (SIS) (DOE/EIS–0136) and also the schedule for three (3) public hearings to solicit comments on the Draft EIS.

The Department has decided to reschedule the SIS public hearings in order to avoid a potential conflict with the Idaho Wilderness Bill public hearings, which were subsequently scheduled for the same week as the SIS hearings. The deadline for submitting written comments on the Draft EIS will remain on April 21, 1988.

DATES: The rescheduled SIS hearings will take place as follows:

Friday, March 25, 1988, at University Place, Idaho Falls, Idaho;

Saturday, March 26, 1988, at LeBoise Room, Boise City Council Chambers, 150 N. Capital, Boise, Idaho;

Monday, March 28, 1988, at Canyon Springs Best Western, 1357 Blue Lakes Blvd., Twin Falls, Idaho.

Two sessions, beginning at 2:00 p.m. and 7:00 p.m. will be held at each location.

SUPPLEMENTARY INFORMATION: On February 19, 1988, DOE published a notice (53 FR 5039) announcing the time and place of public hearings to be held for the purpose of soliciting public comments on the Draft EIS for the SIS Project. The hearings were scheduled for March 9, 1988, in Boise, Idaho; March 10, 1988 in Twin Falls, Idaho; and March 11, 1988, in Idaho Falls, Idaho. Two sessions were scheduled to be held on each date, commencing at 2:00 and 7:00 p.m.

Subsequent to publication of the notice, DOE became aware that the SIS hearings might conflict with other public hearings which were subsequently scheduled for the Idaho Wilderness Bill during the same week. Therefore, DOE has decided to reschedule the SIS public hearings. The public hearings will take place on March 25, 26, and 28, 1988, at the locations and times indicated above. Persons desiring to make oral presentations at the hearings should notify Clay Nichols, SIS Project Manager, at the address given below by March 18, 1988, so that DOE may arrange a schedule for the presentations. Procedures regarding the conduct of the hearing were given in the February 19, 1988, notice.

All oral and written comments postmarked by April 21, 1988, will be considered in preparing the final EIS. Comments received after the indicated period will be considered to the extent practicable. Comments should also be addressed to Clay Nichols at the address given below.

FOR FURTHER INFORMATION CONTACT:

Clay Nichols, SIS Project Manager, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, (208) 526–0306

Carol Borgstrom, Acting Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–4600.

Issued in Washington, DC, this 2nd day of March, 1988.

Garry W. Gibbs,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–4905 Filed 3–4–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES88–31–000 et al.]

Iowa Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

March 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Iowa Public Service Company

[Docket No. ES88–31–000]

Take notice that on February 18, 1988 Iowa Public Service Company filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue up to $135 million of short-term unsecured promissory notes to commercial banks and its parent or affiliated companies and commercial paper dealers. All proposed notes are to be issued on or before March 31, 1989, and will bear final maturity dates not later than March 31, 1990.

Comment date: March 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Black Hills Power and Light Company, an Assumed Business Name of Black Hills Corporation

[Docket No. ER88–222–000]

Take notice that on February 22, 1988, Black Hills Power and Light Company, an assumed business name of Black Hills Corporation (Black Hills) tendered for filing an amendment to the filing in the above docket, filed February 1, 1988, said filing pertaining to the Restated Electric Power and Energy Supply and Transmission Agreement, dated as of December 21, 1987 (New Agreement) between Black Hills and the City of Gillette, Wyoming (Gillette) in replacement of and to supersede the Electric Power and Energy Supply and Transmission Agreement, dated August 6, 1985 between Black Hills and Gillette

filed with the Commission and designated Black Hills Power and Light Company, Rate Schedule FERC No. 29 and Supplement No. 1 to Rate Schedule FERC No. 29. The filing also included the filing of the Second Amendment to Coal Supply Agreement (Coal Amendment), dated November 2, 1987 as an amendment to Black Hills Power and Light Company Supplement No. 2, Rate Schedule FERC No. 27 (as now designated).

The New Agreement provides for changes in the quantity of power and energy to be sold Gillette, for a phased in increase and energy charge therefor and other minor changes and further provides for an increase in transmission charges to Gillette.

Black Hills requests waiver of the Commission's notice requirements to permit the New Agreement to become effective December 21, 1987, the date of the New Agreement, and to permit the Coal Amendment to become effective November 2, 1987, the date of the Coal Amendment.

Copies of this amended filing were served upon the parties to the New Agreement, South Dakota Public Utilities Commission, the Wyoming Public Service Commission and the Montana Public Service Commission.

Comment date: March 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. EC88-12-000]

Take notice that on February 24, 1988, Central Illinois Public Service Company (CIPS) tendered for filing an application for an Order authorizing a planned corporate reorganization.

CIPS is a corporation organized and existing under the laws of the State of Illinois, and is engaged in the sale of electricity which it generates, transmits, and distributes to the public in Illinois. CIPS also sells natural gas to, and transports natural gas for, the public in Illinois. CIPS owns 20 percent of the common stock of Electric Energy, Inc. (EEI), which owns a generating station at Joppa, Illinois. The remaining ownership of EEI is as follows: Union Electric Company, 40%; Illinois Power Company, 20%; and Kentucky Utilities Company, 20% (together with CIPS, the "Sponsoring Companies"). EEI supplies electrical energy requirements to an installation of the Department of Energy (DOE) at Paducah, Kentucky. All of the electricity sold by EEI is sold either to the DOE or the Sponsoring Companies. CIPS proposes to reorganize by causing the creation of a holding company (Company) which will become the owner of all the common stock of CIPS. Under CIPS's reorganization plan, CIPS will retain the whole of its facilities, as well as its ownership interest in EEI.

CIPS states that its proposed corporate reorganization is consistent with the public interest.

Comment date: March 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Fitchburg Gas and Electric Light Company

[Docket No. ER88-191-001]

Take notice that on February 24, 1988, Fitchburgh Gas and Electric Light Company (Fitchburg) tendered for filing an amendment to the initial rate schedule filed by Fitchburg on January 12, 1988.

Fitchburg states that the purpose of the amendment is to remove from the original filing certain transmission costs that were improperly included. The revision results in a maximum rate of $9.73 per kilowatt-year for generation and $19.23 per kilowatt-year for transmission. There is no change in the filed energy charges.

Comment date: March 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER88-68-000]

Take notice that on February 22, 1988, New England Power Company (NEP) tendered for filing an amendment to its October 30, 1987 and December 31, 1987 filings in the above-referenced docket. NEP states that this amendment provides additional calculations under the Commission's Order No. 475 which result in slight changes in the rates proposed in NEP's original submittal. NEP's proposed rates are requested to be modified as follows:

Tariff No. 4, Rate PTF.....	$8.25 per kw yr. to $8.23 per kw yr.
FERC Rate Schedule No. 323 and FERC Rate Schedule No. 334.	$9.42 per kw yr. to $9.43 per kw yr.
Tariff No. 4, Rate STS-PTF.	$8.35 per kw yr. to $8.36 per kw yr.

Comment date: March 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4910 Filed 3-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9836-002]

West Slope Power Co.; Surrender of Preliminary Permit

March 2, 1988.

Take notice that West Slope Power Company, permittee for the Sand Creek Project, FERC No. 9836, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9836 was issued on July 25, 1986, and would have expired on June 30, 1989. The project would have been located on Sand Creek, in Madera County, California.

The permittee filed the request on January 14, 1988, and the preliminary permit for Project No. 9836 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided fro under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4919 Filed 3-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-44-002]

El Paso Natural Gas Co.; Compliance Filing

March 2, 1988.

Take notice that on February 26, 1988, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the

Natural Gas Act and in compliance with the Commission's order issued January 29, 1988 at Docket Nos. RP88–44–000 and CP88–203–000, the revised and original tariff sheets to its FERC Gas Tariff identified on the attached Appendix. Such order, among other things, conditionally accepted, to be effective July 1, 1988, subject to refund, certain tariff sheets tendered as part of El Paso's notice of change in rates for jurisdictional natural gas service filed December 31, 1987 pursuant to section 4 of the Natural Gas Act. Ordering paragraph (H) directed El Paso to refile all tariff sheets referred to in ordering paragraphs (B) through (G) of the order within thirty (30) days of the issuance of the order.

El Paso states that on February 26, 1988 at Docket Nos. RP88–44–001 and CP88–203–000, El Paso filed a request for rehearing of the Commission's January 29, 1988 order. El Paso states that although it is complying with such order in this filing, El Paso reserves the right to refile its rates and/or tariff provisions based upon the outcome of such request for rehearing.

El Paso further states that it has complied with the conditions set forth in the body of the January 29, 1988 order and the ordering paragraphs by submitting revised and original tariff sheets which reflect the Commission directives and serve to modify El Paso's: (i) Cost of service, (ii) cost classification, allocation and rate design, and (iii) Transportation General Terms and Conditions.

El Paso states that a copy of the compliance filing has been served upon all parties of record in Docket Nos. RP88–44–000 and CP88–203–000 and, otherwise, upon all parties served with a copy of El Paso's original filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rule of Practice and Procedure. All such motions or protests should be filed on or before March 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

APPENDIX

First Revised Volume No. 1

Substitute Seventeenth Revised Sheet No. 100

Original Volume No. 1–A

Substitute Sixth Revised Sheet No. 20
Substitute First Revised Sheet No. 21
Substitute Original Sheet No. 21–A
Substitute Second Revised Sheet No. 110
Substitute Second Revised Sheet No. 111
Substitute Third Revised Sheet No. 112
Substitute Third Revised Sheet No. 113
Substitute Second Revised Sheet No. 114
Substitute First Revised Sheet Nos. 130 through 135
Substitute First Revised Sheet Nos. 229 and 230
Substitute First Revised Sheet Nos. 231–A and 231–B
Original Sheet No. 231–C
Substitute First Revised Sheet No. 233
Substitute First Revised Sheet Nos. 235 through 237
Original Sheet No. 237–A

Third Revised Volume No. 2

Substitute Forty-first Revised Sheet No. 1–D
Substitute Twenty-first Revised Sheet No. 1–D.2
Substitute Original Sheet No. 1–D.3

Original Volume No. 2A

Substitute Forty-third Revised Sheet No. 1–C

[FR Doc. 88–4911 Filed 3–4–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI88–252–000]

Exxon Corp.; Application

February 29, 1988.

Take notice that on January 19, 1988, Exxon Corporation [Exxon], P.O. Box 2180, Houston, TX 77252–2180, filed an application for a three-year blanket limited-term certificate with pregranted abandonment authorizing Exxon to sell for resale in interstate commerce contractually uncommitted natural gas produced from the West Cameron Area, Block 630, Offshore Louisiana. Exxon also requests waiver of the filing requirements under Parts 154 and 271 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should , on or before March 14, 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 to the 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. 88–4828 Filed 3–4–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP73–63–002]

Natural Gas Pipeline Co. of America; Petition for Declaratory Order

March 2, 1988.

Take notice that Natural Gas Pipeline Company of America (Natural) on February 24, 1988, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)) filed a petition for a declaratory order in the captioned docket.

Natural explains that the condition imposed by the Federal Power Commission in Ordering Paragraph (F)(10) of the *Order Adopting Settlement Proposal, Authorizing Sale of Gas At Applicable Area Rates, Authorizing Amendment of Purchased Gas Adjustment Clause and Terminating Proceedings* issued August 3, 1973, 50 F.P.C. 368, requires that all natural gas reserves discovered or acquired as a result of activities financed under the revolving expiration fund authorized in the captioned docket shall be dedicated to service for Natural's customers and taken in Natural's system by the most feasible means. By its petition, Natural seeks a declaration that, given the termination of the revolving fund program on August 2, 1985, this condition does not apply to any gas reserves associated with the revolving fund program which are not currently subject to an existing gas purchase contract with Natural.

Copies of this filing were served upon Natural's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4912 Filed 3-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-296-000]

Nielson Enterprises Inc.; Application For Limited-Term; Abandonment With Pregranted Abandonment For Sales Under Small Producer Certificate

February 29, 1988.

Take notice that on February 8, 1988, as supplemented on February 22, 1988, Nielson Enterprises Inc. (Nielson), P.O. Box 370, Cody, WY 82414, filed an application in Docket No. CI88-296-000 requesting limited-term abandonment through December 31, 1989, of its sale of gas to ANR Pipeline Company (ANR) from the Farrand #1 well located in Woodward County, Oklahoma. Nielson also requests pregranted abandonment through December 31, 1989, for sales for resale in interstate commerce of the released volumes under its small producer certificate in Docket No. CS72-450.

In support of its application Nielson states ANR cannot purchase the gas, which Nielson proposes to release, due to market constraints. Nielson states that the deliverability is approximately 250 Mcf/d and the gas is NGPA section 104 minimum rate gas. Nielson requests that its application be considered on an expedited basis pursuant to 18 CFR 2.77.[1]

Since Nielson states that it is subject to substantially reduced takes without payment and has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules and 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 to the 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 Nielson to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4829 Filed 3-4-88; 8:45 am]

BILLING CODE 6717-01-M

Northwest Pipeline Corp.; Change in FERC Gas Tariff

March 2, 1988.

Take notice that on February 25, 1988, Northwest Pipeline Corporation (Northwest) tendered for filing certain tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 1-A.

Northwest states the purpose of this filing is to implement certain tariff provisions which enhance Northwest's ability to provide transportation service under section 311 of the Natural Gas Policy Act (NGPA).

Northwest requests an effective date of March 26, 1988 for all tendered tariff sheets.

Northwest states that a copy of the filing has been mailed to Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4913 Filed 3-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-304-000 et al.]

Parker Gas Transmission, Inc., et al.; Applications for Blanket Limited-Term Certificates with Pregranted Abandonment [1]

March 2, 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 a blanket certificate with pregranted abandonment 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 18, 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.

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[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (40 FERC ¶61,172 (1987)). These interim regulations became effective on September 15, 1987.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Requested term of authorization
CI88-304-000, 2-12-88.	Parker Gas Transmission, Inc.,[2] 1600 Smith Street, Suite 2990, Houston, TX 77002.	3 yr.
CI88-306-000, 2-12-88.	Golden Natural Gas Co., P.O. Box 11248, Midland, TX 79702.	3 yr.
CI88-307-000, 2-16-88.	Mobile Natural Gas Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	(3)
CI88-308-000, 2-16-88.	Corpus Christi Gas Marketing, Inc. and Corpus Christi Gas Gathering, Inc., 615 Upper North Broadway, Corpus Christi, TX 78477.	3 yr.
CI88-338-000, 2-24-88.	Ringwood Marketing Co., 4828 Loop Central Drive, Suite 850, Houston, TX 77081.	3 yr.

[2] Applicant also seeks abandonment authorization and authorization for sales to Applicant on behalf of its producer suppliers.
[3] Unlimited.

[FR Doc. 88-4914 Filed 3-4-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2333]

Rumford Falls Power Co.; Existing Licensee's Intent To File an Application for New License

March 2, 1988.

Take notice that on January 21, 1988, the Rumford Falls Power Company, licensee for the Rumford Falls Project No. 2333, has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Rumford Falls Project No. 2333 will expire on December 31, 1993. The project is located on the Androscoggin River in the Town of Rumford Falls, Maine, and has a total capacity of 34,770 kW.

The principal project works currently licensed for Project No. 2333 are: (1) The Upper Station consisting of a concrete gravity dam with pin-type flashboards, a gatehouse with headgate hoists and gates, two for each of four active penstocks, a reservoir of 400 acres, a powerhouse in two sections, the old Station 120 feet long and 30 feet wide containing one generating unit of 4,050 kW, the New Station, 140 feet long and 60 feet wide contains three units for a total installed capacity of 17,920 kW, two transformer substations, a 40 cycle, 2 circuit, 11-kV, and one 60 cycle 11-kV transmission lines one mile long and underground 11-kV tie line 800 feet long; and (2) the Lower Station consisting of a rock-filled, timber crib, gravity-type dam with 12-inch pin-type flashboards, a 2,400-foot canal with a set of 10 headgates and a gatehouse containing two gate hoists, two 12-foot steel penstocks, surge tanks, a powerhouse containing two generating units capable of developing 6,400 kW each, transmission lines, and appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, 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 December 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. RM7-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM7-7-000 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. 88-4915 Filed 3-4-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI86-27-005 et al.]

Transco Energy Marketing Co. et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

March 2, 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 abandonment 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 18, 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.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Requested term of extension
CI86-27-005, 2-23-88.	Transco Energy Marketing Co., P.O. Box 1396, Houston, TX 77251.	3 yr.
CI87-386-001, 2-22-88.	American Central Gas Pipeline Co. (formerly American Central Gas Pipeline Corp.) [2] Suite 1705, 6100 South Yale Street, Tulsa, OK 74126.	3 yr.
CI87-648-001, 2-24-88.	Victoria Gas Corp., 450 Gears Road, Suite 200, Houston, TX 77067.	(3)
CI87-736-001, 2-22-88.	Chevron Natural Gas Services, Inc., 575 Market Street, San Francisco, CA 94105.	3 yr.
CI87-883-001, 2-19-88.	Meridian Oil Trading Inc., c/o Holland & Hart, 1001 Pennsylvania Avenue NW., Suite 310, Washington, DC 20004.	(3)
CI87-889-001, 2-22-88.	Associated Natural Gas, Inc., P.O. Box 5660, Denver, CO 80202.	(3)
CI88-17-001, 2-23-88.	Tejas Hydrocarbons Co., 333 Clay Street, Suite 4545, Houston, TX 77002.	3 yr.

Docket No. and date filed	Applicant	Requested term of extension
CI88-95-001, 2-19-88	Houston Gas Exchange Corp., 355 Timmons Lane, Suite 1050, Houston, TX 77027.	3 yr.

[2] Applicant requests that the certificate holder in this docket be redesignated from American Central Gas Pipeline Corporation to America Central Gas Pipeline Company and also requests authorization on behalf of suppliers selling to or through Applicant as agent.
[3] Unlimited.

[FR Doc. 88-4916 Filed 3-4-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CI86-278-003 and CI86-296-003

Transcontinental Gas Pipe Line Corp. and Transco Gas Supply Co.; Applications for Extension of Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment on Behalf of Producer-Suppliers

March 2, 1988.

Take notice that on February 23, 1988, Transcontinental Gas Pipe Line Corporation and Transco Gas Supply Company (herein together referred to as Applicants), P.O. Box 1396, Houston, Texas 77251, filed in Docket Nos. CI86-278-003 and CI86-296-003 applications pursuant to section 7 of the Natural Gas Act and the Commission's Rules and Regulations issued thereunder, for an order extending the authorizations previously granted by the Commission in its order issued on March 31, 1987.

Applicants state that the Commission's March 31, 1987, order authorized until March 31, 1988, (1) the blanket limited-term abandonment by Applicants' producer-suppliers of certain sales for resale of natural gas in interstate commerce, (2) a blanket limited-term certificate of public convenience and necessity with pregranted abandonment authorizing the sale for resale of such gas in interstate commerce, and (3) the waiver of certain Commission regulations, including those in Parts 154 and 271 of the Commission's Regulations.

Applicants now request that the authorizations granted in the Commission's March 31, 1987, order be extended until March 31, 1991.

Applicants state that the extension of authorizations requested by Applicants would apply to any or all gas that is currently committed to Applicants under contracts with producer-suppliers and subject to the Commission's Natural Gas Act jurisdiction.

Commission approval for extension of the authority would constitute issuance to Applicants' producer-suppliers of the requisite blanket limited-term full or partial abandonment and blanket limited-term sales certificate authority with pregranted abandonment necessary to permit the marketing beyond March 31, 1988, of gas supplies released by Applicants which are subject to the Commission's NGA jurisdiction. Any or all gas that is currently committed to Applicants under contract with producer-suppliers and subject to the Commission's NGA jurisdiction would be covered by the extension of limited-term abandonment and sales authorizations sought herein, to the extent such gas is released by Applicants—i.e., the applications contemplate the possible release and sale of all jurisdictional gas, including NGPA sections 102, 104, 108 and 109 gas.

Applicant states that granting the extension of authorizations requested herein will assist Applicants in resolving the current surplus deliverability problems, maintain or improve cash flow to producer-suppliers on Applicants' system, maintain pipeline throughput, alleviate potential take-or-pay exposure to Applicants to the benefit of Applicants' sales customers, and permit Applicants to implement the terms of settlement agreements entered into with their producer-suppliers who have granted them concessions from contractual price and take-or-pay provisions. Applicants state that failure to grant the extension of authorizations requested herein will result in discontinuation of the benefits which have accrued to Applicants and to their producer-suppliers and their customers under existing authority, the most severe results possibly including the shutting in at times of much of the gas supply dedicated to Applicants, and significant potential take-or-pay obligations which would burden both Applicants and their customers.

Applicants request that the Commission handle these applications on an expedited basis to avoid disruption of the spot market.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene in order to give the Commission adequate time to consider Applicants' requests, since Applicants' existing authorizations expire March 31, 1988, and lack of continued authority could exacerbate Applicants' take-or-pay claims. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 11, 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 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.

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.

[FR doc. 88-4918 Filed 3-4-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-695-004, et al.]

TXP Operating Co. et al.; Applications for Extension of Blanket Limited-Term Abandonments and Certificates With Pregranted Abandonment [1]

March 2, 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 abandonment and certificate with pregranted abandonment 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 18, 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

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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
CI85-695-004, 2-23-88.	TXP Operating Co. c/o Transco Exploration Co., P.O. Box 1396, Houston, TX 77251.	3 yrs.
CI86-46-003, 2-22-88.	Chevron U.S.A. Inc.,[2] P.O. Box 7309, San Francisco, CA 94120-7309.	3 yrs.
CI87-531-001, 2-19-88.	FMP Operating Co. c/o Holland & Hart, 1001 Pennsylvania Avenue, NW., Suite 310, Washington, DC 20004.	1 yr.
CI87-767-001, 2-19-88.	Ensource Inc. c/o Holland & Hart, 1001 Pennsylvania Avenue, NW., Suite 310, Washington, DC 20004.	1 yr.

[2] Applicant also requests: (1) Authorization for sales by others to or through Applicant as agent and (2) consolidation in this docket and extension of the authorizations granted in Docket No. CI87-918-000 which permit Applicant to make sales of contractually uncommitted gas.

[FR Doc. 88-4917 Filed 3-4-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3337-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: TSCA section 8(a) Chemical Specific Rules. (EPA ICR # 1198).

Abstract: Section 8(a) rules require persons to report to EPA (and keep records) if they manufacture, import, or process or propose to manufacture, import, or process the chemical substance or mixture identified in the 8(a) rule. This report enables EPA to monitor the production, importation, and uses of the identified chemical substance or mixture and to regulate as appropriate. This collection is a renewal.

Respondents: Manufacturers, Importers, and Processors of Chemical Substances.

Estimated Burden: 2,110 hours.

Frequency of Collection: On occasion.

* * * * *

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: March 1, 1988

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-4865 Filed 3-4-88; 8:45 am]

BILLING CODE 6560-50-M

Office of Research and Development

[FRL-3337-8]

Ambient Air Monitoring Reference and Equivalent Methods; Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53, has designated another reference method for the measurement of ambient concentrations of carbon monoxide. The new reference method is an automated method (analyzer) which utilizes a measurement principle based on non-dispersive infrared spectrometry. The new designated method is identified as follows:

RFCA-0388-066, "Monitor Labs Model 8830 Carbon Monoxide Analyzer," operated on the 0-50 ppm range, with a five micron Teflon filter element installed in the rear-panel filter assembly, with or without any of the following options:

2 Zero/Span Valve Assembly
3 Rack Assembly
4 Slide Assembly
7 230 VAC, 50/60 Hz

This method is available from Monitor Labs, Incorporated, 10180 Scripps Ranch Boulevard, San Diego, California 92131. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 53, February 2, 1988, page 2887.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users).

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of Part

53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR Part 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR Part 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the states in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the method should be directed to the manufacturer.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 88–4866 Filed 3–4–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 25, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reductioin Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0292.

Title: Part 69, Access Charges.

Action: Revision.

Respondents: Businesses (including small businesses).

Frequency of Response: Recordkeeping requirement, monthly, semi-annually, and a one-time filing requirement.

Estimated Annual Burden: 5,832 Responses, 1,458 Recordkeepers; 176,709 Hours Needs and Uses: The rules in 47 CFR Part 69 establish methods for compensating exchange carriers for the origination or termination of interstate and foreign telecommunications in order to eliminate unlawful discrimination or preferences resulting from prior methods. The Rules also establish procedures for the pooling of revenues for such service. The information is used to compute charges in tariffs for access service (or origination or termination) and to compute revenue pool distributions. Neither process could be implemented without the information.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–4821 Filed 3–4–88; 8:45 am]

BILLING CODE 6712–01–M

Information Collection Requirement Approval by Office of Management and Budget

March 1, 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.: 3060–0402.

Title: Application for a New or Modified Microwave Radio Station License Under Part 21.

Form No.: FCC 494.

OMB No.: 3060–0403.

Title: Certification of Completion of Construction Under Part 21.

Form No.: FCC 494–A.

These two new forms have been approved for use through November 30, 1990. A public notice will be issued at a later date containing information on availability and implementation.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–4897 Filed 3–4–88; 8:45 am]

BILLING CODE 6712–01–M

Emergency Broadcast System Advisory Committee; Meeting

Pursuant to the provisions of Pub. L. 92–463, announcement is made of a public meeting of the Emergency Broadcast System Advisory Committee (EBSAC) on March 25, 1988, from 9:30 a.m. until 12:00 p.m. The meeting will be held at the National Association of Broadcasters, in the Wasilewski Room, 1771 N Street NW., Washington, DC.

Agenda:

—Welcome of all Committee Members
—Presentation of the Committee's Mission
—Presentation of EBS Task Force Report
—Discussion of EBS Two-tone Attention Signal Changes
—Discussion of the Revitalization of State/Local Plans
—Training
—Adjournment

The meeting is open to the public, and a written statement may be filed with the Committee at any time. Those persons wishing to make an oral statement must consult with the Committee prior to the meeting. Anyone desiring additional information about the meeting may contact the EBSAC Executive Secretariat, Claudette Pride, on (202) 632–3906.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–4822 Filed 3–4–88; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1714]

Petitions For Reconsideration and Clarification of Actions in Rulemaking Proceedings

February 26, 1988.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed March 23, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 97.86(d) of the rules to allow auxiliary operation in the 52–54 MHz segment of the 6 meter amateur frequency band.
Number of petitions received: 1.
Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Topsail Beach and Wilmington, North Carolina) (MM Docket No. 86–27, RM's 5157 & 5364).
Number of petitions received: 1.
Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Burnet and Mason, Texas) (MM Docket No. 86–324, RM–5395).
Number of petitions received: 1.
Subject: Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers. (CC Docket No. 86–497).
Number of petitions received: 10.

Supplement To Petition For Clarification

Subject: Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821–824/866–869 MHz Bands by the Public Safety Services. (Gen. Docket No. 87–112).
Number of petitions received: 1.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–4898 Filed 3–4–88; 8:45 am]
BILLING CODE 6712–01–M

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95–454), Chairman Dennis R. Patrick has appointed Mr. Alex D. Felker, Chief, Mass Media Burea, to the Executive Resources and Performance Review Board.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–4820 Filed 3–4–88; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 1988–5]

Filing Dates for Virginia Special Elections

AGENCY: Federal Election Commission.
ACTION: Notice of filing dates for Virginia special elections.

SUMMARY: Committees required to file reports in connection with only the Democratic Convention to be held in the 5th Congressional District of Virginia on March 26, 1988, should file a 12-day Pre-Convention Report by March 14, 1988. Committees required to file reports in connection with only the Republican Convention on April 9, 1988, shall file a 12-day Pre-Convention Report by March 28, 1988. Committees required to file reports in connection with *both* the Special Convention and Special General Election to be held on June 14, 1988, must file a 12-day Pre-Convention Report, a 12-day Pre-Special Election Report by June 2, 1988, and a 30-day Post-Special Election Report by July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376–3120; Toll Free (800) 424–9530.

Notice of Filing Dates for Special Convention and Special General Elections, 5th Congressional District, Virginia

All principal campaign committees of candidates in the Democratic Convention and all other political committees not filing monthly, which support candidates in the Convention shall file a 12-day Pre-Convention Report by March 14, 1988, with coverage dates from the last report filed through March 6, 1988. All principal campaign committees of candidates in the Republican Convention and all other political committees not filing monthly, which support candidates in the convention, shall file a 12-day Pre-Convention Report by March 28, 1988, with coverage dates from the last report filed through March 20, 1988. Committees must also file an April Quarterly Report due April 15, 1988.

All principal campaign committees of candidates in the Special General Election and all other political committees not filing monthly reports which support candidates in this election shall file a 12-day Pre-Special Election Report due on June 2, 1988, with coverage dates from April 1, 1988 through May 25, 1988, and a 30-day Post-Special Election Report due on July 14, 1988, with coverage dates from May 26, 1988 through July 4, 1988. Committees that file these reports in a timely manner will be granted a waiver of the July Quarterly reporting requirement.

Dated: March 2, 1988.
Thomas J. Josefiak,
Chairman, Federal Election Commission.
[FR Doc. 88–4834 Filed 3–4–88; 8:45 am]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Bank Shares Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

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

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated,* Minneapolis, Minnesota; to engage *de novo* in making, acquiring, and servicing loans or other extensions of credit directly or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-4810 Filed 3-4-88; 8:45 am]

BILLING CODE 6210-01-M

Chemical New York Corp.; Acquisition of Company Engaged in Nonbanking Activities

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

The 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 25, 1988.

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

1. *Chemical New York Corporation,* New York, New York; to expand its activities as a futures commission merchant through its subsidiary Chemical Futures, Inc., New York, New York, to include soliciting, executing, and clearing futures contracts on the Bond Buyer Municipal Bond Index and providing related investment advice.

Board of Governors of the Federal Reserve System, March 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-4811 Filed 3-4-88; 8:45 am]

BILLING CODE 6210-01-M

Community Bancshares of Alva, 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 25, 1988.

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

1. *Community Bancshares of Alva, Inc.,* Alva, Oklahoma; to become a bank holding company by acquiring 82 percent of the voting shares of Community National Bank, Alva, Oklahoma.

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

1. *Cooper Lake Financial Corporation,* Cooper, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank in Cooper, Cooper, Texas.

Board of Governors of the Federal Reserve System, March 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-4812 Filed 3-4-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 23, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Peter A. Sabia,* Dunmore, Pennsylvania; to acquire an additional 5 percent of the voting shares of First Jermyn Corporation, Jermyn, Pennsylvania.

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

1. *Jerry G. Scott,* Seminole, Oklahoma; to acquire an addition 1.2 percent; and James N. Wall, Seminole, Oklahoma, to acquire an additional 1.2 percent of the voting shares of Prague Bancorp, Inc., Prague, Oklahoma, and thereby indirectly acquire Prague National Bank, Prague, Oklahoma.

Board of Governors of the Federal Reserve System, March 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–4813 Filed 3–4–88; 8:45 am]

BILLING CODE 6210-01-M

Trustcorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these 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 25, 1988.

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

1. *TrustCorp, Inc.,* Toledo, Ohio; to acquire 100 percent of the voting shares of Summcorp, Fort Wayne, Indiana, and thereby indirectly acquire Summit Bank of Johnson County, Edinburg, Indiana; Summit Bank, Fort Wayne, Indiana; Summit Bank of Clinton County, Frankfort, Indiana; Summit Bank of Kendallville, Kendallville, Indiana; Summit Bank of Marion, Marion, Indiana; Industrial Trust & Savings Bank, Muncie, Indiana; Summit Bank of Hamilton County, Sheridan, Indiana; Summit Bank of South Bend, South Bend, Indiana; and Decatur Financial, Inc., Decatur, Indiana, and thereby indirectly acquire Decatur Bank & Trust Co., Decatur, Indiana.

In connection with this application, TrustCorp of Indiana, Inc., Fort Wayne, Indiana, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Summcorp.

TrustCorp, Inc. and TrustCorp of Indiana, Inc. have also applied to acquire Summcorp Financial Services, Inc., Fort Wayne, Indiana, and thereby engage in discount brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–4814 Filed 3–4–88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0081]

Drug Export; Enoximone for Intravenous Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merrell Dow Pharmaceuticals Inc. has filed an application requesting approval for the export of the human drug Enoximone for Intravenous Injection, to France via Italy.

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

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merrell Dow Pharmaceuticals Inc., P.O. Box 429553, Cincinnati, Ohio 45242–9553, had filed an application to export the drug Enoximone for Intravenous Injection, to France via Italy. Enoximone Injection is a cardiotonic agent with positive inotropic and vasodilator properties. The application was received and filed in the Center for Drug Evaluation and Research on February 23, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions

may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 17, 1988 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

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

Dated: February 26, 1988.

Daniel L. Michels,

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

[FR Doc. 88-4872 Filed 3-4-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 we are proposing to establish a new system of records, the "Medicaid Third Party Liability (TPL) Cost Avoidance Study", HHS/HCFA/BQC No. 09-70-2005. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB), on March 2, 1988. The new system of records including routine uses will become effective May 2, 1988 unless HCFA receives comments which would necessitate alternations to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-M-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mel Schmerler, Bureau of Quality Control, Health Care Financing Adminstration, Room 233, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301-966-3333.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records, collecting data under the authority of section 1902(a)(25) of the Social Security Act, as implemented by regulations at 42 CFR 433.135. Federal legislation, regulation, and instruction require States to take all reasonable measures to ascertian the legal liability of third parties to pay for medical services provided to a Medicaid recipient. Under the cost avoidance system, the State edits claims to detect a third party insuror prior to making payment; if there is a third party resource indicated, the State returns the claim to the provider with instructions to bill the third party insuror. The Federal regulation at 42 CFR 433.139 requires States to use the cost avoidance system of payment where existence of a probable third party payor is known at the time of claim filing by the provider. The purpose of this system of records is to provide data necessary to: (1) Enable the contractor to develop a methodology for States to use to estimate and report cost avoidance savings to the Medicaid program and (2) make determinations whether or not Medicaid beneficiaries have third party resources available to them to replace State and Federal payments made on their behalf for medical services. From these determinations, a national estimation will be made of both utilized and untapped third party resources available.

This system of records will contain information acquired through case record reviews, claims reviews, survey questionnaires, field investigations, and interviews and recipients. In addition, the records will contain any correspondence with insurance companies, attorneys, providers, absent parents, and any other entity which can furnish information with regard to thrid party liability.

In order to fulfill objectives and complete the tasks in this project, HCFA, directly or through its contractors, must have individually identified records. Since we are proposing to establish this system of records in accordance with the requirements and principals of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of individuals for "routine uses"—that is, disclosures that are compatible with the purpose for which we collect the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicaid program, for which we are responsible.

We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: February 29, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-2005

SYSTEM NAME:

Medicaid Third Party Liability (TPL) Cost Avoidance Study.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA central office or regional office. A contractor site will be determined when and if the contract is executed. Contact the System Manager for the location of the contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Sampled Medicaid beneficiaries in 8 jurisdictions (particular jurisdictions to be selected at a later date).

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents (e.g., names of recipients and family members; SSN's; unique identifiers, if any; portions of eligibility applications; questionnaires; State forms relating to health insurance information and responsible third parties; correspondence with insurance companies, attorneys, and other responsible third party payors).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1902(a)(25) of the Social Security Act. Implementing regulations at 42 CFR Part 433, Subpart D, "Third Party Liability".

PURPOSE OF THE SYSTEM:

To gather data from which a methodology can be created to estimate and report cost avoidance savings in States, and to estimate third party

resources available for Medicaid recipients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To the State Medicaid agencies that will use this information to update their files and made third party recoveries, as appropriate.

2. To collateral contacts to verify availability of third party resources. Collateral contacts are contacts with third parties that include but are not limited to insurance companies, employers, attorneys, absent parents, Federal and State agencies, and any other entity that can provide information necessary to arrive at a definitive decision as to the availability of third party resources.

3. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STOARGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by recipient name, social security number, or other unique identifier, by HCFA or the State.

SAFEGUARDS:

HCFA and/or the contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, if required, HCFA and/or the contractor will initiate automated data processing (ADP) systems security procedures required by HHS *ADP Systems Manual*, Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hard copy records will be maintained during the life of the contract. Disposal occurs when the contract is terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Quality Control, Health Care Financing Administration, Room 200, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above. Specify name, address, and State.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with Departmental Regulations (45 CFR 56.7).)

RECORD SOURCE CATEGORIES:

Data are collected from the beneficiary and collateral contacts. Collateral contacts are contacts with third parties that include but are not limited to contacts with private individuals, insurance companies, attorneys, employers, Federal and State agencies, and any other entity that can provide information necessary to arrive at a definitive decision regarding the availability of third party resources to Medicaid beneficiaries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-4806 Filed 3-4-88; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Division of Research Resources; Meeting of the Biomedical Research Technology Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee (BRTRC), Division of Research Resources (DRR), March 17-18, 1988, Building 31, Conference Room 8, C Wing, National institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 18 from 1:00 p.m. until adjournment, during which time there will be comments by the Director, DRR; report of the Director, BRTP; and an update on the Small Grants for Innovative Technology announcement. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 8:30 a.m. on March 17 until recess, and on March 18 from 8:30 a.m. until 1:00 p.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31 Rm. 5B-10, National Institutes of Health, Bethesda, MD 20892, (301) 496-5545, will provide a summary of the meeting and a roster of committee members upon request. Dr. Caroline Holloway, Executive Secretary, Biomedical Research Technology Review Committee, Division of Research

Resources, Bldg. 31, Rm. 5B–41, National Institutes of Health, Bethesda, MD 20892, (301) 496–5411, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health.)

Dated: February 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–4928 Filed 3–4–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Cancer Program Project Review Committee, National Cancer Institute, on March 25, 1988, Ramada Renaissance, New Hampshire Avenue and M Street, NW., Washington, DC 20037.

This meeting will be open to the public on March 25 from 8 a.m. to 8:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 25 from 8:30 a.m. to adjournment on March 25 for the review, discussion and evaluation of individual program project applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland, 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members, upon request.

Dr. Robert D. Hammond, Executive Secretary, Clinical Cancer Program Project Review Committee, National Cancer Institute, Westwood Building, Room 822, Bethesda, Maryland 20892 (301/496–7924) will provide substantive program information, upon request.

Dated: February 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–4929 Filed 3–4–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on March 28–29, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on March 28 from 9 a.m. to approximately 10:30 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 28, from 10:30 a.m. to adjournment on March 29, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braum or Carol Shreffler, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle, North Carolina, 27709, (telephone 919–541–7826), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13. 115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: February 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–4930 Filed 3–4–88; 8:45 am]

BILLING CODE 4101–01–M

National Institute of Dental Research; Meeting of NIDR Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on April 20–22, 1988, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on April 20 and from 9:00 a.m. to 12:00 noon on April 21. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:30 p.m. to recess April 21 and from 9:00 a.m. to adjournment on April 22 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, Maryland 20892 (telephone 301–496–1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: February 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–4931; Filed 3–4–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological and Communicative Disorders and Stroke; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, Intramural Research Program on April 27–29, 1988, Conference Room 1B–07, Building 36, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. to 5 p.m. on April 28 to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 8 p.m. to 10 p.m. on April 27 and from 9 a.m. until adjournment on April 29 for the review, discussion and evaluation of individual programs and projects. The programs and discussions include consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Mr. Edward M. Donohue, Federal Building, Room 1016, 7550 Wisconsin Avenue, Bethesda, MD 20892, telephone (301) 496–4188, will furnish a summary of the meeting and a roster of committee members upon request.

The Executive Secretary from whom substantative program information may be obtained is Dr. Irwin J. Kopin, Director, Intramural Research Program, NINCDS, Building 10, Room 5N214, NIH, Bethesda, MD 29892, telephone (301) 496–4297.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: February 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–4932 Filed 3–4–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary For Health; Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to section 13 of Pub. L. 92–463, the Annual Reports for the following Office of the Assistant Secretary for Health Federal Advisory Committees have been filed with the Library of Congress:

Health Care Technology Study Section;
Health Services Research and Developmental Grants Review Committee;
National Advisory Council on Health Care Technology Assessment.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS Building, Room G400, 330 Independence Avenue, Southwest, Washington, DC 20201, telephone (202) 245–6791.

Copies may be obtained from Mr. James E. Owens, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3091.

Dated: February 19, 1988.

Donald E. Goldstone, M.D.

Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88–4837 Filed 3–4–88; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1781]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

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

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

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

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

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

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

Date: March 1, 188

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Public Housing: Life-Cycle Cost Analysis of Utility Combinations
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: This information is needed by HUD to assure selection of the most cost-effective utilities, fuels, related mechanical equipment, and methods of purchase for public housing projects. The information is used to compare and recommend the most cost-effective utility combination for new constructions and rehabilitation projects.
Form Number: HUD–51994
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Respondents: On Occasion
Estimated Burden Hours: 1,562
Status: Extension
Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880

Date: March 1, 1988.

Proposal: Public Housing: Contract Administration
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: This information is needed because standard construction practice requires that public housing agencies (PHAs) retain certain records. These records are submitted with certain documents in conjunction with the award of the construction contract and the development or modernization of public housing projects
Form Number: HUD–5372 and 51000
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Respondents: On Occasion
Estimated Burden Hours: 7,023
Status: Extension
Contact: Pris P. Buckler, HUD, (202) 755–6640; John Allison, OMB, (202) 395–6880

Date: March 1, 1988.

Proposal: Coinsurance Application Package: Management Exhibits
Office: Housing
Description of the Need for the Information and its Proposed Use: This coinsurance loan application management exhibits are needed by the lenders for proper loan underwriting procedures. This information is used to deter the

incidence of defaults and consequent losses to HUD's insurance fund
Form Number: None
Respondents: Business or Other For-Profit
Frequency of Respondents: On Occasion
Estimated Burden Hours: 750
Status: Reinstatement
Contact: Matthew C. Andrea, Jr., HUD, (202) 755–4956; John Allison, OMB, (202) 395–6880

Date: February 9, 1988.

Proposal: Requisition for Development on Modernization Funds
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: The U.S. Housing Act of 1937, as amended, authorizes HUD to assist Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) in the development and rehabilitation of lower income housing. This form will be used by the PHAs/IHAs to requisition funds for their immediate needs
Form Number: HUD–5402A
Respondents: State or Local Governments
Frequency of Respondents: On Occasion
Estimated Burden Hours: 9,000
Status: Revision
Contact: Wallace H. Garner, HUD, (202) 755–1015; John Allison, OMB, (202) 395–6880

Date: February 19, 1988.

[FR Doc. 88–4889 Filed 3–4–88; 8:45 am]
BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. N–88–1783]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records. HUD/DEPT–34, Pay and Leave Records of Employees.

EFFECTIVE DATE: This amendment shall become effective without further notice in 30 calendar days (April 6, 1988) unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

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

SUPPLEMENTARY INFORMATION: HUD/DEPT–34 contains information about the pay and leave records the Department maintains on its employees. The Department is converting its Terminally Operated Personnel/Payroll System (TOPPS) to the Department of Agriculture's National Finance Center (NFC) payroll/personnel system. The conversion requires amending HUD/DEPT–34 to reflect the involvement of the NFC in the processing and maintenance of this Department's personnel/payroll records. As a result of the conversion, the Department is also shifting the currently centralized function of payroll processing to the operating personnel offices and is changing the current processing of hard copy time and attendance data to direct electronic transmission to the NFC. In addition, the system of records is being amended to reflect the availability of the Thrift Savings Plan to Department employees. The amended system is published below in its entirety. Previously, the system and a prefatory statement containing the general Routine Uses applicable to most of the Department's systems of records were published by the **Federal Register** in the *Privacy Act Issuances, 1986 Compilation, Volume II.* A report of the Department's intention to amend this system was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget on February 16, 1988.

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

Issued at Washington, DC, March 2, 1988.

Judith L. Hofmann,

Assistant Secretary for Administration.

HUD/DEPT–34

SYSTEM NAME:

Pay and Leave Records of Employees.

SYSTEM LOCATION:

All Department offices and the Department of Agriculture's National Finance Center. For a complete listing of Department offices, with addresses, see Appendix A. The address of the National Finance Center is P.O. Box 60000, New Orleans, LA 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and separated HUD employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number and employee number, grade, step, and salary; organization, retirement or FICA data as applicable; Federal, state, and local tax deductions; regular and optional Government life insurance deduction(s), health insurance deduction and plan or code; Thrift Savings Plan participation and contribution; cash award data; jury duty data; military leave data; pay differentials; union dues deduction; allotments by type and amount; financial institution code and employee account number; leave status and data of all types (including annual, compensatory, jury duty, maternity, military, retirement disability, sick, transferred, and without pay); time and attendance records, including sign in/sign out sheets and related documentation; leave applications and reports; individual daily time reports; adjustments to time and attendance; overtime reports, supporting data, such as medical certificates; number of regular, overtime, holiday, Sunday, and other hours worked; pay period number and ending dates; cost of living allowances; mailing address; co-owner and/or beneficiary of bonds; marital status and number of dependents; "Notification of Personnel Actions." Congressional requests or inquiries on the pay/leave problems of employees; court orders; personnel/payroll data requests; information about the problem received from the employee, an Administrative Office, or from a personnel employee, including supporting documentation; written correspondence pertaining to pay/leave problems; and related information or documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other Routine Uses: Transmittal of data to U.S. Treasury to effect issuance of paychecks to employees and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes. Annual reporting of W–2 statements to Internal Revenue Service, Social Security Administration, the individual, and taxing authorities of states, the District of Columbia, terrorities, possessions, and local

governments, except Social Security Numbers will be reported only to such authorities that have satisfied the requirements set forth in Section 7(a)(2)(B) of the Privacy Act of 1974. To the Office of Personnel Management concerning pay, benefits, retirement deductions, and other information necessary for the office to carry on its Governmentwide personnel functions; to the General Accounting Office (GAO)—for audit and to resolve employee appeals on pay/leave decisions; to other Federal Government agencies—to facilitate employee transfers; to state agencies—to verify workmen's compensation injury claims; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset; to the Federal Retirement Thrift Investment Board to administer the Thrift Savings Plan; to the Department of Agriculture's National Finance Center for payroll/personnel action, receipt account, time and attendance, and administrative overpayment processing; to the Department of Agriculture, Office of Inspector General, for audits of the payroll/personnel system; to Federal, State, and local agencies to assist in the enforcement of child and spousal support obligations.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15. U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual, machine-readable, and magnetic media.

RETRIEVABILITY:

Name of employee, Social Security Number.

SAFEGUARDS:

Physical, technical, and administrative security is maintained with all storage equipment and/or rooms locked when not in use. Admittance, when open, is restricted to authorized personnel only. All payroll personnel, computer operators, programmers, and other staff are instructed and cautioned on the confidentiality of the records. Manual files are kept in lockable desks, file cabinets, and safes.

RETENTION AND DISPOSAL:

Retained on site until after GAO audit, then disposed of or transferred to Federal Records Storage Centers in accordance with fiscal records program approval by GAO, as appropriate, or General Record Schedules of the General Services Administration. Generally, records on employee pay/leave problems are retained in the operating office for three years after a decision has been made on the problem. For payroll related records, the retention schedule is the same as that for employee pay and leave records. In offices not actually processing the pay/leave problem resolution, problem pay/leave records are retained for six months after a decision has been made on the problem, and then may be disposed of.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Systems and Payroll Division, Office of Personnel and Training, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

NOTIFICATION PROCEDUURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with procedures in 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES;

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contracting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location (a list of all locations is given in Appendix A) and (ii) in relation to appeals of initial denials, the Department of Housing and Urban Development Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; supervisors; timekeepers; official personnel records; previous employers; or other Federal Government agencies; Headquarters or Regional Office personnel responsible for solving pay/leave/time problems; National Finance Center personnel responsible for solving pay/leave/time problems; Field Office personnel who have information about pay/leave problems, banks, other financial institutions, and courts.

[FR Doc. 88-4920 Filed 3-4-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-025-88-022]

Phoenix District Planning Amendment and Decision Record, Arizona; Availability and Public Comment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of Phoenix District Planning Amendment and Decision Record and opportunity for public comment.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, a Draft Planning Amendment/Environmental Assessment was prepared by the Phoenix District, Arizona. A subsequent Decision Record and Finding of No Significant Impact (FONSI) is made available for public comment for thirty (30) days, after which the Decision will become final.

The Decision finds it appropriate to amend the land tenure sections of the Lower Gila North, Black Canyon, Middle Gila and Silver Bell Management Framework Plans and identify land available for exchange purposes.

Public Participation: Copies of the Decision Record and FONSI are available upon request from the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863-4464. Public reading copies of the amendment may also be reviewed there and at the Bureau of Land Management, Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona 85014, (602) 241-5547.

Written comments should be sent to William T. Childress and Arthur E. Tower, Area Managers, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The public review and comment period will end thirty (30) days from the date of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: William T. Childress or Arthur E. Tower, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,

District Manager.

[FR Doc. 88-4454 Filed 3-4-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-08-4410-4-ADVB]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Pub. L. 92-463 and Pub. L. 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Thursday, April 7, 10 a.m. to 5 p.m., and Saturday, April 9, 8 a.m. to noon, in Meeting Rooms A and B of the Travelodge Vacation Inn, 2000 Cottonwood Circle, El Centro, California. Friday, April 8, will be devoted to a field trip within the El Centro Resource Area. Members of the public may follow the Council on the field trip but will have to furnish their own transportation, food and drink.

Agenda items will include: Council review of 1988 amendment proposals to the CDCA Plan; review of status and process on West Rand Mtn ACEC Plan, Rand Recreation Plan, and Afton Canyon ACEC Plan; status review on East Mojave Plan; Review of FY1988 budget and FY1989 and 1990 budget proposals; status/Windy Point. There will also be discussion of items of past consideration including local government cooperation and coordination involving both lands and minerals management; military use of public land, Prado Dam and Reservoir land issues. The Council will also be given status reports and be asked for advice regarding strategies for dealing with vandalism and protests on public lands, and will discuss, in addition to specific items on Afton, the CDCA general program and riparian area management.

All formal Council meetings are open to the public, with time allocated for public comments, such time made available by the Council Chairman during presentations of various agenda items.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Dr. Loren Lutz, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507. Written comments are also accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated in the minutes.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507 (714) 351-6383.

Dated: March 2, 1988.

Gerald E. Hillier,

District Manager.

[FR Doc. 88-4956 Filed 3-4-88; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Environmental Documents Prepared For Proposed Oil and Gas Operations on The Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Apache Corporation, structure removal operations, ES/SR 87-033.	Eugene Island Area, South Addition, Block 321, Lease OCS-G 2610, 84 miles south of St. Mary Parish, Louisiana.	Dec. 9, 1987
Walter Oil and Gas Corporation, structure removal operations, ES/SR 87-027.	Sabine Pass Area, Block 7, Lease OCS-G 3956, 10 miles south of Cameron Parish, Louisiana.	Nov. 6, 1987.
Kerr-McGree Corporation, structure removal operations, ES/SR 87-026.	High Island Area, South Addition, Block A-508, Lease OCS-G 3245, 79 miles south of Galveston, Texas.	Oct. 29, 1987.
Mobil Oil Exploration & Producing Southeast Inc., structure removal operations, ES/SR 87-024.	West Cameron Area, Blocks 72, 101, and 102, Leases OCS 0245, 0246, and 0247, respectively, 20 miles south of Cameron Parish, Louisiana.	Nov. 6, 1987.
Samedan Oil Corporation, structure removal operations, ES/SR 87-020.	West Cameron Area, Block 67, Lease OCS-G 3256, 10 miles south of Cameron Parish, Louisiana.	Oct. 14, 1987.
Chevron U.S.A. Inc., structure removal operations, ES/SR 87-014.	South Timbalier Area, Block 128, Lease OCS 0498, 25 miles south of Lafourche Parish, Louisiana.	Dec. 22, 1987.
Mobil Oil Exploration & Producing Southeast Inc., structure removal operations, ES/SR 87-013.	Eugene Island Area, Block 120, Lease OCS 050, 40 miles south of St. Mary Parish, Louisiana.	Nov. 4, 1987.
CNG Producing Company, one exploratory well, SEA No. R-1937.	High Island Area, East Addition, South Extension, Block A-374, Lease OCS-G 6256, 112 miles southeast of Galveston, Texas.	Nov. 3, 1987.
Sun Exploration and Production Company, five exploratory wells, SEA No. N-2758.	High Island Area, East Addition, South Extension, Block A-353, Lease OCS-G 7362, 113 statute miles south of Sabine Pass, Texas.	Sept. 24, 1987.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS

Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: February 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–4799 Filed 3–4–88; 8:45 am]

BILLING CODE 4310-MR-M

Environmental Document Prepared for Proposed Oil and Gas Operations on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of the Availability of Environmental Document Prepared for an OCS Minerals Development and Production Plan (Revised) on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), prepared by the MMS for the following oil and gas development and production activity proposed on the Pacific OCS.

Activity/Operator	Location	Date
Exxon Company, U.S.A. Development and production, OCS, Santa Ynez Unit.	Western Santa Barbara Channel Block 6A (52 N., 77 W.; 53 N., 75 W.; and 53 N., 78 W.).	Feb. 19, 1988.

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about EAs and FONSIs prepared for activities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS Region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor, Office of Leasing and Environment, Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, Mail Stop 300, Los Angeles, CA, 90017, telephone (213) 894–6775.

SUPPLEMENTAL INFORMATION: The MMS prepares EAs and FONSIs for proposals which relate to exploration for and the development/production of oil and gas resources on the Pacific OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposal constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(c). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Date: March 1, 1988.

James W. Sutherland,

Acting Regional Director.

[FR Doc. 88–4885 Filed 3–4–88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Cities Service Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Cities Service Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4546, Block 654, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Harbor Island, Texas.

DATE: The subject DOCD was deemed submitted on February 22, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: Feb 24, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–4797 Filed 3–4–88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Mobil Exploration and Producing U.S. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the

activities it proposes to conduct on Lease OCS-G 5809, Blocks 944 and 988, Ewing Bank Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 22, 1988. Comments must be received on or before March 22, 1988, 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-4798 Filed 3-4-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

[DES 88-10]

Draft Environmental Impact Statement; Wilderness Recommendation Bering Land Bridge National Preserve, Alaska; Public Hearings and Meetings

ACTION: Notice of the availability of the Draft Environmental Impact Statement (DEIS) regarding Wilderness Recommendation Bering Land Bridge National Preserve, Alaska and the holding of public hearings and public meetings.

Four alternatives were examined ranging from no action, which means no wilderness designation, to the designation of all suitable lands as wilderness. Alternative 2, the proposed action, excludes 89 percent of the lands suitable from wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end May 27, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503. Comments must be received by May 27, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Yukon-Charley Rivers National Preserve and Kenai Fjords National Park draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, April 18, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive at a time to be announced later in local newspapers.

Two public meetings will be held on Bering Land Bridge National Preserve Wilderness DEIS. One in Shishmaref, Alaska, on Wednesday, April 20, 1988, at 7:00 p.m. in the Community Building; and the other in Nome, Alaska, on Thursday, April 21, 1988, 7:00 p.m., in the City Council Chambers.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654. The headquarters in Nome, Alaska will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC, 18th and C Streets, NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Date: March 1, 1988.

Approved.

Bruce Blanchard,

Director, Office of Environmental Projects Review, United States Department of the Interior.

[FR Doc. 88-4791 Filed 3-4-88; 8:45 am]

BILLING CODE 4310-70-M

Meeting of National Park System Advisory Board

Notice is hereby given in accordance with the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247) that a meeting of the National Park System Advisory Board will be held in Harpers Ferry, West Virginia on April 25-27, 1988.

The general business session will start at 8:30 a.m., Tuesday morning, April 26, and conclude about 4:45 p.m. on Wednesday, April 27. It will be held in the second-floor training room of the Service's Mather Training Center, near the corner of Filmore and Jackson Streets in Harpers Ferry. The Advisory Board will consider potential National Historic Landmark nominations, plus a variety of matters relating to the National Park System. The meeting will follow an April 25 orientation tour and briefings on issues at local National Park Service units and facilities.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Advisory Board a written statement concerning matters to be discussed.

Persons wishing further information concerning this meeting or who wish to

submit written statements may contact Mr. David L. Jervis, National Park Service, P.O. Box 37127, MIB–MS 1226, Washington, DC 20013–7127 (telephone 202/343–4030).

Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting in Room 3424 Interior Building, 18th and C Streets NW., Washington, DC.

Carol F. Aten,

Chief, Office of Policy.

[FR Doc. 88–4792 Filed 3–4–88; 8:45 am]

BILLING CODE 4310–70–M

U.S. World Heritage Nomination 1988

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the nomination of Taos Pueblo to the World Heritage List. The nomination is the result of Interior's annual World Heritage nomination process, which was initiated through a February 19, 1987, **Federal Register** notice (52 FR 5198). The Department earlier announced the identification of the site as a proposed U.S. World Heritage nomination (52 FR 41513). The nomination has been submitted to the Secretariat of the World Heritage Committee for consideration through a process that could lead to its inscription on the World Heritage List in fall 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Milne, Chief, Office of International Affairs, National Park Service, U.S. Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 98 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs, and provides for:

(a) The establishment of a 21-member World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund, with a primary function to assist participating countries in preserving and protecting endangered World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the vital importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 288 cultural and natural properties. The World Heritage Committee evaluates all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, presentation, and rehabilitation of World Heritage properties situated within its borders.

The Federal Interagency Panel for World Heritage makes recommendations on proposed U.S. World Heritage nominations and related matters. The Panel includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the U.S. Fish and Wildlife Service and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the Department of Commerce; the Department of Agriculture; the U.S. Information Agency; and the Department of State.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470a–1, a–2). On May 27, 1982, the Interior Department published in the **Federal Register** the final rules which are used to carry out this legislative mandate (47 FR 23392). The rules contain further information on the Convention and its implementation in the United States.

U.S. World Heritage Nomination: 1988

The Interior Department, in cooperation with the Federal Interagency Panel for World Heritage, has selected the following property as a U.S. nomination to the World Heritage Committee for inscription on the World Heritage List.

I. Cultural Property

Post-Contact Aboriginal

Taos Pueblo, New Mexico (36°25′ N., 105°40′ W.). A center of Indian culture since the 17th century, the Pueblo of Taos, still active today, symbolizes Indian resistance to external rule. The mission of San Geronimo, one of the earliest in New Mexico, was built near Taos Pueblo in the early 17th century. Criteria: (v) an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change.

Date : February 12, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–4790 Filed 3–4–88; 8:45 am]

BILLING CODE 4310–70–M

U.S. World Heritage Nomination Process; Calendar Year 1988

AGENCY: National Park Service, Department of the Interior.

ACTION: Public notice and request for comment.

SUMMARY: The Department of the Interior, through the National Park Service, announces the process that will be used in calendar 1988 to identify possible U.S. nominations to the World Heritage List. This notice lists the properties that are included in the Inventory of Potential Future U.S. World Heritage Nominations, and solicits public comments and suggestions on properties that should be considered as potential U.S. World Heritage nominations this year. This notice identifies the requirements that U.S. properties must satisfy to be considered for nomination, and references the rules that the Department of the Interior has adopted to implement the World Heritage Convention. In addition, this notice contains the criteria which cultural or natural properties must satisfy for World Heritage status, and lists the 17 U.S. properties inscribed on the World Heritage List as of January 1, 1988.

DATES: Comments or suggestions of cultural or natural properties as potential 1989 U.S. World Heritage nominations must be received within 60 days of this notice. Comments should

pertain to the merits of properties included on the Inventory or others which the respondent believes should be considered for nomination to the World Heritage List in 1988. Comments should also specify how the recommended property satisfies one or more of the World Heritage criteria. The Department will decide the issue of nominations for this year and will publish the decision in the **Federal Register**, with a request for further public comment in the event that potential nominations are identified. Comments on potential United States nominations which may be listed must be received within 30 days of the second notice. In the event that nominations are favorably identified and received, the Department of the Interior will subsequently publish in the **Federal Register** a final list of proposed 1989 U.S. World Heritage nominations. A detailed nomination document will be prepared for each such proposed nomination. In November, the Federal Interagency Panel for World Heritage will review the accuracy and completeness of draft 1989 United States nominations, and will make recommendations to the Department of the Interior. The Assistant Secretary for Fish and Wildlife and Parks will subsequently transmit approved nomination(s) on behalf of the United States to the World Heritage Committee Secretariat, through the Department of State, by December 15, 1988, for evaluation by the World Heritage Committee in a process that could lead to inscription on the World Heritage List by fall 1989.

ADDRESS: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127. Attention: World Heritage Convention—023.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Milne, Chief, Office of International Affairs, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, (202/343–7063).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 98 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs, and provides for:

(a) The establishment of an elected 21-member World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund to assist participating countries in identifying, preserving, and protecting World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List. The World Heritage Committee reviews and evaluates all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470a–1, a–2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures which are used to carry out this legislative mandate (47 FR 23392). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service, Department of Agriculture; the U.S. Information Agency; and the Department of State.

I. Potential U.S. World Heritage Nominations

The Department encourages any agency, organization, or individual to submit written comments on how one or more properties on the U.S. World Heritage Indicative Inventory which follows, or other qualified property, relates to and satisfies one or more of the World Heritage criteria (Section II of this notice). In order for a U.S. property to be considered for nomination to the World Heritage List, it must satisfy the requirements set forth earlier, i.e., (a) it must have previously been determined to be of national significance, (b) its owner must concur in writing to such nomination, and (c) its nomination document must include evidence of such legal protections as may be necessary to preserve the property and its environment. Information provided by interested parties will be used in evaluating the World Heritage potential of a particular cultural or natural property.

The following properites were published in the **Federal Register** on May 6, 1982, as the Inventory of Potential Future U.S. World Heritage Nominations (47 FR 19648) and amended in (48 FR 38100). The Inventory discusses briefly the significance of each site, and identifies the specific World Heritage criteria that the sites appear to satisfy. The properties included on the Inventory, minus properites nominated in intervening years, are as follows:

Natural

Acadia National Park, Maine
Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge, Alaska
Arches National Park, Utah

Arctic National Wildlife Refuge, Alaska
Big Bend National Park, Texas
Bryce Canyon National Park, Utah
Canyonlands National Park, Utah
Capitol Reef National Park, Utah
Carlsbad Caverns National Park, New Mexico
Colorado National Monument, Colorado
Crater Lake National Park, Oregon
Death Valley National Monument, California
Denali National Park, Alaska
Gates of the Arctic National Park, Alaska
Glacier Bay National Park, Alaska
Grand Teton National Park, Wyoming
Guadalupe Mountains National Park, Texas
Haleakala National Park, Hawaii
Joshua Tree National Monument, California
Katmai National Park, Alaska
Mount Rainier National Park, Washington
North Cascades National Park, Washington
Okefenokee National Wildlife Refuge, Georgia-Florida
Organ Pipe Cactus National Monument/ Cabeza Prieta National Wildlife Range, Arizona
Point Reyes National Seashore, California
Rainbow Bridge National Monument, Utah
Rocky Mountain National Park, Colorado
Saguaro National Monument, Arizona
Sequoia/Kings Canyon National Park, California
Virginia Coast Reserve, Virginia
Zion National Park, Utah

Cultural

Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge (Fur Seal Rookeries), Alaska
Auditorium Building, Illinois-Chicago
Bell Telephone Laboratories, New York-New York City
Brooklyn Bridge, Brooklyn, New York
Cape Krusenstern Archaeological District, Kotzebue, Alaska
Carson, Pirie, Scott and Company Store, Chicago, Illinois
Chapel Hall, Gallaudet College, District of Columbia
Eads Bridge, Illinois-Missouri
Fallingwater, Mill Run, Pennsylvania
Frank Lloyd Wright Home and Studio, Oak Park, Illinois
General Electric Research Laboratory, Schenectady, New York
Goddard Rocket Launching Site, Auburn, Massachusetts
Hohokam Pima National Monument, Arizona
Leiter II Building, Chicago, Illinois
Lindenmeier Site, Colorado
Lowell Observatory, Flagstaff, Arizona
Marquette Building, Chicago, Illinois
McCormick Farm and Workshop, Walnut Grove, Virginia
Mound City Group National Monument, Ohio
Moundville Site, Alabama
New Harmony Historic District, New Harmoney, Indiana
Ocmulgee National Monument, New Mexico
Poverty Point, Bayou Macon, Louisiana
Prudential (Guaranty) Building, Buffalo, New York
Pupin Physics Laboratories, Columbia University, New York
Reliance Building, Chicago, Illinois
Robie House, Chicago, Illinois
Rookery Building, Chicago, Illinois
San Xavier Del Bac, Tucson, Arizona
Savannah Historic District
South Dearborn Street-Printing House Row North Historic District, Chicago, Illinois
Taliesin, Spring Green, Wisconsin
Trinity Site, Bingham, New Mexico
Unity Temple, Oak Park, Illinois
Ventana Cave, Arizona
Wainwright Building, St. Louis, Missouri
Warm Springs Historic District, Georgia
Washington Monument, District of Columbia

Additional information on each of the properties listed above may be found in the May 6, 1982, **Federal Register** notice (47 FR 19648), which includes a description of the properties on the U.S. World Heritage inventory. This notice is available from the National Park Service (see addresses). Written comments are welcome on these and other qualified properties.

II. World Heritage Criteria

The following criteria are used by the World Heritage Committee in evaluating the World Heritage potential of cultural and natural properties nominated to it:

A. Criteria for the Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which is nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria *and* the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town planning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

(B) Criteria for the Inclusion of Natural Properties on the World Heritage List

(1) A natural heritage property which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and fulfills the conditions of integrity set out below. Properties nominated should therefore:

(i) Be outstanding examples representing *the major stages of the earth's evolutionary history;* or

(ii) Be outstanding examples representing *significant ongoing geological processes, biological evolution, and man's interaction with his natural environment;* as distinct from the periods of the earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms, and marine areas and fresh water bodies; or

(iii) *Contain superlative natural phenomena, formations or features,* for instance, outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements; or

(iv) *Contain the foremost natural habitats where threatened species of animals or plants of outstanding universal value* from the point of view of science or conservation still survive.

(2) In addition to the above critieria, the sites should also fulfill the conditions of integrity:

(i) The sites described in (B)(1)(i) above should contain all or most of the key interrelated and interdependent elements in their natural relationships; for example, an "ice age" area would be expected to include the snow field, the glacier itself, and samples of cutting patterns, deposition, and colonization (striations, moraines, pioneer stages of plant succession, etc.).

(ii) The sites described in (B)(1)(ii) above should have sufficient size and contain the necessary elements to demonstrate the key aspects of the

process and to be self-perpetuating. For example, an area of "tropical rain forest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrate the diversity and complexity of the system.

(iii) The sites described in (B)(1)(iii) above should contain those ecosystem components required for the continuity of the species or of the other natural elements or processes/objects to be conserved. This will vary according to individual cases; for example, the protected area of a waterfall would include all, or as much as possible, of the supporting upstream watershed; or a coral reef area would include the zone necessary to control siltation or pollution through the stream flow or ocean currents which provide its nutrients.

(iv) The sites containing threatened species as described in (B)(1)(iv) above should be of sufficient size and contain necessary habitat requirements for the survival of the species.

(v) In the case of migratory species, seasonal sites necessary for their survival, wherever they are located, should be adequately protected. The Committee must receive assurances that the necessary measures be taken to ensure that the species are adequately protected throughout their full life cycle. Agreements made in this connection, either through adherence to international conventions or in the form of other multilateral or bilateral arrangements, would provide this assurance.

(3) The property should be evaluated relatively, that is, it should be compared with other properties of the same type, both inside and outside the country's borders, within a biogeographic province, or migratory pattern.

III. World Heritage List

As of January 1, 1988, the World Heritage Committee had approved the following 17 cultural and natural properties in the United States for inscription on the World Heritage List. (The World Heritage List currently includes 288 properties worldwide.)

Cahokia Mounds State Historic Site
Chaco Culture Sites
Everglades National Park
Grand Canyon National Park
Great Smoky Mountains National Park
Hawaii Volcanoes National Park
Independence Hall
Mammoth Cave National Park
Mesa Verde National Park
Monticello/University of Virginia; Jeffersonian Precinct
Olympic National Park
Redwood National Park
San Juan National Historic Site and La Fortaleza
The Statue of Liberty
Wrangell—St. Elias National Park
Yellowstone National Park
Yosemite National Park

Date: February 12, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-4789 Filed 3-4-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 230)]

CSX Transportation, Inc., Abandonment Between Live Oak and High Springs in Suwannee, Columbia, and Alachua Counties, FL; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 44.95-mile rail line between Live Oak, FL (milepost AR 670.58) and High Springs, FL (milepost AR 715.48) in Suwannee, Columbia and Alachua Counties, FL, as well as 5.69 miles of siding. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88-4840 Filed 3-4-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 121X)]

Southern Pacific Transportation Co.; Discontinuance of Operations Exemption; Anaheim, CA

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue its trackage rights over a 1.48-mile line of railroad of Union Pacific Railroad Company between milepost 18.50 and milepost 19.98 in Anaheim, CA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective April 6, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 17, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 28, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by March 11, 1988. Other interested persons may obtain a copy of the EA from SEE

[1] *See* Ex Parte No. 274 (Sub-No. 16), *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*_____ I.C.C.2d _____, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: February. 24, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–4526 Filed 3–4–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Pollution Control Consent Judgment; Raymark Industries, Inc.

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that on February 18, 1988, a proposed consent decree in *United States* v. *Raymark Industries.* Civil Action Number B–86–883 (TFGD), was lodged with the United States District Court for the District of Connecticut. The Complaint filed by the United States alleged violations of the Clean Air Act, as amended. Defendant Raymark owns and operates a facility in Stratford, Connecticut which emitted asbestos. Defendant is alleged to have violated the Clean Air Act and the regulations passed thereunder by, *inter alia,* operating without controls to prevent the emission of asbestos fibers into the outside air.

The Consent Decree provides that the defendant shall pay a civil penalty of $135,000.00 and be subject to continuing obligations with respect to compliance with various environmental regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Raymark Industries. Inc.,* D.J. No. 90–5–2–865.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 250, Federal Building, 450 Main Street, Hartford, Connecticut 06103, at the Region I office of the Environmental Protection Agency, Office of Regional Counsel, John F. Kennedy Federal Building, Boston, Massachusetts 02203, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Raymark Industries. Inc.,* D.J. No. 90–5–2–865, and include a check for $4.10 (10 cents per page reproduction charge) payable to the United States Treasury.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–4923 Filed 3–4–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 87–41]

White's Best Buy Drugs; Revocation of Registration

On March 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to White's Best Buy Drugs (Respondent) of Highway 49 North, Collins, Mississippi 39428, to revoke the pharmacy's DEA Certificate of Registration AW4660456 and to deny any pending applications for the renewal of such registration. The Order to Show Cause alleged that the continued registration of the pharmacy would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

Respondent, proceeding through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held before Judge Bittner in New Orleans, Louisiana on August 27, 1987. On December 15, 1987, the Administrative Law Judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on January 19, 1988, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on January 17, 1983, agents of the Mississippi State Board of Pharmacy conducted an accountability audit of selected controlled substances at Respondent pharmacy. The audit covered the period May 4, 1981 through January 17, 1983, and revealed significant shortages of the majority of the substances audited, including shortages of 1,333 dosage units of Percodan; 1,850 dosage units of Biphetamine; 1,754 dosage units of Dilaudid 4 mg.; and 8,884 dosage units of Talwin 50 mg. Also on January 17, 1983, the agents audited Pyribenzamine, a non-controlled substance. This substance was audited because it is sold in the illicit market in combination with Talwin, a Schedule IV controlled substance. The audit revealed a shortage of 7,400 dosage units of Pyribenzamine.

When advised of the shortages discovered as a result of the accountability audit, Jimmy D. White, the owner and pharmacist of Respondent, stated that a burglary had occurred at the pharmacy on or about November 3, 1982, which might explain some of the shortages of controlled substances. There was no record of this alleged theft of controlled substances on file with either the Mississippi State Board of Pharmacy or the DEA, as required by both state and Federal law.

Following the audit, Jimmy White provided the Mississippi State Board of Pharmacy and DEA with a list of what controlled substances were allegedly taken during the November 3, 1982 burglary. Even after taking into account the drugs that were allegedly stolen, Respondent exhibited significant shortages of some of the substances audited for the period May 4, 1981 through January 17, 1983, including 1,425 dosage units of Biphetamine, 1,264 dosage units of Dilaudid 4 mg., and 7,684 dosage units of Talwin 50 mg.

During the course of the inspection which began on January 17, 1933, the agents conducted an audit of selected controlled substances covering the period November 3, 1982 through January 17, 1983. This audit was conducted to cover the period after the alleged burglary on November 3, 1982, and revealed a shortage of 600 dosage units of Talwin 50 mg., or 37.5 percent of the total for which the pharmacy was accountable, 66 dosage units of Percodan, or 6.6 percent, and 388 dosage units of Mepergan Fortis, or 97 percent.

During the course of the audit, the agents noticed a large number of prescriptions which were filled for certain individuals, including prescriptions for Talwin injectable. Records indicated that Respondent dispensed over 300 10cc vials of Talwin 30 mg/cc injectable to one individual over a five month period. The

prescriptions were allegedly issued or authorized by one specific doctor. However, the doctor gave affidavits stating that he did not personally authorize, orally or otherwise, the filling or refilling of these prescriptions. On several occasions various agents of the Mississippi State Board of Pharmacy interviewed the individual who was dispensed over 300 vials of Talwin injectable by Respondent. It was learned that Jimmy White dispensed Talwin injectable to the individual on a regular basis not pursuant to a prescription. In fact, the individual stated that he never presented Jimmy White with a prescription for the drugs.

Following the inspection, a grand jury in the United States District Court for the Southern District of Mississippi, Hattiesburg Division, charged Jimmy White with five misdemeanor counts of failure to maintain accurate records in violation of 21 U.S.C. 829(b) and 21 U.S.C. 842.

While Jimmy White was still under indictment, DEA investigators went to Respondent on December 5, 1984, to conduct an accountability audit of various controlled substances. The audit covered the period January 17, 1983 through December 5, 1984. Jimmy White stated that there had been a burglary at Respondent on January 25, 1984. Although the investigators took into account this alleged theft of controlled substances, the audit revealed both shortages and overages of some of the substances audited, including a shortage of 1,039 dosage units of Talwin 50 mg. In addition, Respondent could not account for any of the Talwin injectable for which it was accountable.

On April 23, 1986, in the United States District Court for the Southern District of Mississippi, Jimmy White pled *nolo contendere* to two counts of failure to maintain records of controlled substances in violation of 21 U.S.C. 842. He was sentenced to two years imprisonment with this sentence suspended, was placed on three years active reporting probation and fined $5,000.00.

The Administrative Law Judge noted that Respondent pharmacy itself has not been convicted of any controlled substance offenses and the Mississippi State Board of Pharmacy has not taken any action against the state pharmacy permit of Respondent. However, it is clear that Jimmy White, the owner and pharmacist of Respondent, has ignored both Federal and state laws and regulations relating to controlled substances, as evidenced by both the audit results and by his dispensing of controlled substances to an individual without a doctor's authorization.

The Administrator of DEA has consistently held that the registration of a pharmacy may be revoked, suspended or denied as a result of the controlled substance handling practices of the pharmacy's owner, majority shareholder, officer, managing pharmacist or other key employee. See, *Unarex of Plymouth Road, d.b.a. Motor City Prescription and Unarex of Dearborn, d.b.a. Motor City Prescription Center*, Docket Nos. 84–1 and 84–2, 50 FR 6077 (1985); *Bourne Pharmacy, Inc.*, Docket No. 83–32, 49 FR 32816 (1984); *Big T. Pharmacy*, Docket No. 80–34, 47 FR 51830 (1982); and cases cited therein.

The Administrative Law Judge concluded that the continued registration of Respondent pharmacy would be inconsistent with the public interest and therefore recommended that Respondent's DEA Certificate of Registration be revoked. 21 U.S.C. 823(f) and 824(a)(4). The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW4660456, previously issued to White's Best Buy Drugs, be, and it hereby is, revoked, and any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective April 6, 1988.

Date: March 1, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–4879 Filed 3–4–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Performance Standards for Program Years (PY) 1988–9

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of performance standards for PY 1988–9.

SUMMARY: Section 106 of the Job Training Partnership Act (JTPA) requires the Secretary of Labor to prescribe performance standards for adult and youth training programs under Title II–A and dislocated worker programs under Title III of JTPA. Based on information obtained from participants after they leave JTPA programs, four additional postprogram performance standards are being issued for the next two Program Years (PY) 1988–9 (July 1, 1988–June 30, 1990). A new youth measure—the rate of youth employability enhancements—is added to the youth standards. Governors are required to select eight of the twelve Secretary's standards to evaluate local program performance for purposes of making incentive/sanction determinations.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Telephone (202) 535–0687.

SUPPLEMENTARY INFORMATION: On December 16, 1987, proposed revisions to the performance standards for Job Training Partnership Act (JTPA) Title II–A adult and youth training programs and Title III dislocated worker programs were published in the **Federal Register** at 52 FR 47771. Interested parties were invited to submit written comments through January 11, 1988.

A. Purpose of Performance Standards

The Secretary of Labor (Secretary) issues performance standards in order to determine whether the basic objectives of JTPA, increased earnings and employment and reduced welfare dependency, are being met. On the basis of the Secretary's performance standards, Governors must set standards for each of their service delivery areas (SDAs). Since JTPA's inception, the seven measures set by the Secretary have remained unchanged. In the December 16, 1987 issuance, the Secretary proposed to add four adult postprogram measures and to replace the youth entered employment rate with a new measure of youth employability enhancements. New numerical levels for five current measures were proposed. The attached directive presents the final Secretary's standards and also consolidates into one document the implementation instructions for performance standards.

B. Authority to Issue Performance Standards

Section 106 of the Act directs the Secretary to establish performance standards for Title II–A adult and youth and Title III dislocated worker programs.

C. Discussion of Comments

The Department of Labor (Department) received 147 written comments on the proposed issuance within the comment period. The following is a summary of the comments on each of the major issues raised by the

commenters and the Department's response.

Youth Standards

Most of the comments supported the Departmental goal of encouraging intensive investments in basic skills instruction and job skills training to improve the long-term employability of disadvantaged youth. Many opposed the elimination of the youth entered employment rate as tilting the system too far toward employability development, thus restricting local program design options. Returning the youth entered employment rate to the total number of youth standards restores the balance between the employment and employability development goals sought by some States and localities. This will increase to twelve the total number of standards the Secretary will establish for PY 88–9 from which Governors will select eight for implementation in their States.

Concerns also centered around the cost and timing of implementation necessary to restructure youth programs to meet the new youth employment competency definition. The increase in the number and quality of youth employment competency skill areas required for an employability enhancement poses a serious timing issue as these revisions will become effective after the PY 88 local job training plans and state plans are finalized. To account for this timing problem, the Department will delay the implementation of the new youth competency attainment definition to July 1, 1989. The system will have nearly 18 months to make the necessary changes in its youth employment competency programs before two skill areas will be required for an employability enhancement credit. Youth costs are set at levels which will accommodate increased expenditures associated with providing more intensive basic education and job specific skills training.

Adult Standards

Although the majority of comments favored implementing postprogram standards, many States and SDAs also supported retaining the termination-based measures as useful management tools. Nearly all of those commenting agreed with the Department's transitional strategy of allowing Governors to select a set of 8 measures from among the 12 now being issued. This will enable those States to establish incentive policies based upon a set of standards that best reflects their State and local conditions, program design and baseline postprogram experience. Some SDAs and PICs preferred that the Department select the measures, out of concern that States will impose too many standards or the "wrong" mix. The Department will be in a better position in PY 90, after two years of postprogram results are analyzed, to determine the optimum mix of measures. The Department does not intend to maintain all termination-based and postprogram standards for adults beginning in PY 90.

Performance Standards Levels

Few comments were critical of the numerical values of the adult standards with the exception of the average wage at placement. Several SDAs commented that this standard—set at the 35th percentile—may be hard to meet in their labor markets and will create a disincentive to enroll the hardest-to-serve. The Secretary's standard for the average wage at placement has been at the same level ($4.91) since PY 84. It is expected that more intensive investments in training and employability development, combined with other economic factors, should lead to increased placement wages in JTPA over the next two years. Recognizing the fact that some economies are atypical, the Governor may either make adjustments to this standard or may choose the follow-up weekly earnings standard. The cost standards were favored as sending to the system a signal that increased costs, where appropriate and necessary to bring about more intensive and effective services, should not be discouraged. A few commenters thought the adult placement rate was too high to encourage service to the most difficult to serve. Because the level is set at the 25th percentile of expected performance, three quarters of the SDAs are expected to exceed their standards according to their performance in PY 86. It is anticipated that the cost standards will enable providers to target greater resources for training participants resulting in better placement performance. Accordingly, the Department is retaining all the proposed numerical levels.

Application of Performance Standards to Six Percent Funded Programs

Many commenters objected to applying performance standards to six percent funded programs. Most argue that six percent funds are being used for innovative projects that would not be funded if included in the performance management system. In some SDAs, however, incentive funds are indistinguishable from those used for general training, and therefore should not be exempted from performance standards. Over the next two years, the Department will more carefully examine this issue. In the interim, Governors will have the discretion to exclude six percent funded projects in computing their standards and actual performance. Consolidated reports for 78% and 6% projects (expenditures and terminee characteristics) will continue to be required on the JTPA Annual Status Reports.

Require Governors to Include a Youth Standard in Incentive Policy

Several comments took issue with the absence of any Federal requirement specifying that a State must include a youth standard in its incentive policies. The Department is now requiring that State incentive policies must include at least one of the following youth measures: entered employment rate, positive termination rate or employability enhancement rate. To be consistent with Departmental youth initiatives and performance management goals, the positive termination or youth employability enhancement rate is suggested.

Certifications

The issuance is procedural in character and gives direction to States and local service deliverers on the implementation of performance standards for programs under Titles II and III of JTPA. Therefore, it is not classified as "major" under Executive Order 12291 and no impact analysis is required. This issuance has been assessed according to the Federalism policymaking criteria outlined in Executive Order 12612 and the Department has determined that this issuance will not limit the policymaking discretion of the States. This issuance is intended to enhance State discretionary authority in the selection of performance standards from among those issued by the Secretary and in the application of performance standards to certain programs funded under incentive funds. The procedural framework included in this issuance enables States to better assist localities in more effective, efficient and consistent youth program design and management.

Signed at Washington, DC this 1st day of March 1988.

Roberts T. Jones,

Acting Assistant Secretary for Employment and Training.

Appendix

Training and Employment

Information Notice _____

February 1988

Performance Standards for PY 1988

Authority: Job Training Partnership Act, Pub. L. 97–300, section 106, Implementing Regulations, 20 CFR 629.46, March 15, 1983.

1. *Purpose.* To transmit to State JTPA Liaisons the Secretary's national numerical standards and implementing instructions for Program Years (PY) 88–9.

2. *Background.* Section 106 of JTPA directs the Secretary to establish performance standards for adult, youth, and dislocated worker programs. These standards are updated every two years based on the most recent JTPA program experience. The Secretary also issues instructions for implementing standards and parameter criteria for States to follow in adjusting the Secretary's Standards for SDAs.

3. *Performance Management Goals for PY 88–9.* Program Year 1988 (PY 88) will begin the third two-year cycle of the performance management system under JTPA. As the system matures, the effects of performance standards on program design, service delivery, and participants served have drawn increased attention. In response, the Department has set the following goals for the performance management system in PY 88–9. To encourage:

- Increased service to individuals at risk of chronic unemployment, particularly youth;
- The provision of training which leads to long-term employability;
- Increased basic skills and youth employment competency training; and
- The implementation of postprogram performance measures.

These goals are reflected in the revisions to the Secretary's measures, national numerical standards and reporting requirements. An integral part of the Federal strategy for meeting these goals is to encourage Governors to use their discretion in allowing further adjustments to SDA standards and to use their authority in developing innovative incentive policies. Thus, SDAs will be rewarded for performance which not only exceeds numerical performance standards, but which addresses these broader performance management concerns.

This issuance introduces new postprogram standards and a new measure of youth employability enhancements and revises numerical levels of the current Title II–A standards. A new performance level is set for Title III programs, and the implementing instructions are updated to accommodate the new postprogram standards.

4. *Performance Measures for PY 88–9 For Title II–A.* The current performance measures will be retained for PY 88–9. These measures are the entered employment rates for adults, youth and welfare recipients, the average wage at placement, the youth positive termination rate, the cost per entered employment for adults and the cost per positive termination for youth.

A new measure of youth employability enhancements strengthens the importance of increasing the long-term employability of youth by assessing a program's effectiveness in helping youth obtain competencies in basic education and job specific skills and other employability enhancements.

Four new measures of long-term performance will focus on the employment, earnings and job retention of participants 13 weeks after termination. These measures are: an employment rate at follow-up for adults and welfare recipients, average weekly earnings of those employed at follow-up, and average weeks worked by all terminees during the 13-week follow-up period.

5. *Secretary's National Numerical Standards for PY 88–9 for Title II–A.* The numerical standards are derived from PY 86 performance data reported on the JTPA Annual Status Report (JASR) and are generally set at a level at which approximately 75% of the SDAs are expected to exceed. Continued improved performance in obtaining jobs for all JTPA participants is reflected in higher national entered employment rates for adults, youth and welfare recipients than the levels set for these measures in PY 86. Although actual program costs have been steadily declining, the two cost measures are set at levels that will accommodate more comprehensive programming and increased services to individuals in need of more intensive training.

The new employability enhancement rate is based upon employability enhancements reported on the PY 86 JTPA Annual Status Report and specific competency attainments reported for a sample of participants in the PY 86 Job Training Quarterly Survey. These PY 86 data show that 46% of youth attained one or more competencies, that 25% of the youth attained competencies in basic education and job specific skills and another 8% of the youth attained an employability enhancement that was not a youth competency attainment (e.g., returned to school or achieved a major level of education). Thus, the employability enhancement standard is set at a level which most SDAs will exceed.

The Secretary's Standard for the average wage at placement has previously reflected a policy-determined performance goal that was considerably higher than actual program. performance.

To emphasize the importance of placing participants in better than entry-level jobs, the Secretary's average wage at placement standard was set again this year at a higher level than other standards.

Three of the four postprogram standards are also set at the 25th percentile. The rate of employment at follow-up for welfare recipients is set at a slightly higher level to reinforce the Department's committment to providing services to welfare recipients that will lead to their long-term employability, thus reducing their future dependency on welfare.

The Secretary's Standards for PY 88–9 are as follows:

Adults

A. *Entered Employment Rate: 68%.*

B. *Cost per Entered Employment: $4,500.*

C. *Average Wage at Placement: $4.95.*

D. *Welfare Entered Employment Rate: 56%?*

Youth

A. *Entered Employment Rate: 45%.*

B. *Employability Enhancement Rate: 30%.*

C. *Positive Termination Rate: 75%.*

D. *Cost per Positive Termination: $4,900.*

Postprogram

A. *Follow-up Employment Rate: 60%.*

B. *Welfare Follow-up Employment Rate: 50%.*

C. *Weeks Worked in the Follow-up Period: 8.*

D. *Weekly Earnings of all Employed at Follow-up: $177.*

6. *Implementation Provisions.* The following implementation requirements must be followed:

A. *Required Standards.* Governors are required to set for each SDA a numerical performance standard for eight of the Secretary's measures.

B. *Setting the Standards.* The Governor may set the SDA's standards by using the Secretary's numerical standards or by adjusting these standards. Such adjustments must conform to the Secretary's parameters described below:

1. Procedures must be:

- Responsive to the intent of the Act,
- Consistently applied among the SDAs,

• Objective and equitable throughout the State,

• In conformance with widely accepted statistical criteria;

2. Source data must be:

• Of public use quality,

• Available upon request;

3. Results must be:

• Documented,

• Reproducible; and

4. Adjustment factors must be limited to:

• Economic factors,

• Labor market conditions,

• Characteristics of the population to be served,

• Geographic factors,

• Types of services to be provided.

The Department has developed an adjustment methodology which is available for Governors to use at their option. The Department's methodology conforms to the parameter criteria cited above. Should the Governor choose to use an alternate methodology, or further adjust the Departmental model, it must conform to the parameter criteria and be documented in the Governor's Coordination and Special Services Plan prior to the program year to which it applies.

In the case of an appeal from an SDA concerning the imposition of a reorganization plan for failure to meet the performance standards for two consecutive years, the Secretary will make the final decision in accordance with section 106(h)(4) of the Act and 20 CFR 629.46(d)(6). In making this decision, the Secretary will be predisposed to uphold the Governor's determination concerning the application of the performance standards, if the Governor elects to use the nationally developed adjustment methodology to vary the performance standards. If the Governor, however, uses an alternative methodology to vary the standards, the Secretary will review, on a case-by-case basis, the validity of the methodology and its uniform application throughout the State.

The State Job Training Coordinating Council must have an opportunity to consider adjustments to the Secretary's Standards and to recommend variations.

C. *Performance Standards Definitions.* Governors must compute the performance of their SDAs according to the definitions included in the attachment.

D. *Application of the Performance Standards.* Performance standards are to be applied to all programs funded under section 202(a)(1) of the Act. Performance standards may be applied to those programs funded from incentive funds received under section 202(b)(3)(B). In applying the Secretary's Standards, Governors may select any combination from among the twelve measures to form the basis of incentive and sanction policies as long as the following criteria are met:

1. The Governor must designate eight Secretary's measures as the basis for consideration in making awards and imposing sanctions.

2. One of these eight must be a quality of placement measure for adults (the average wage at placement or the weekly earnings at follow-up) and at least one must be among the following youth measures (entered employment rate, positive termination rate or employability enhancement rate.)

3. Eligibility for incentive awards pursuant to section 202(b)(3)(B) must be based on exceeding, not just meeting, standards.

4. To determine whether an SDA has met/exceeded a performance standard, Governors must use actual end-of-year program data to recalculate the performance standards.

5. Incentive policies may include adjustments to the incentive award amount based upon such factors as grant size, service to the hard-to-serve, intensity of service, and expenditure level.

6. An SDA cannot be precluded from receiving an incentive award in accordance with section 202(b)(3)(B) if it exceeds the eight Secretary's measures selected by the Governor and designated in the Governor's Coordination and Special Services Plan. Additional State measures and/or any undesignated Secretary's measures can also be considered in making awards.

7. An SDA can only be sanctioned under section 106(h) for failure to meet the Secretary's measures designated by the Governor. The Governor's policy on sanctions may provide for sanctioning SDAs for missing fewer than all eight of the Secretary's measures. However, sanctioning is required if an SDA fails to meet for two consecutive years all eight Secretary's measures designated by the Governor.

8. Governors must specify their incentive award policy under section 202(b)(3)(B) and sanctions policy under section 106(h). State sanctioning policy must include a definition of "failure to meet" and the timeframe that constitutes the period on which sanction action will be taken. The failure to receive incentive funds for two consecutive years does not necessarily constitute failure to meet the standards under section 106(h).

E. *Performance Standards Provisions for Title III.* Governors are required to set an entered employment rate standard for their Title III formula-funded programs and are encouraged to establish an average wage at placement goal. Because there are no incentive or sanction provisions for Title III performance, the Title III standard serves as a guide for the expected level of performance. In addition, the Secretary is specifying a national goal of 64% for the entered employment rate. This goal has been established on the same basis as the Secretary's Standards for Title II–A. If Title III programs continue to perform in the same manner as they did in PY 86, 75% of the system should exceed the goal.

F. *Inquiries.* Questions concerning this issuance may be directed to Karen Greene on (202) 535–0687.

Attachment

Definitions for Performance Standards

The following defines the Title II–A performance standards:

Adult

1. *Entered Employment Rate*—Number of adults who entered employment at termination as a percentage of the total number of adults who terminated.

2. *Cost per Entered Employment*—Total expenditures for adults divided by the total number of adults who entered employment.

3. *Average Wage at Placement*—Average hourly wage for all adults who entered employment at the time of termination.

4. Welfare Entered Employment Rate—Number of adult welfare recipients who entered employment at termination as a percentage of the total number of adult welfare recipients who terminated.

Postprogram

5. *Follow-up Employment Rate*—Total number of adult respondents who were employed (full-time or part-time) during the 13th full calendar week after termination, divided by the total number of adult respondents (i.e., terminees who completed follow-up interviews).

6. *Welfare Follow-up Employment Rate*—Total number of adult welfare respondents who were employed (full-time or part-time) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents (i.e, terminees who completed follow-up interviews).

7. *Average Weekly Earnings at Follow-up*—Total weekly earnings for all adult respondents employed during the 13th full calendar week after termination, divided by the total number of adult respondents employed at the time of follow-up.

8. *Average Number of Weeks Worked in Follow-up Period*—Total number of weeks worked (full-time or part-time) during the 13 full calendar weeks after termination for all adult respondents who worked, divided by the total number of *all* adult respondents, whether or not they worked any time during this 13-week follow-up period.

Youth

9. *Entered Employment Rate*—Number of youth who entered employment at termination as a percentage of the total number of youth who terminated.

10. *Employability Enhancement Rate*—Number of youth who attained one of the employability enhancements at termination whether or not they also obtained a job as a percentage of the total number of youth who terminated.

• Youth Employability Enhancements include:

a. Attained (two or more) PIC-Recognized Youth Employment Competencies.[1]

b. Entered Non-Title II Training.

c. Returned to Full-Time School.

d. Completed Major Level of Education.

e. Completed Program Objectives (14–15 year olds).

11. *Positive Termination Rate*—Number of youth who entered employment or attained one of the youth employability enhancements at termination as a percentage of the total number of youth who terminated.

12. *Cost per Positive Termination*—Total expenditures for youth divided by the total number of youth who either entered employment or met one of the five employability enhancements.

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BILLING CODE 4510–30–M

Job Training Partnership Act: Annual Status Report for Titles II–A and III Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of revised annual status report for Titles II–A and III.

SUMMARY: The Department of Labor is issuing revised annual reporting requirements for programs under Titles II–A and III of the Job Training Partnership Act (JTPA). The revisions extend and update the reporting system in order to provide data for improved adjustments to the new youth employability enhancement and postprogram performance standards introduced in Program Year 1988, to more adequately identify more difficult-to-serve portions of the JTPA population, and to collect information on SDA level funding availability.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Chief, Adult and Youth Standards, Telephone (202) 535–0687.

SUPPLEMENTARY INFORMATION: On December 21, 1987, proposed revisions to the JTPA Annual Status Report (JASR) for Titles II–A and III programs were published in the **Federal Register**, Volume 52, Number 244, Pages 48338–48348. Interested parties were invited to submit written comments through January 16, 1988. At the same time, the proposed revisions were forwarded to the Office of Management and Budget (OBM) for review pursuant to the Paperwork Reduction Act. The purpose of this notice is to advise the system of the nature of the comments received and the final action taken pursuant to the OMB review.

A. Authority and Purpose of the JTPA Annual Reporting Requirements

Reporting instructions are necessary to comply with the Job Training Partnership Act's (JTPA's) provisions regarding the Secretary's responsibilities and authority for setting performance standards and for recordkeeping and reporting as indicated below.

• *Section 106—Performace Standards.* This section directs the Secretary to prescribe standards for adult and youth programs under Title II–A and dislocated worker programs under Title III. To set performance standards, the Secretary must have data on performance. In addition, this section directs the Secretary to establish parameters within which Governors may vary standards for service delivery areas (SDAs) based on local economic factors, the characteristics of the population to be served and the types of services provided. The Departmental adjustment approach, that satisfies these parameter criteria, requires data collection on those factors that have a significant effect on performance and vary sufficiently across SDAs to warrant an adjustment to standards.

• *Section 165—Reports, Recordkeeping, and Investigations.* This section requires federal grant recipients to maintain records and report information regarding program performance as specified by the Secretary. This section also requires reporting of expenditures at a level adequate to ensure statutory compliance.

• *Section 169—Administrative Provisions.* The Secretary is directed at (d)(1) to submit an annual report to the Congress summarizing the achievements of the program. Such a report will include data on program performance.

These revisions are intended to extend and update the reporting system. The justification for having reporting at the service delivery area (SDA) level has not changed since the initial establishment of the reporting requirements, namely:

• Data on program performance, participant characteristics and local economic conditions must be available at the SDA level to set standards.

• Federal reporting is the most cost effective method for collecting program performance and participant characteristics. In addition, such a system ensures the consistency of the data across SDAs.

• Without SDA-level data, objective and defensible local standards cannot be set, because the effects on performance of varying local conditions cannot be systematically predicted.

B. Reasons for the Revisions

These revisions are being implemented for several reasons:

• Whether JTPA programs are serving the more difficult-to-serve has been the subject of increasing concern. Identifying more adequately those participants with the most severe barriers to employment and adjusting the performance standards for varying levels of service to these groups will address this concern.

• Attainment of youth employment competencies is an integral part of the employability enhancement outcome. Yet, unlike other program outcomes, competency attainments are locally defined, lack comparability across SDAs and are subject to much systemwide criticism. Two changes are adopted that maintain local flexibility in prescribing specific competencies, while responding to the lack of reporting consistency: (1) Increase the number of skill areas required for reporting a competency attainment to two out of the three skill areas effective in Program Year 1989. This ensures that every youth counted as a competency attainment has received either basic education or job specific skills training. (2) Establish minimum criteria for reporting competency attainment in pre-employment/work maturity—the skill area subject to the most variability. For clarification the seven components of a "sufficiently developed" youth employment competency system are delineated.

[1] During PY 88, competency attainment in one skill area will meet this definition.

• Program costs and competency attainments differ widely depending on whether youth are enrolled in pre-employment/work maturity, basic skills and/or job specific skills programs. Reporting of attainments by individual skill areas will enable the Department to improve its adjustment models by accounting for differences in youth employment competency strategies.

• Whether SDAs are underexpending JTPA funds, particularly in youth programs, is an issue of statutory compliance and programmatic concern. More precise reporting of net funds available to SDAs will yield improved information on SDA/level expenditure rates.

C. Discussion of Comments

There were 130 comment received within the comment period. Additional comments received after the deadline were reviewed and considered to the extent possible. The position of the Department following review with OMB is indicated below and reflected in the reporting instructions as appropriate.

Terminee Characteristics

The Department received many comments on the addition of minimal work history. Questions were raised about the accuracy of information recalled from the previous five years. Some commenters suggested that this information duplicates other reported labor force status characteristics (such as long-term unemployed or not in the labor force). Labor force characteristics currently reported on the JASR capture more recent work experience (no longer than the previous six months). Whether current labor force information may serve as a proxy for longer-term work history is not yet known. Other comments suggested the current long-term unemployment status is more relevant for youth, who typically have short work histories, than the proposed minimal work history. Because of the overriding concern about the reliability of this information, the Department has deleted this requirement.

Comments on the reporting of long-term AFDC recipients suggested some misunderstanding of how the item is to be reported. Some commenters assumed the information would be used for eligibility determination, and would have to be verified from welfare agency records at substantial cost to the SDA. Because this is a self-reported terminee characteristic, and not an eligibility criterion, data collection and reporting should incur nominal costs. Some commenters were concerned because the Department's definition is inconsistent with shorter-term AFDC status collected their local systems. Research indicates that the two-year benchmark distinguishes the population receiving the greatest portion of welfare expenditures. It also replicates the long-term welfare status definition used in numerous Federal and State welfare reform programs. The Department believes that this item will identify a hard-to-serve group not previously represented on the JASR and will improve adjustments to performance standards for programs serving this group. Consequently the Department has decided to retain this item.

Reading level below the 7th grade was added to adjust standards for service to participants who are less employable and in need of longer-term training. Several commenters stated that the administrative time and resources to universally assess reading level were underestimated. The Department has identified several low cost assessment tools, including one used by Job Corps which is available at no cost to the system. Moreover, the Department is not mandating extensive diagnostic testing of all participants, rather it is requiring a simply screening test at intake to determine the number of participants who have serious reading deficiencies. Several commenters suggested the cutoff grade level was inappropriate. This cutoff represents a level below which participants have significantly lower employment expectations and income. Therefore the assessment and reporting of reading level below the 7th grade remains as a reporting requirement.

The addition of reporting items for total available Federal funds and new incentive grants drew few comments. Some viewed the collection of this information would contribute little to an analysis of underexpenditures without inclusion of the 3% and 8% setasides. Further comments indicates that this might be more appropriately reported on the semiannual fiscal report (JSSR); however, this report does not include substate fiscal report (JSSR); however, this report does not include substate fiscal reporting. The Department has decided that the total available Federal funds are sufficient for initial analysis of substate expenditures and has retained this item. Reporting of new incentive grants is deleted.

Youth Employment Competency Attainment Information

Some commenters viewed Section IV as redundant with the Youth Employment Competency (YEC) attainments reported for an employability enhancement. Section IV's merits were not fully recognized. This section will provide adjustments so that States can give different employability enhancement standards to SDAs depending upon the volume of clients completing each competency area.

A number of comments were received concerning the redefinition of youth employment competency attainment. The Department proposed to require that youth attain competency is two of the three skill areas. Commenters felt service delivery areas had insufficient time to adjust to this change. Programs in many SDAs do not offer competencies in two skill areas and had not planned to implement additional ones in program year 1988. The Department concurs that quality competency programs require adequate planning and start-up time to implement. Thus, the Department will delay implementation of the new youth employment competency definition until PY 89.

Paperwork Reduction Act of 1980

The Appendix to this notice has been reviewed in accordance with the Paperwork Reduction Act by the Office of Management and Budget and approved for the period through June 30, 1990 (OMB No. 1205–0211).

Signed at Washington, DC, this 1st day of March 1988.

Roberts T. Jones,

Acting Assistant Secretary for Employment and Training.

JTPA Annual Status Report (JASR)

1. Purpose.

The JTPA Annual Status Report (JASR) displays cumulative data on participation, termination, performance measures and the socio-economic characteristics of all terminees on an annual basis. The information will be used to determine levels of program service and performance measures. Selected information will be aggregated to provide quantitative program accomplishments on a local, State, and national basis.

2. General Instructions.

The Governor will submit: 1) a combined Statewide JASR for Title III Formula and Discretionary National Reserve (Column D only) and 2) for Title II–A (Columns A–C) a separate JASR for *each* designated Service Delivery Area (SDA). (A Statewide summary of these SDA data need not be submitted.) Grantees may determine whether the reports are submitted on JASR forms or as a computer printout, with data, including signature and title, date signed and telephone number, arrayed as

indicated on the JASR form. If revisions are made to the JASR data after the reporting deadline, revised copies of the JASR should be submitted to DOL as soon as possible according to the required reporting procedures.

Note: For JASR reporting purposes, Title II–A shall refer to programs operated with funds authorized under Section 202(a) of the Act or otherwise distributed by the Governor under Section 202(b)(3) (six percent) of the Act—incentive grants for service to the hard-to-serve and programs exceeding performance standards. (Concentrated Employment Programs (CEPs) should report total Title II–A program expenditures of 78% funds, special supplemental allocations, and 6% incentive grants.) Do not include data on (six percent) funds authorized under Section 202(b)(3) for technical assistance. Participants and expenditures under Title I, Sections 123(8%) and 124(3%), and expenditures under Title II, Section 202(b)(4)(five percent) and any participants, if applicable, are likewise excluded from the JASR.

Note: Participant and expenditure information under Title II–B, Summer Youth Employment and Training Program (SYETP), is also excluded from the JASR.

SDAs should not terminate from Title II–A *youths* who participate in the Title II–B Summer Program unless they are not expected to return to Title II–A for further employment, training and/or services.

If these youths receive concurrent employment, training and/or services under both Titles II–A and II–B, they are to be considered participants in both titles for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data.

If, however, these youths do not receive Title II–A employment, training and/or services while participating in Title II–B, this period is *not* to be included in the calculation of actual number of weeks participated in Title II–A at Line 29, Column C.

The reporting period begins on the starting date of each JTPA program year, as stated in Section 161 of the Act. Reports are due in the national and regional offices no later than 45 days after the end of each program year. Two copies of the JASR are to be provided to: Employment and Training Administration, U.S. Department of Labor, ATTN: TSVR—Rm. S–5306, 200 Constitution Avenue NW., Washington, DC 20210.

At the same time an additional copy of the JASR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL regional office that includes the State in which the JTPA recipient is located.

3. Facsimile of Form

See the following page.

BILLING CODE 4510–30–M

U.S. DEPARTMENT OF LABOR Employment and Training Administration JTPA ANNUAL STATUS REPORT	a. STATE/SDA NAME AND ADDRESS	b. REPORT PERIOD FROM	TO

I. PARTICIPATION AND TERMINATION SUMMARY	Total Adults (A)	Adults (Welfare) (B)	Youth (C)	Dislocated Workers (D)
A. TOTAL PARTICIPANTS				
B. TOTAL TERMINATIONS				
1. Entered Unsubsidized Employment				
a. Also Attained Any Youth Employability Enhancement				
2. Youth Employability Enhancement Terminations				
a. Attained PIC-Recognized Youth Employment Competencies				
b. Completed Program Objectives (14-15 year olds)				
3. All Other Terminations				

Line No.	II. TERMINEES PERFORMANCE MEASURES INFORMATION				
1	Sex	Male				
2		Female				
3	Age	14 - 15				
4		16 - 17				
5		18 - 21				
6		22 - 29				
7		30 - 54				
8		55 and over				
9	Education Status	School Dropout				
10		Student				
11		High School Graduate or Equivalent (No Post-High School)				
12		Post-High School Attendee				
13	Family Status	Single Head of Household With Dependent(s) Under Age 18				
14	Race/Ethnic Group	White (Not Hispanic)				
15		Black (Not Hispanic)				
16		Hispanic				
17		American Indian or Alaskan Native				
18		Asian or Pacific Islander				

c. SIGNATURE AND TITLE	d. DATE SIGNED	e. TELE. NO.

ETA 8580 (June 1988)

a. STATE/SDA NAME AND ADDRESS	REPORT PERIOD FROM	TO

Line No.		II. TERMINEES PERFORMANCE MEASURES INFORMATION - Continued	Total Adults (A)	Adults (Welfare) (B)	Youth (C)	Dislocated Workers (D)
19	Other Barriers To Employment	Limited English Language Proficiency				
20		Handicapped				
21		Offender				
22		Reading Skills Below 7th Grade Level				
23		Long-Term AFDC Recipient				
24	U.C. Status	Unemployment Compensation Claimant				
25	Labor Force Status	Unemployed: 15 or More Weeks of Prior 26 Weeks				
26		Not in Labor Force				
27	Welfare Grant Info.	Welfare Grant Type: AFDC				
28		GA/RCA				
29		Average Weeks Participated				
30		Average Hourly Wage at Termination				
31		Total Program Costs (Federal Funds)				
32		Total Available Federal Funds				
		III. FOLLOW-UP INFORMATION				
33		Employment Rate (At Follow-up)				
34		Average Weekly Earnings of Employed (At Follow-up)				
35		Average Number of Weeks Worked in Follow-up Period				
36		Sample Size				
37		Response Rate				
		IV. YOUTH EMPLOYMENT COMPETENCY ATTAINMENT INFORMATION				
38		Attained Any Competency Area				
39		Pre-Employment/Work Maturity Skills				
40		Basic Education Skills				
41		Job Specific Skills				

REMARKS:

ETA 8580 (June 1988)

BILLING CODE 4510-30-C

4. Instructions for Completing the JTPA Annual Status Report (JASR)

a. State/SDA Name, Number and Address

Enter the name and address of the State agency that will administer the grant recipient's program (Title III report). Enter the name, *ETA assigned SDA number* and address of the designated SDA subrecipient, as appropriate (Title II–A report).

b. Report Period

Enter in "From" the beginning date of the designated JTPA program year and enter in "To" the ending date of that program year.

c. Signature and Title (at bottom of the page)

The authorized official signs here and enters his/her title.

d. Date Signed

Enter the date the report was signed by the authorized official.

e. Telephone Number

Enter the area code and telephone number of the authorized official.

5. General Information

For purposes of the JASR, the Total Adults and Adults (Welfare) columns will include terminees age 22 years and older. Thus, the column breakouts are based strictly on age rather than on program strategy. The youth column will include terminees who were age 14–21 at the time of eligibility determination. The Dislocated Workers column may include adults and youth, as applicable.

Unless otherwise indicated, data reported on characteristics of terminees should be based on information collected at the time of eligibility determination.

Characteristics Information Obtained on an Individual at the time of Eligibility Determination for the Recipient's JTPA Program Should Not Be Updated When the Individual Terminates From the JTPA Program.

Column Headings

Column A *Total Adults*

This column will contain an entry for each appropriate item for *All* adult participants in Title II–A only.

Column B *Adults (Welfare)*

This column will contain an entry for each appropriate item for adult participants in Title II–A who were welfare recipients or whose family received cash payments under AFDC (SSA Title IV), General Assistance (State or local government), or the Refugee Assistance Act of 1980 (PL 96–212) at the time of JTPA eligibility determination. For reporting and performance standards purposes, *exclude* those individuals who receive only SSI (SSA Title XVI) from entries in Column B.

Note: Column B is a sub-breakout of Column A; therefore, Column B should be less than or equal to Column A for each line entry.

Column C *Youth*

This column will contain an entry for each appropriate item for *all* participants, aged 14–21, in Title II–A only.

Column D *Dislocated Workers*

This column will contain an entry for each appropriate item for *all* participants in Title III Formula and Discretionary National Reserve who were determined to be eligible dislocated workers.

Note: Columns A, B, and C apply to Title II–A only. Column D applies to Title III only. All information regarding a given participant must be entered in the same column, e.g., Column C for a youth in Title II–A.

The sum of the entries (all SDAs in a State) in Columns A and C, Item I.A., Total Participants, of the JASR should equal the entry in Column A, Item III. A. 1., SDA Participants, of the JSSR, for the same recipient, that includes the final quarter of the same program year. The entry in Column D, Item I.A. of the Statewide JASR for Title III should be the sum of the entries in Columns B and C, Item III.A. of the JSSR, for the same recipient, that includes the final quarter of the same program year for the same grant.

The sum of the entries (all SDAs in a State) in Colums A and C, Item I.B., Total Terminations, of the JASR should equal the entry in Column A Item III.B.1., SDA Terminations, of the JSSR, for the same recipient, that includes the final quarter of the same program year. The entry in Column D, Item I.B. of the statewide JASR for Title III should be the sum of the entries in Columns B and C, Item III.B. of the JSSR, for the same recipient, that includes the final quarter of the same program year for the same grant.

Section I—Participation and Termination Summary

Section I displays the program's accomplishments in terms of the total cumulative number of participants in the program and the numnber of types of terminations from the program, as of the end of the reporting period.

Entries for Items I.A. and I.B. are cumulative from the beginning of the program year through the end of the reporting period.

Item I.A. *Total Participants*

Enter by column the total number of participants who are or were receiving employment, training or services (except post-termination services) funded under that program title through the end of the reporting period, including both those on board at the beginning of the designated program year and those who have entered during the program year. If individuals receive concurrent employment, training and/or services under more than one title, they are to be considered participants in both titles for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data.

"Participant" means any individual who has: (1) Been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post-termination services) funded under the Act, following intake. Individuals who receive *only* outreach and/or intake and initial assessment services or postprogram follow-up are excluded.

Participants who have transferred from one title to another, or between programs of the same title, should be recorded as terminations from the title or program of initial participation and included as participants in the title or program into which they have transferred, unless they are to be considered concurrent participants in both titles or programs.

Item I.B. *Total Terminations*

Enter by column the total number of participants terminated after receiving employment, training, or services (except post-termination services) funded under that program title, for any reason, from the beginning of the program year through the end of the reporting period. This item is the sum of Items I.B.1. through I.B.3.

"Termination" means the separation of a participant from a given title of the Act who is no longer receiving employment, training, or services (except post-termination services) funded under that title.

Note.—Individuals may continue to be considered as participants for a single period of 90 days after last receipt of employment and/or training funded under a given title. During the 90-day period, individuals may or may not have received services. For purposes of calculating average weeks paticipated, this period between "last receipt of employment and/or training funded under a given title" and actual date of termination is defined as "inactive status" and is not to be included in Line 29.

Individuals who initially participate in Title III Formula funded activity and subsequently participate in Title III Discretionary National Reserve funded activity (and conversely), *For the completion of the initially determined training objective*, may be considered to be concurrent participants in both Title III programs. The type of termination determined for the subsequent program also should be recorded for the initial program for such participants.

For purposes of calculating average weeks participated for such concurrent Title III program participants, the period between "last receipt of employment and/or training funded under a given Title III program" (i.e., Formula or Discretionary National Reserve) and actual date of termination from that Title III program is defined as "inactive status" and is not to be included in Line 29.

Item I.B.1. *Entered Unsubsidized Employment*

Enter by column the total number of participants who, at termination, entered full- or part-time unsubsidized employment through the end of the reporting period. Unsubsidized employment means employment not financed from funds provided under the Act and includes, for JTPA reporting purposes, entry into the Armed Forces, entry into employment in a registered apprenticeship program, and terminees who became self-employed.

Item I.B.1.a. *Also Attained Any Youth Employability Enhancement*

Enter the total number of youth who (1) entered unsubsidized employment, Item I.B.1, and (2) *also* attained any one of the five youth employability enhancements (as enumerated in the instructions for Item I.B.2. below and defined in Appendix C).

This item is a sub-breakout of Item I.B.1.

Item I.B.2. *Youth Employability Enhancement Terminations*

Enter the total number of youth who were terminated under one of the Youth Employability Enhancements through the end of the report period. "Youth Employability Enhancement" means an outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following: (1) Attained PIC-Recognized Youth Employment Competencies (two or more); (2) Entered Non-Title II Training; (3) Returned to Full-Time School; (4) Completed Major Level of Education; or (5) Completed Program Objectives (14–15 year olds).

Note: For reporting purposes, *a youth shall not be counted in Item I.B.2. if s/he entered unsubsidized employment*, and shall be counted in only *one* of the five categories enumerated above, even though more than one outcome may have been achieved.

Item I.B.2.a. *Attained PIC-Recognized Youth Employment Competencies*

Enter the total number of youth who, at termination, have demonstrated proficiency as defined by the PIC in two or more of the following three skill areas in which the terminee was deficient at enrollment: pre-employment/work maturity, basic education, or job-specific skills. Competency gains must be achieved through program participation and be tracked through sufficiently developed systems that must include: quantifiable learning objectives, related curricula/training modules, pre- and post-assessment, employability planning, documentation, and certification. This item is a sub-breakout of Item I.B.2. During PY '88, competency attainment in one skill area will meet this definition.

Note: Terminees who have attained a competency in basic education skills and/or job specific skills through training funded under 8% programs and/or cooperative agreements may be counted in Item I.B.2.a. provided such training was for completion of a training objective initially determined while in a youth employment competency system operated under 78% funds.

Appendix B defines the minimal structural and procedural elements of a sufficiently developed youth employment competency system as well as the minimal requirements for ensuring consistency in the reporting of competency attainment in the pre-employment/work maturity skill area.

Item I.B.2.b. *Completed Program Objectives (14–15 year olds)*

Enter the total number of youth (ages 14 and 15 only) who, at termination, had completed a program objective. This item is a sub-breakout of Item I.B.2.

Note: For Column C, (1) Item I.B.2.b. cannot be greater than Item II.3., (2) the sum of Items I.B.2.a. and I.B.2.b. cannot be greater than Item I.B.2. and (3) Item I.B.1. plus Item I.B.2. plus Item I.B.3. must equal Item I.B.

Item I.B.3. *All Other Terminations*

Enter by column the total number of participants who were terminated for reasons other than those in Items I.B.1. and I.B.2., successful or otherwise, through the end of the reporting period. *Include intertitle transfers here.* See notes at Item I.B.

Section II—Terminee Performance Measures Information

Section II displays performance measures/parameters information. As indicated previously, data reported on characteristics of terminees should be based on information collected at time of eligibility determination unless otherwise indicated.

Governors may develop any participant record which meets the requirements of Section 629.35 (c) and (d) of the JTPA regulations. The DOL/ETA *Technical Assistance Guide: The JTPA Participant Record*, dated May 1983, may be used as a reference.

Line Item Definitions and Instructions

Sex

Line 1 Male
Line 2 Female

Distribute the terminees by column according to Sex. The sum of Lines 1 and 2 in each column should equal Item I.B. in that column.

Age

Line 3 14–15
Line 4 16–17
Line 5 18–21
Line 6 22–29
Line 7 30–54
Line 8 55 and over

Distribute the terminees by column according to Age. The sum of Lines 3 through 8 in each column should equal Item I.B. in that column.

Education Status

Line 9 School Dropout
Line 10 Student
Line 11 High School Graduate or Equivalent (No Post-High School)
Line 12 Post-High School Attendee

Distribute the terminees by column according to Education Status. The sum of Lines 9 through 12 in each column should equal Item I.B. in that column.

Family Status

Line 13 Single Head of Household with Dependent(s) Under Age 18.

Enter the total number of terminees by column for whom the above Family Status classification applies.

Race/Ethnic Group

Line 14 White (Not Hispanic)
Line 15 Black (Not Hispanic)
Line 16 Hispanic
Line 17 American Indian or Alaskan Native
Line 18 Asian or Pacific Islander

Distribute the terminees by column according to the Race-Ethnic Groups listed above. For purposes of this report,

Hawaiian Natives are to be recorded as "Asian or Pacific Islander". The sum of Lines 14 through 18 in each column should equal Item I.B. in that column.

Other Barriers to Employment

Line 19 Limited English Language Proficiency
Line 20 Handicapped
Line 21 Offender
Line 22 Reading Skills Below 7th Grade Level
Line 23 Long-Term AFDC Recipient

Enter the total number of terminees by column for whom each of the above Other Barriers to Employment apply.

U.C. Status

Line 24 Unemployment Compensation Claimant

Enter the total number of terminees by column for whom the above Unemployment Compensation Status classification applies.

Labor Force Status

Line 25 Unemployed: 15 or More Weeks of Prior 26 Weeks
Line 26 Not in Labor Force

Enter the total number of terminees by column for whom each of the above Labor Force Status classifications apply.

Welfare Grant Information

Line 27 Welfare Grant Type: AFDC
Line 28 Welfare Grant Type: GA/RCA

Distribute by column the total number of adult and youth welfare terminees who, at eligibility determination, were receiving (or whose family was receiving) cash payments under AFDC (SSA Title IV), GA, General Assistance (State or local government) or RCA (Refugee Cash Assistance) under the Refugee Assistance Act of 1980 (Pub. L. 96–212). If a welfare recipient terminee (or his/her family) received AFDC cash payments, include such terminee on Line 27. A welfare recipient terminee (or his/her family) who received cash payments under GA and/or RCA, but *not* AFDC, should be included on Line 28. The sum of Lines 27 and 28 in Column B, Adults (Welfare), should equal Item I.B. in that column. The sum of Lines 27 and 28 in Column C, Youth, should be the same as or less than Item I.B. in that column.

Other Program Information

Line 29 Average Weeks Participated

Enter by column the average number of weeks of participation in the program for all terminees. Weeks of participation include the period from the date an individual becomes a participant in a given title through the date of a participant's last receipt of employment and/or training funded under that title. Exclude the single period of up to 90 days during which an individual may remain in an inactive status prior to termination. Time in inactive status for all terminees should not be counted toward the actual number of weeks participated. Inactive status is defined as that period between "last receipt of employment and/or training funded under a given title" and actual date of termination. See note at Item I.B.

To calculate this entry: Count the number of days participated for each terminee, including weekends, from the start date of his/her participation in the title until his/her last receipt of employment and/or training under that title. For those who receive services only, use date of last receipt of such services. Divide this result by 7. This will give the number of weeks participated for that terminee. Sum all the terminees' weeks of participation and divide the result by the number of terminees, as entered (by column) in Item I.B. This entry should be reported to the nearest whole week.

Line 30 Average Hourly Wage at Termination

Enter by column the average hourly wage at termination for the total number of terminees in Item I.B.1.

To calculate this entry: Sum the hourly wage at termination for all the terminees shown in Item I.B.1. Divide the result by the number of terminees shown in Item I.B.1.

Hourly wage includes any bonuses, tips, gratuities and commissions earned.

Line 31 Total Program Costs (Federal Funds)

Enter the total accrued expenditures, through the end of the reporting period, of the funds allocated to SDAs under Section 202 (a) of the Act or otherwise distributed by the Governor to SDAs under Section 202(b)(3)—incentive grants for services to the hard-to-serve and programs exceeding performance standards—for Title II–A programs in Columns A and C (includes costs of services to participants aged 14–21), as appropriate, for *all* participants served. Do not include expenditures of funds authorized under Section 202(b)(3) for technical assistance. Exclude expenditures under Title I, Sections 123 (8%) and 124 (3%) and Title II Section 202(b)(4) (5%). Enter the total accrued expenditures of Title III funds received by the Governor under Section 301 of the Act in Column D only, for *all* Title III participants served through the end of the reporting period. Include expenditures of Federal funds only, both Formula and Discretionary National Reserve.

Note.—Entries will be made to the nearest dollar. Negative entries are not acceptable. The JASR program cost data will be compiled on an accrual basis. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

The sum of the entries in Columns A and C, Line 31, Total Program Costs, of the JASR (i.e., total for the State's SDAs under Title II–A) should equal the entry in Column A, Item I.A.1., SDA Total Program Expenditures, of the JSSR, and the sum of the entries (all SDAs in a State) in Column C, Line 31 of the JASR should equal the entry in Column A, Item II. of the JSSR, for the same recipient, that includes the final quarter of the same program year. The entry in Column D, Line 31, of the Statewide JASR for Title III should be the sum of the entries in Columns B and C, Item I.A. of the JSSR, for the same recipient, that includes the final quarter of the same program year for the same grant.

Line 32 Total Available Federal Funds

Enter the total Federal funds available for the Title II–A or Title III program described on this report including (1) unexpended funds carried over from previous program years, (2) funds allocated or awarded for this program year, and (3) any reallocation that *increased or decreased* the amount of funds available for expenditure through the end of this reporting period. Enter *all* Title II–A funds (Adults and Youth) in Column A and all Title III funds in Column D. Title II–A funds include those allocated to the SDA by the Governor under Section 202(a) of the Act, as well as incentive grants for services to the hard-to-serve and for programs exceeding peformance standards under Section 202(b)(3). Exclude funds authorized under Section 202(b)(3) (6%) for technical assistance to SDAs and funds received for activities under Sections 123 (8%) and 124 (3%) and Section 202(b)(4) (5%). Title III funds include *all* Formula amounts under Section 301(b) and *all* Discretionary National Reserve awards under Section 301(a).

Section III—Follow-Up Information

Section III displays information based on follow-up data which must be collected through participant contact to determine an individual's labor force status and earnings, if any, during the 13th full calendar week after termination and the number of weeks s/he was employed during the 13-week period. Follow-up data should be collected from participants whose 13th

full calendar week after termination ends during the program year (the follow-up group). Thus, follow-up will be conducted for individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year.

Follow-up data will be collected for the following terminees: Title II–A adults, adult welfare recipients, and Title III dislocated workers (Columns A, B, and D). No follow-up information is required for Title II–A youth (Column C).

The procedures used to collect the follow-up data are at the discretion of the Governors. However, in order to ensure consistency of data collection and to guarantee the quality of the follow-up information, follow-up procedures must satisfy certain criteria. (See the Follow-up Guidelines included in these JASR instructions, Appendix A.)

Note.—Every precaution must be taken to prevent a "response bias" which could arise because it may be easier to contact participants who were employed at termination than those who were not and because those who entered employment at termination are more likely to be employed at follow-up. Special procedures have been developed by which SDAs and States can monitor response bias. If your response rates for those who were and were not employed at termination differ by more than 5 percentage points, the follow-up entries for the JASR must be calculated using the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide. If the response rates differ by 5 percentage points or less, the following instructions for completing Lines 33–35 may be used.

Line 33 Employment Rate (At Follow-up)

Enter by column the employment rate at follow-up.

Calculate the employment rate by dividing the total number of respondents who were employed (full-time or part-time) during the 13th full calendar week after termination by the total number of respondents (i.e., terminees who completed follow-up interviews). Then multiply the result by 100. This entry should be reported to the nearest one decimal (00.0).

Line 34 Average Weekly Earnings of Employed (At Follow-up)

Enter by column the average weekly earnings of those employed (full-time or part-time) at follow-up.

Calculate the (before-tax) average weekly earnings by multiplying the hourly wage by the number of reported hours for each respondent employed at follow-up; and, if appropriate, add tips, overtime, bonuses, etc. Divide the sum of weekly earnings for all respondents employed during the 13th full calendar week after termination by the number of respondents employed at the time of follow-up. Respondents not employed at follow-up are not included in this average. This entry should be reported to the nearest whole dollar.

Weekly earnings include any wages, bonuses, tips, gratuities, commissions *and* overtime pay earned.

Line 35 Average Number of Weeks Worked in Follow-up Period

Enter by column the average number of weeks worked.

To calculate the average number of weeks worked (full-time or part-time), divide the sum of the number of weeks worked during the 13 full calendar weeks after termination for all respondents who worked, by the *total* number of all respondents, whether or not they worked any time during this 13-week follow-up period. This entry should be reported to the nearest one decimal (00.0).

Line 36 Sample Size

Enter by column the size of the actual sample selected to be contacted for follow-up. (For Title III only, a *statewide* sample of dislocated workers must be selected. For Title II–A, i.e., total adults and adult welfare recipients, SDA samples must be selected.)

Note.—If oversampling was used, the sample size should include all those selected, not just the required minimum sample size. Those deceased or severely incapacitated to the point of being unable to respond at follow-up may be excluded from the sample size.

Line 37 Response Rate

Enter by column the overall response rate, i.e., the percentage of complete surveys obtained.

To calculate the overall response rate, divide the number of terminees with complete follow-up information by the total number of terminees included in the follow-up sample (Line 36) and multiply by 100. This entry should be reported to the nearest whole percent.

Note.—Complete follow-up information consists of substantive answers to the required follow-up questions and may not include "don't know", "no answer" or "don't remember".

Section IV—Youth Employment Competency Attainment Information

Section IV displays information relevant to youth employment competency attainment as defined by the PIC. Regardless of termination type, the following data represent the total cumulative number of individuals that attained a youth employment competency in any of the three skill areas and the numbers of individuals who attained a competency in: (1) Pre-employment-work maturity, (2) basic education and/or (3) job specific skills.

Note.—Terminees who have attained a competency in basic education skills and/or job specific skills through training funded under 8% programs and/or cooperative agreements may be counted in Section IV provided such training was for completion of a training objective initially determined while in a youth employment competency system operated under 78% funds.

Appendix B defines the minimal structural and procedural elements of a sufficiently developed youth employment competency system as well as the minimal requirements for ensuring consistency in the reporting of competency attainment in the pre-employment/work maturity skill area.

Line 38 Attained Any Competency Area

Enter in Column C the total unduplicated number of youth terminees who were enrolled in a youth employment competency component and who attained a competency in at least one skill area.

Note.—Lines 39–41 are *not* sub-breakouts of Line 38 because one individual may attain several competencies and may be recorded *on more than one of* Lines 39–41. That individual may be recorded only once on Line 38, thus, Lines 39–41 *need not* sum to Line 38.

Line 39 Pre-Employment/Work Maturity Skills

Enter in Column C the number of youth terminees who attained a competency in the pre-employment/work maturity skill area.

Line 40 Basic Education Skills

Enter in Column C the number of youth terminees who attained a competency in the basic education skill area.

Line 41 Job Specific Skills

Enter in Column C the number of youth terminees who attained a competency in the job specific skill area.

Note.—An entry of "0" on any of Lines 39–41 may indicate that the PIC has determined that a specific skill area is not necessary to become employment competent in their local labor market.

Appendix A—Follow-up Guidelines

To ensure consistent data collection and as accurate information as possible, procedures used to obtain follow-up information must satisfy the following criteria:

- Participant contact should be conducted by telephone or in person. Mail questionnaires may be used in those cases where an individual does not have a telephone or cannot be reached.
- Participant contact must occur as soon as possible after the 13th full calendar week after termination but no later than the 17th calendar week after termination.

• Data reported are to reflect the individual's labor force status and earnings during the 13th full calendar week after termination and the number of weeks s/he was employed throughout the 13-week period after termination.

• Interview questions developed by DOL (see following Exhibit) must be used to determine the follow-up information reported on the JASR. Respondents must be told that responding is voluntary and that information provided by them will be kept confidential. Other questions may be included in the interview. Attitudinal questions may precede DOL questions, but questions related to employment and earnings must follow.

Exhibit

Minimum Postprogram Data Collection Questions

A. I want to ask you about the week starting on Sunday, ———, and ending on Saturday, ———, which was (last week/two/three/four weeks ago).

1. Did you do any work for pay during that week?
——— Yes [Go to 2]
——— No [Go to C]

2. How many hours did you work in that week?
——— Hours

3. How much did you get paid per hour in that week?
——— Dollars per hour

4. How much extra, if any, did you earn in that week from tips, overtime, bonuses, commissions, or any work you did on the side, before deductions?
——— Dollars

B. Now I want to ask you about the entire 13 weeks from Sunday, ———, to Saturday, ———.

5. Including the week we just talked about, how many weeks did you work at all for pay during the 13-week period?
——— Weeks [Go to end]

Alternative Questions

C. If answered "NO" to Question 1:
Now I want to ask you about the entire 13 weeks from Sunday, ———, to Saturday, ———.

6. Did you do any work for pay during the 13-week period?
——— Yes [Go to 7]
——— No [Go to end]

7. How many weeks did you do any work at all for pay during that 13-week period?

• Attempts must be made to contact *all* individuals unless terminee populations are large enough to use sampling.

• At least six attempts may need to be made to contact enough individuals in the follow-up group to obtain the required response rate.

• For each SDA (Title II–A) or combined Statewide (Title III Formula and National Reserve) report (JASR), minimum response rates of 70% are required for each of the following six groups: among adults, those who entered employment at termination and those who did not enter employment at termination; among welfare recipients, those who entered employment at termination and those who did not enter employment at termination; and among dislocated workers, those who entered employment at termination and those who did not enter employment at termination. The response rate is calculated as the number of terminees with complete follow-up information divided by the total number of terminees included in the group eligible for follow-up.

Sampling Procedures

Where sampling is used to obtain participant contact information, it is necessary to have a system which ensures consistent random selection of sample participants from *all* terminees in the group requiring follow-up.

• No participant in the follow-up group may be arbitrarily excluded from the sample.

• Procedures used to select the sample must conform to generally accepted statistical practice, e.g., a table of random numbers or other random selection techniques must be used.

• The sample selected for contact must meet minimum sample size requirements indicated in Table 1.

The use of sampling will depend on whether the terminee populations are large enough to provide estimates which meet minimum statistical standards. If the number of terminees for whom follow-up is required is less than 138, sampling cannot be used. In such cases attempts must be made to contact all the appropriate terminees.

Minimum Sample Sizes for Follow-up

To determine the minimum number of terminees to be included in the follow-up sample, refer to Table 1 in the following instructions. Find the row in the left-hand column that contains the planned number of terminees for each of the groups requiring follow-up: adults, welfare recipients and dislocated workers. The required minimum sample size is given in the middle column of that row. The last column gives sampling percentages that will assure that the minimum sample size is obtained.

Note.—The welfare recipients in the adult sample may be used as part of the welfare sample. In this case, an additional number of welfare recipients must be randomly selected to provide a supplemental sample large enough to meet the same accuracy requirements as other groups requiring follow-up. To determine the minimum size of this supplemental welfare sample, find the row in the left-hand column of Table 1 that contains the planned *total* number of welfare recipients requiring follow-up. From the corresponding entry in the middle column, subtract the number of welfare recipients included in the adult sample. The remainder represents the minimum size of the supplemental sample of welfare recipients required for contact.

TABLE 1—MINIMUM SAMPLE SIZES FOR FOLLOW-UP

Number of terminees in follow-up population	Minimum sample size	Sampling percentages
1–137	All	100
138–149	137	94
150–159	143	92
160–169	149	89
170–179	154	87
180–189	159	85
190–199	164	84
200–224	175	82
225–249	185	78
250–274	194	74
275–299	202	71
300–349	217	67
350–399	229	62
400–449	240	57
450–499	250	53
500–599	265	50
600–749	282	44
750–999	302	38
1,000–1,499	325	30
1,500–1,999	338	22
2,000–2,999	352	17
3,000–4,999	364	12
5,000 or more	383	7.3

Correcting for Differences in Response Rates

Different response rates for those terminees who entered employment at termination and those who did not are expected to bias the performance estimates because those who entered employment at termination are more likely to be employed at follow-up. It is assumed that those who are employed at termination are easier to locate than those who were unemployed because the interviewer has more contact sources (e.g., name of employer). The resulting response bias can artifically inflate performance results at follow-up.

To account for this problem, separate response rates should be calculated for those who were employed at termination and for those who were not. These separate response rates should be calculated for three groups: all adult II–A terminees, welfare recipients and Title III terminees.

For each group, if the response rates of those employed at termination and those not employed differ by more than 5 percentage points, then the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide must be used to correct the follow/up measures for that group.

Appendix B—Pic-Recognized Youth Employment Competencies

A. General Description of Youth Employment Competency Skill Areas

• *Pre-employment skills* include world of work awareness, labor market knowledge, occupational information, values clarification and personal understanding, career planning and decision making, and job search techniques (resumes, interviews, applications, and follow-up letters). They also encompass survival/daily living skills such as using the phone, telling time, shopping, renting an apartment, opening a bank account, and using public transportation; *and*

Work maturity skills include positive work habits, attitudes, and behavior such as punctuality, regular attendance, presenting a neat appearance, getting along and working well with others, exhibiting good conduct, following instructions and completing tasks, accepting constructive criticism from supervisors and co-workers, showing initiative and reliability, and assuming the responsibilities involved in maintaining a job. This category also entails developing motivation and adaptability, obtaining effective coping and problem-solving skills, and acquiring an improved self image.

• *Basic education skills* include reading comprehension, math computation, writing, speaking, listening, problem solving, reasoning, and the capacity to use these skills in the workplace.

• *Job-specific skills*—Primary job-specific skills encompass the proficiency to perform actual tasks and technical functions required by certain occupational fields at entry, intermediate or advanced levels. Secondary job-specific skills entail familiarity with and use of set-up procedures, safety measures, work-related terminology, recordkeeping and paperwork formats, tools, equipment and materials, and breakdown and clean-up routines.

B. Sufficiently Developed Systems for Youth Employment Competencies

A sufficiently developed youth employment competency system must include the following structural and procedural elements:

1. Quantifiable Learning Objectives

• PIC-recognized competency statements that are quantifiable, employment-related, measurable, verifiable learning objectives that specify the proficiency to be achieved as a result of program participation.

Employment competencies/quantifiable learning objectives approved by the PIC as relevant to the SDA must include a description of the skills/knowledge/attitudes/behavior to be taught, the levels of achievement to be attained, and the means of measurement to be used to demonstrate competency accomplishment. The level of achievement selected should enhance the youth's employability and opportunities for postprogram employment.

2. Related Curricula, Training Modules, and Approaches

• Focused curricula, training modules, or behavior modification approaches which teach the employment competencies in which youth are found to be deficient.

Such related activities, components, or courses must encompass participant orientation, work-site supervisor/instructor/community volunteer training, and staff development endeavors as appropriate. They also must include, as appropriate, relevant agreements, manuals, implementation packages, instructions, and guidelines. A minimum duration of training must be specified which allows sufficient time for a youth to achieve those skills necessary to attain his/her learning objectives.

3. Pre-Assessment

• Assessment of participant employment competency needs at the start of the program to determine if youth require assistance and are capable of benefitting from available services.

A minimum level of need must be established before a participant is eligible to be tracked as a potential "attained PIC-recognized youth employment competency" outcome. All assessment techniques must be objective, unbiased and conform to widely accepted measurement criteria. Measurement methods used must contain clearly defined criteria, be field tested for utility, consistency, and accuracy, and provide for the training/preparation of all raters/scorers.

4. Post-Assessment (Evaluation)

• Evaluation of participant achievement at the end of the program to determine if competency-based learning gains took place during project enrollment.

Intermediate checking to track progress is encouraged. All evaluation techniques must be objective, unbiased and conform to widely accepted evaluation criteria. Measurement methods used must contain clearly defined criteria, be field tested for utility, consistency, and accuracy, and provide for the training/preparation of all raters/scorers.

5. Employability Development Planning

• Use of assessment results in assigning a youth to appropriate learning activities/sites in the proper sequence to promote participant growth and development, remedy identified deficiences, and build upon strengths.

6. Documentation

• Maintenance of participant records and necessary reporting of competency-based outcomes to document intra-program learning gains achieved by youth.

Certification

• Proof of youth employment competency attainment in the form of a certificate for participants who achieve predetermined levels of proficiency to use as evidence of this accomplishment and to assist them in entering the labor market.

C. Guidelines for Ensuring Consistency in the Reporting of Pre-Employment/Work Maturity Skill Competencies

Individuals should demonstrate proficiency in each of the following 11 core competencies. In order for an attainment to be reported in the area of pre-employment/work maturity, at least one PIC-certified competency statement must be developed/quantified in each of the following 11 core competencies—provided that at least 5 of these learning objectives were achieved during program intervention:

1. Making Career Decisions
2. Using Labor Market Information
3. Preparing Resumes
4. Filling Out Applications
5. Interviewing
6. Being Consistently Punctual
7. Maintaining Regular Attendance
8. Demonstrating Positive Attitudes/Behavior
9. Presenting Appropriate Appearance
10. Exhibiting Good Interpersonal Relations
11. Completing Tasks Effectively

Appendix C—Definitions of Terms Necessary for Completion of Reports

Employment/Training Services

Assessment—services are designed to initially determine each participant's employability, aptitudes, abilities and interests, through interviews, testing and counseling to achieve the applicant's employment related goals.

Follow-up—is the collection of information on a terminee's employment situation at a specified period after termination from the program.

Intake—includes the screening of an applicant for eligibility and: (1) A determination of whether the program can benefit the individual; (2) an identification of the employment and training activities and services which would be appropriate for that individual; (3) a determination of the availability of an appropriate employment and training activity; (4) a decision on selection for participation and (5) the dissemination of information on the program.

Outreach—activity involves the collection, publication and dissemination of information on program services directed toward economically disadvantaged and other individuals eligible to receive JTPA training and support services.

Youth Employability Enhancement Termination

An outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for long-term increase in earnings and employment. The five youth employability enhancement outcomes are:

(1) Demonstrated proficiency in youth employment competencies as defined by the PIC in *two or more* of the following three skill areas in which the terminee was deficient at enrollment: pre-employment/work maturity, basic education, or job-specific skills. During PY '88, competency attainment in one skill area will meet the definition.

(2) Entered an occupational skills employment/training program, not funded under Title II of the JTPA, which builds upon *and does not duplicate* training received under Title II.

(3) Returned to full-time school if, at time of intake, the participant was *not* attending school and had *not* obtained a high school diploma or equivalent.

(4) Completed, during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational attainment are elementary, secondary, and post-secondary. Completion standards shall be governed by State standards or, at the Governor's discretion, local standards at the elementary level; shall include a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the post-secondary level. NOTE: To obtain credit, completion of a major level of education must result primarily from participation in a JTPA activity.

(5) Completed program objectives as defined in approved exemplary youth project

plans if, at time of entry, the participant was 14 or 15 years of age.

Education Status

School Dropout—An adult or youth (aged 14–21) who is not attending school full-time and has not received a high school diploma or a GED certificate.

Student—An adult or youth (aged 14–21) who has not received a high school diploma or GED certificate and is enrolled full-time in an elementary, secondary or postsecondary-level vocational, technical, or academic school or is between school terms and intends to return to school.

High School Graduate or Equivalent (No Post-High School)—An adult or youth (aged 14–21) who has received a high school diploma or GED Certificate, but who has not attended any postsecondary vocational, technical, or academic school.

Post High School Attendee—An adult or youth (aged 14–21) who has received a high school diploma or GED certificate and has attended (or is attending) any postsecondary-level vocational, technical, or academic school.

Family Status

Single Head of Household—A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

Race/Ethnic Group

White (Not Hispanic)—A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Black (Not Hispanic)—A person having origins in any of the black racial groups of Africa.

Hispanic—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin (including Spain), regardless of race.

Note.—Among persons from Central and South American countries, only those who are of Spanish origin, descent, or culture should be included in the Hispanic category. Persons from Brazil, Guiana, and Trinidad, for example, would be classified according to their race, and would not necessarily be included in the Hispanic category. Also, the Portuguese should be excluded from the Hispanic category and should be classified according to their race.

American Indian or Alaskan Native—A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent (e.g., India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan), or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa. Hawaiian natives are to be recorded as Asian or Pacific Islanders.

Other Barriers to Employment

Limited English Language Proficiency—Inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap.

Handicapped Individual—Refer to Sec. 4(10) of the Act. Any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

Note.—This definition will be used for performance standards purposes, but is not required to be used for program eligibility determination (Sec. 4(8)(E)).

Offender—For reporting purposes, the term "offender" is defined as any adult or youth who requires assistance in overcoming barriers to employment resulting from a record of arrest or conviction (excluding misdemeanors).

Reading Skills Below 7th Grade Level—An adult or youth assessed as having English reading skills below the 7th grade level on a generally accepted standardized test.

Long-Term AFDC Recipient—An adult or youth welfare recipient who had received (or whose family had received) cash payments under AFDC (SSA Title IV) for any 24 or more of the 30 months prior to eligibility determination.

U.C. Status

Unemployment Compensation Claimant—Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation programs, and who has not exhausted benefit rights or whose benefit year has not ended.

Labor Force Status

Employed—(a) An individual who, during the 7 consecutive days prior to application to a JTPA program, did any work at all: (i) As a paid employee; (ii) in his or her own business, profession or farm, or (iii) worked 15 hours or more as an unpaid worker in an enterprise operated by a member of the family; or (b) an individual who was not working, but has a job or business from which he or she was temporarily absent because of illness, bad weather, vacation, labor-management dispute, or personal reasons, whether or not paid by the employer for time off, and whether or not seeking another job. (This term includes members of the Armed Forces on active duty, who have not been discharged or separated; participants in registered apprenticeship programs; and self-employed individuals.)

Employed Part-Time—An individual who is regularly scheduled for work less than 30 hours per week.

Unemployed—An individual who did not work during the 7 consecutive days prior to application for a JTPA program, who made specific efforts to find a job within the past 4 weeks prior to application, and who was available for work during the 7 consecutive days prior to application (except for temporary illness).

Unemployed: 15 OR MORE WEEKS OF PRIOR 26 WEEKS—An individual who is unemployed (refer to definition above) at the time of eligibility determination and has been unemployed for any 15 or more of the 26 weeks immediately prior to such determination, has made specific efforts to find a job throughout the period of unemployment, and is not classified as "Not in Labor Force".

Not in Labor Force—A civilian 14 years of age or over who did not work during the 7 consecutive days prior to application for a JTPA program and is not classified as employed or unemployed.

Welfare Grant Information

Welfare Recipient—An individual who receives (or whose family receives) cash payments under AFDC (SSA Title IV), General Assistance (State or local government), or the Refugee Assistance Act of 1980 (PL 96–212) at the time of JTPA eligibility determination. For reporting and performance standards purposes, *exclude* those individuals who receive only SSI (SSA Title XVI).

Program Costs

Accrued Expenditures—The allowable charges incurred during the program year to date requiring provision of funds for: (1) Goods and other tangible property received; and (2) costs of services performed by employees, contractors, subrecipients, and other payees.

Note.—These charges do not include "resources on order", i.e., amounts for contracts, purchase orders and other obligations for which goods and/or services have not been received.

[FR Doc. 88–4836 Filed 3–4–88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88–22]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on the Next Generation Fighter.

DATE AND TIME: March 22, 1988, 9:30 a.m. to 4 p.m.; and March 23, 1988, 9:30 a.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Kirkpatrick, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2803.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall

guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on the Next Generation Fighter, chaired by Mr. William Webb, is comprised of ten members.

This meeting will involve briefings and discussions of classified National Security information pertaining to Soviet threat data and United States' military strategic planning. Since the subjects will be concerned with matters listed in 5 U.S.C. 552b(c)(1), it has been determined that this meeting should be closed to the public.

Type of Meeting: Closed.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

February 29, 1988.

[FR Doc. 88-4826 Filed 3-4-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-368]

Arkansas Power and Light Co., Arkansas Nuclear One, Unit 2; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Technical Specifications (TSs) for Arkansas Nuclear One, Unit 2 (ANO-2) located at Russellville, Arkansas.

Environmental Assessment

Identification of Proposed Action

By letters dated October 28, 1987 (2CAN108704 and 2CAN108705), Arkansas Power and Light Company (AP&L, the licensee) requested a change in the plant technical specifications (TSs) to reflect a decrease in the boron concentration required in the boric acid makeup tanks (BAMTs), and an increase in the boron concentration required for the refueling water tank (RWT) and the safety injection tanks (SITs). Additional information regarding time for loss of shutdown margin was provided in the licensees' letter of January 19, 1988 (2CAN018801).

The BAMTs are presently required to contain between 5.0 and 12.0 weight percent boric acid concentration. The proposed change would permit boric acid concentrations of between 2.5 and 3.5 weight percent. Similarly, the RWT and SITs are now required to have a boron concentration between 1731 and 2250 ppm of boron. The proposed change will increase the level to between 2500 ppm and 3000 ppm.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing regarding the proposed changes to the TS, were published in the Federal Register on December 21, 1987 (52 FR48348 and 52 FR48349).

Need for Proposed Action

The proposed TS changes are needed because the licensee will be using extended cycle cores at ANO-2. The proposed changes to the TS will provide the safety and operational enhancements specifically suited to use of the extended cycle cores.

Environmental Impact of the Proposed Action

The proposed increase in boron concentration in the RWT and SITs was considered for the applicable accident analyses in chapter 15 of the Final Safety Analysis Report. The appropriate criteria are met and in some analyses, there are slight increases in the margin of safety due to the minimal increases in the reactor coolant system boron concentration. The contents of the BAMTs are not considered in accident mitigation but are assumed to be added to the containment sump inventory in the evaluation of long term emergency core cooling system performance. The decrease in the boron concentration of the BAMTs almost exactly offsets the boron increases in the RWT and SITs. Consequently there is, either minimal or no change in the potential for boric acid precipitation, spray and sump pH values, iodine removal capabilities, and containment corrosion characteristics. Therefore the proposed changes will not increase to greater than previously determined, the probability of accident and post-accident radiological releases, nor otherwise affect radiological plant effluents. The Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS changes.

With regard to potential non-radiological impacts, the proposed TS changes involve features located entirely within the restricted area as defined in 10 CFR Part 20. They would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Actions

The principal alternative to the proposed actions would be to deny the requested TS changes. It has been concluded that there is no measurable impact associated with the proposed license amendment; any alternatives to the license amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's safety analysis and changes to the TSs that support the proposed amendment. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the applications for license amendment dated October 28, 1987, as supplemented by letter dated January 19, 1988. Copies are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 29th day of February, 1988.

For The Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects — III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-4853 Filed 3-4-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Instrumentation and Control Systems; Meeting

The ACRS Subcommittee on Instrumentation and Control Systems will hold a meeting on March 24, 1988, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, March 24, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the NRC Staff's analysis and study to limit the scope of USI A–47, "Safety Implications of Control Systems."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allocated therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El–Zeftawy (telephone 202/634–3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 1, 1988.

Morton W. Libarkin,

Executive Director for Project Review.

[FR Doc. 88–4906 Filed 3–4–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Occupational and Environmental Protection System; Meeting

The ACRS Subcommittee on Occupational and Environmental Protection System will hold a meeting on March 22 and 23, 1988, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, March 22, 1988—8:30 a.m. until the conclusion of business; Wednesday, March 23, 1988—8:30 a.m. until the conclusion of business

The Subcommittee plans to review: (1) The "hot particle" problem, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planning rule, (4) the control room habitability report by ANL, and (5) other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact one of the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 1, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 83–4907 Filed 3–4–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment To Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to Washington Public Power Supply System (the licensee), for operation of Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated December 1, 1987 (Reference GOL–87–278).

The proposed amendment would modify snubber functional testing sampling plans as detailed in Technical Specifications 4.7.4.e. This action if approved would reduce the amount of snubber testing required.

Before issuance of the proposed license amendment, the Commission will have made findings required by the atomic Energy Act of 1954, as amended (the Act) and the Commisison's regulations.

By April 6, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commisison's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a

notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99532, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 29th day of February, 1988.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-4852 Filed 3-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21 issued to Washington Public Power Supply System (the licensee), for operation of Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated December 15, 1987 (Reference G02-87-286).

The proposed amendment would allow the operation of WNP-2 with final feedwater temperature reduction and subsequent thermal coastdown to 65% power for the purpose of extending the normal fuel cycle. This action if approved would result in more efficient utilization of fuel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 6, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99532, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 29th day of February, 1988.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-4854 Filed 3-4-88; 8:45 am]

BILLING CODE 7590-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Application for Special Use of Parks and Plazas

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Public notice.

SUMMARY: Notice is hereby given of the general and special conditions upon which the Corporation approves applications for permits for special uses of Pershing Park, Western Plaza, Market Square Park, Indiana Plaza, and John Marshall Park.

DATE: This action is effective as of March 7, 1988.

ADDRESS: An Application for Special Use may be obtained from the Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Avenue NW., Washington, DC 20004-1703.

FOR FURTHER INFORMATION CONTACT: Sylvia Simmons, Chairperson, Public Use Committee, (202) 724-9061.

SUPPLEMENTARY INFORMATION: The Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, Oct. 27, 1972 (40 U.S.C. 871, *et seq.*) established the Pennsylvania Avenue Development Corporation to develop, maintain, and use the Pennsylvania Avenue development area in a manner suitable to its ceremonial, physical, and historical relationship to the legislative and executive branches of the Federal government, to the governmental buildings, monuments, memorials, and parks in and adjacent to that area, and to the downtown commercial core of Washington, DC. The Act authorizes the Corporation to establish such requirements as are necessary to assure the maintenance and protection of the development area in accordance with the Pennsylvania Avenue Plan. Presently, five public parks and plazas are located within the development area: Pershing Park, Western Plaza, Market Square Park, John Marshall Park, and Indiana Plaza. The Corporation has established a Public Use Committee to oversee the issuance of permits for the use of these parks and plazas by groups and individuals. Permits are issued by the Executive Director upon approval of an "Application for Special Use of PADC Parks and Plazas." Permittees must comply with the general conditions of use stated on the Application and any special conditions determined by the Committee to be reasonably necessary to protect public health and safety and to prevent physical damage to the parks and plazas. The following General Conditions apply:

(a) The Application must be submitted to the Corporation at least six weeks in advance of the proposed use.

(b) A principal member of the organization applying for the permit must be available to make a presentation on the proposed use to the Committee, if necessary.

(c) All sidewalks, walkways, and roadways must remain unobstructed to allow for the reasonable use of these areas by other park and plaza visitors. A temporary public space occupancy permit must be obtained from the D.C. Government if any streets are to be closed.

(d) If the proposed use is expected to attract over 5,000 people, or to be heavily covered by local media, the permittee is required to notify the following agencies at least sixty days in advance of the use:

—Special Operations, Metropolitan Police Department (202) 727-4641

—American Red Cross (202) 728-6585

—D.C. Public Space Committee (202) 727-5330

(e) Motor vehicles are not allowed in the park or plaza, except with written permission from PADC.

(f) All staging, platforms, musical equipment, amplifiers, vending, etc., must be contained within the area approved by the Corporation.

(g) Permittee must leave the area in the same condition as it was prior to use. All trash must be placed in trash baskets in the area or, if more debris is generated than the trash baskets can contain, permittee must remove additional trash for disposal.

(h) The permittee of any event which may require extra maintenance by the Corporation may be charged a *minimum* fee of $250.00, payable in cash to the Corporation by cashier's check, or money order, to be paid in advance of permit issuance. The permittee must agree to reimburse the Corporation for any maintenance and damage costs that exceed $150.00.

(i) The sale of food or beverage in Pershing Park is prohibited.

(j) The Corporation may require liability insurance and indemnification for those activities which in the Corporation's opinion have the potential for personal injury or property damage.

(k) Permittee must have an original of the permit with him/her at all times during the event.

(l) The use of these parks and plazas shall be at the sole risk of permittee, and permittee must agree to save the Corporation wholly harmless from and against all claims, damages, expenses, and liability (whether or not such liability has been judicially determined) resulting from or in any manner attributable to permittee's use of the park or plaza.

(m) The Corporation reserves the right to revoke any permit if any of the general or special conditions of the permit are violated, or if it reasonably appears that the proposed use presents a clear and present danger to the public health and safety.

(n) Any false or misleading information provided by the permittee may at the discretion of the Corporation result in the denial of the permit, the revocation of permit previously approved, or the forfeiture of the required fee.

(o) The Corporation reserves the right to condition the approval of any permit upon the applicant's securing of any other permit required by the laws and regulations of the governments of the District of Columbia and the United States governing the proposed use.

M.J. Brodie,

Executive Director.

Dated: February 26, 1988.

[FR Doc. 88-4860 Filed 3-4-88; 8:45 am]

BILLING CODE 7630-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employee Representatives' Status and Compensation Reports.

(2) *Form(s) submitted:* DC-2a, DC-2.

(3) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) *Frequency of use:* On occasion, annually.

(5) *Respondents:* Businesses or other for-profit.

(6) *Annual responses:* 60.

(7) *Annual reporting hours:* 25.

(8) *Collection description:* Benefits are provided under the Railroad Retirement Act for individuals who are employee representatives as defined in section 1 of that Act. The collection obtains information on the status of such individuals and their compensation.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information, Resources Management.

[FR Doc. 88-4861 Filed 3-4-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25402; File No. SR-NYSE-87-31]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Reports to Control Persons

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 14, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Proposed Rule 354 is designed to supplement the regulatory initiatives that the Exchange filed with the Commission (SR-NYSE-87-10) on March 26, 1987. The purpose of these initiatives, which are pending Commission approval, is to strengthen the supervisory and compliance functions of the Exchange's members and member organizations and to require them to demonstrate to the Exchange that they are meeting their supervisory and compliance responsibilities.

The proposed Rule 354 will require a copy of the annual internal report [1] covering the member organization's supervision and compliance efforts during the preceding year required by proposed Rule 342.30 to be furnished annually to control persons of a member organization.

Where a member organization has no control person, proposed Rule 354 requires that the reports be made to the audit committee of the member organization's board of directors or its equivalent committee or group.

Where the control person is an organization, the report must be made to the general counsel of the control person and to the audit committee of that control person's board of directors or its equivalent committee or group.

The term "control" as used in proposed Rule 354 is defined in Exchange Rule 2.

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 and is set forth in Sections A, B, and C below.

[1] The report is to include statistical information on customer complaints and inquiries into anomalous trades, significant compliance problems, plans for future systems or procedures to prevent and detect violations and problems, and on the year's supervisory and compliance efforts and initiatives in specified areas.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange believes that proposed Rule 354 is a natural and necessary outgrowth of the regulatory initiatives pending with the Commission. Assuring an awareness of a member organization's supervision and compliance process by its control persons will strengthen overall supervision and compliance functions of Exchange member organizations as well as the self-regulatory process. It will also assist persons who control member organization's in understanding of the member organization's responsibilities in the self-regulatory process and how it discharges them.

(b) Statutory Basis

The bases under the 1934 Act for this proposed rule change are sections 6(b)(1) and 19(g)(1) which, in effect, require the Exchange to enforce compliance, by its members and persons associated with its members, with the provisions of the 1934 Act and rules of the Exchange. Proposed Rule 354 is also consistent with section 15(b)(4)(E) which effectively mandates established procedures and a system for applying such procedures which would reasonably be expected to prevent and detect violations by persons subject to supervision. Further, the proposed rule change is consistent with the requirements of section 6(b)(5) in that such rule is designed to prevent fraudulent and manipulative acts and practices and promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchagne has received two letters commenting on a draft of the proposed rule.[2]

The first letter argued that the proposed rule change creates two classes of member organizations, *i.e.*, those with control persons and those without. As a result, the proposed rule change is discriminatory to those organizations with a control person. Further, control persons would include stockholders who are entitled to be "passive investors without regard to the size of their holdings." Therefore, submission of reports to control persons may create an obligation on their part not heretofore in existence. (5/26/87 Letter to David Marcus, EVP, NYSE, from Loren Schechter, SVP, Prudential-Bache Securities Inc.)

The second letter (6/3/87 Letter to David Marcus, EVP, NYSE, from Dennis H. Greenwald, EVP, Dean Witter Reynolds Inc.) stated that the commentator had reviewed and "fully agrees with" the Prudential-Bache letter. Additionally, concern was expressed that proposed Rule 354 would negate the exception to liability of control persons established by section 20 of the 1934 Act for violations by their controlled persons. This exception is based on the control persons acting in good faith and not causing or including the violation.

The Exchange reviewed these letters and concluded that the rule proposal does not discriminate against member organizations with control persons since the required reports would have to be made to a firm's own board audit committee if it has no control person.

With respect to section 20 of the 1934 Act, the Exchange does not believe that receipt of reports as proposed by Rule 354 would negate a good faith defense and may even be evidence of the control person's good faith efforts.

In response to verbal comments received from member organizations, Exchange advisory committees and others, the Exchange made changes to the initial proposal. Changes were made to: (1) Delete a requirement that a member organization demonstrate to its control person(s) that it has established supervisory and compliance procedures and is reasonably carrying them out and (2) permit the annual compliance report to be submitted to the general counsel of a controlling organization (rather than to the chief executive officer or managing partner) as well as to the controlling organization's audit committee.

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule. The Exchange has not received any other unsolicited written comments from members or other interested parties.

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 the 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 28, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 26, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4846 Filed 3-4-88; 8:45 am]

BILLING CODE 8010-01-M

[2] The letters, as described below, are available from the Commission at the address noted in Section IV below or from the NYSE.

[Release No. 34-25400; Filed No. SR-NYSE-88-02]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by New York Stock Exchange, Inc.; Relating to Index Arbitrage

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 25, 1988, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below,

which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) This proposed rule change amends the Exchange's rules by adding the following new Rule 80A and adopting the interpretation of proposed Rule 80A described below.

(i) The text of proposed Rule 80A is as follows:

Restrictions on Index Arbitrage

Rule 80A. (a) Except as paragraph (c) provides, if the Dow Jones Industrial Average SM [1] reaches a value 50 or more points above or below the average's closing value on the previous trading day, no member or member organization shall enter into any of the automated order-routing or trading facilities of the Exchange any order or other trading interest involving index arbitrage for any account, whether proprietary or for a customer. The restrictions of this paragraph (a) shall apply only during the remainder of the day on which the average changes in value by 50 or more points.

(b) For the purpose of this Exchange, "index arbitrage" means an arbitrage trading strategy involving the purchase or sale of "baskets" or groups of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts (collectively, "derivative index products") in an attempt to profit by the price difference between the "baskets" or groups of stocks and the derivative index products. While the purchase or sale of the "baskets" or groups of stocks must be in conjuction with the purchase or sale of derivative index products, the two sets of transactions need not be executed contemporaneously to be considered index arbitrage.

(c) The restrictions of paragraph (a) shall not apply to any market-on-close order or other trading interest transmitted on a Friday (or, if a Friday is not a business day, the next preceding business day) when that Friday (or next preceding business day) is the last trading day of any derivative index product.

* * * *Supplemental Material:*

.10 The 50-point parameter of paragraph (a) represents a movement of approximately 2.5 percent of the Dow Jones Industrial Average at the time of the formulation of this Rule 80A (when the average stood at approximately 2,000). Whenever the average equals any multiple of 250, the Exchange may, by notice to its members and member organizations, substitute a new point parameter that reestablishes the correspondence to a change of 2.5 percent.

.20 Whenever movement in the Dow Jones Industrial Average triggers the application of the restrictions of paragraph (a), the Exchange will seek to assist members and member organizations in complying with this Rule 80A by disseminating notice of the restrictions' applicability through electronic or other means. However, this Rule 80A applies independently of such notice. Accordingly, members and member organizations are subject to its restrictions whether or not such notice is disseminated or received. Members and member organizations that engage in index arbitrage for proprietary or customer accounts shall create appropriate procedures to monitor movements in the average and notify their personnel responsible for index arbitrage whenever the restrictions of paragraph (a) apply.

.30 Subject to the exceptions in this Rule 80A, the restrictions of paragraph (a) shall apply whenever the Dow Jones Industrial Average reaches the trigger value, notwithstanding the fact that, at any given time, the calculation of the value of the average may be based on the prices of less than all of the stocks included in the average.

.40 Orders or other trading interest transmitted by members and member organizations, but not yet executed at the time the application of the restrictions of paragraph (a) are triggered, shall not be affected by the restrictions.

.50 The Exchange may waive the restrictions of paragraph (a) whenever such waiver appears justified to foster or maintain the efficiency, fairness or orderliness of the market. The Exchange shall provide notice of any such waiver through electronic or other means.

(ii) In the information memorandum announcing Commission approval of proposed Rule 80A, the Exchange will include the following interpretation of this rule, which interpretation will be considered a rule of the Exchange:

While index arbitrage can cover a number of trading strategies, in the following circumstances, the Exchange will presume that, for the purpose of Rule 80A, a member or member organization is engaging in index arbitrage. If a member or member organization—

(1) Enters an order (or orders) to sell (buy) a derivative index product while the derivative index product is trading at a premium (discount) in relation to the value of the index, and,

(2) If, at or about the same time, the member or member organization enters orders to buy (sell) a "basket" or group of stocks that comprise or closely track the index, then,

unless the member or member organization can show evidence to the contrary, the orders entered in the "basket" or group of stocks will be considered to be part of an index arbitrage strategy regardless of whether the orders in the "basket" or group of stocks and the order(s) in the derivative product are executed contemporaneously or whether the set of transactions, in fact, results in a profit. The Exchange emphasizes that this presumption represents only one possible example of index arbitrage and that there may be other situations in which trading in a "basket" or group of stocks could be considered index arbitrage.

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 and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Over the last several months, there has been significant volatility in the securities markets. The Exchange believes that trading activity known as "index arbitrage" may exacerbate this volatility. The Commission's Division of Market Regulation also has expressed concern that futures-related trading can result in increased stock market volatility. In its recent report, the Division stated that such trading can have "profound impacts on the participation of individual investors in the stock market" and that individual participation in the stock market "remains important both for the

[1] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

additional liquidity it provides and for its contribution to consensus support for the U.S. economic system." [2]

In response to this volatility, the Exchange has been examining how to address index arbitrage, which forms the link between the equities and the derivative product markets. The Exchange believes that its examinations must consider whether index arbitrage makes both markets more efficient, as well as respond to the professional and public perception that index arbitrage makes the markets more volatile. (See Section C. below.) The Exchange has determined that one way to attempt to level off volatility is by controlling the amount of risk rebounding into the stock market as a result of activity in the derivative product market. Specifically, the Exchange has determined to impose restrictions on the use of the Exchange's automated order-routing and trading facilities for index arbitrage purpose during periods of excessive market volatility.

Proposed Rule 80A would impose the restrictions when the Dow Jones Industrial Average [3] reaches a level 50 or more points above or below the average's previous day close.[4] At this trigger point, a member or member organization would be prohibited from entering into any automated order routing or trading system of the Exchange (such as the Designated Order Turnaround System, which is referred to as "Dot" or "SuperDot") any order to other trading interest involving index arbitrage, whether that order or trading interest is proprietary or for the account of a customer. The restrictions would apply for the remainder of the trading day.

"Index arbitrage" is defined in the rule to cover certain activity involving the trading of "baskets" or groups of stocks in conjunction with the trading of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts (referred to in the rule as "derivative index products"). Specifically, the restrictions of the rule would cover trading in an attempt to profit from price discrepancies between the stocks and the derivative index products. The definition of "index arbitrage" requires only that the purchase and sale of the "basket" or group of stocks and the purchase or sale of the derivative index products be related; these purchases and sales do not have to be executed simultaneously. This is because some arbitrage strategies allow for time lags between the execution of the two legs of the transaction.

In administering the rule, the Exchange has determined to adopt an interpretation that presumes (absent a contrary showing) that a member or member organization is engaging in index arbitrage if orders representing the stock and derivative index product legs are entered contemporaneously and at a time when the value of the derivative index product was at a premium (or discount) in relation to the index value. This presumption is not exclusive and there may be other situations where trading in a "basket" or group of stocks would be considered index arbitrage.

There are three exceptions to proposed Rule 80A. First, the rule does not apply to market-on-close orders transmitted on expiration Fridays. This is intended to allow the orderly liquidation of previously-established index arbitrage positions where the final value of the derivative index product is determined as of the close of trading on that Friday. This exception will not apply to market-on-close orders on Thursdays for securities traded in conjunction with derivative index products where the value is determined by the Friday opening stock prices (such derivative index products do not trade on expiration Fridays) because the rule's restrictions do not apply to opening trades, and therefore, cannot interfere with liquidation orders seeking to receive the opening price.

Second, the rule does not prohibit the execution of an order that a member or member firm has transmitted before the restrictions were triggered. However, the order must be en route to the point of execution (*e.g.*, the specialist's post via SuperDot), thus not requiring the member or member organization to take any further action to effect the execution.

Finally, the rule allows the Exchange to waive the restrictions in appropriate circumstances. This discretion recognizes that it may not be appropriate to apply the restrictions of the rule when such waiver appears justified to foster or maintain the efficiency, fairness or orderliness of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

While the Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change, the Exchange has adopted the proposal after informal discussions with all segments of the Exchange's membership, various constituents, including individual and institutional investors, and listed companies. This specific proposal was discussed at a meeting of approximately 25 member organizations on February 3, 1988, preceding consideration of the proposal by the Exchange's Board of Directors. At that meeting, there was virtually unanimous sentiment that the Exchange should take some form of action to curtail the volatility associated with index arbitrage. Suggestions received at that meeting were incorporated into the final form of the proposal.

In addition, although not in response to this specific proposal, as of January 28, 1988, the Exchange had received over 375 letters on the volatility of the securities markets. Almost uniformly, the approximately 250 letters that discussed index arbitrage called for either its outright prohibition or restrictions on its use. In addition, approximately 40 letters specifically recommended limitations on the use of Dot for index arbitrage. These letters were attached to the testimony of John Phelan, Chairman and Chief Executive Officer of the Exchange, before the United States Senate Committee on Banking, Housing and Urban Affairs, February 5, 1988, and are available upon request.

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 the proposed rule change, or

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[2] "The October 1987 Market Break—A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission," February 1988, at xiv.

[3] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company Inc.

[4] The 50-point trigger represents approximately a 2.5 percent movement in the Dow Jones Industrial Average at the time of this filing. The rule provides the Exchange the discretion to adjust the trigger at 250 point multiples of the average to reestablish the correspondence to the 2.5 percent change.

(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 communcations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 28, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 26, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4847 Filed 3-4-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Birmingham Steel Corporation
Common Stock, Par Value $.01 (File No. 7-3083)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 21, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4843 Filed 3-4-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

CRI Insured Mortgage Investments III, L.P.
Beneficial Assignee Certificates (Representing Beneficial Assignment of Limited Partnership Interest) File No. 7-3084)

Leasure Technology, Inc.
Common Stock, $.10 Par Value (File No. 7-3085)

Putnam Premier Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3086)

Thai Fund
Common Stock, $.10 Par Value (File No. 7-3087)

USA Cafes L.P.
Units (File No. 7-3088)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 22, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4844 Filed 3-4-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

MFS Municipal Income Trust
Shares of Beneficial Interest (File No. 7-3093)

Applied Magnetics Corporation
Common Stock, $0.10 Par Value (File No. 7-3094)

Freeport-McMoRan Energy Partners Ltd.
Limited Partnership Interest (File No. 7-3095)

Freeport-McMoRan Resource Partners
General Partnership Units (File No. 7-3096)

Pansophic Systems, Inc.
Common Stock, No Par Value (File No. 7-3097)

Phillips-Van Heusen Corporation
Common Stock, $1.00 Par Value (File No. 7-3098)

Primark Corporation
Common Stock, No Par Value (File No. 7-3099)

Sea Containers Ltd.
Common Shares, $0.01 Par Value (File No. 7-3100)

Valhi, Inc.
Common Stock, $1.00 Par Value (File No. 7-3101)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 22, 1988, written data, views and arguments

concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4845 Filed 3-4-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Apple Bank for Savings
Common Stock, $1.00 Par Value (File No. 7-3089)
Dime Savings Bank of New York
Common Stock, $1.00 Par Value (File No. 7-3090)
Manhattan Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7-3091)
Potlatch Corporation
Common Stock, $1.00 Par Value (File No. 7-3092)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 22, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 88-4903 Filed 3-4-88; 8:45 am]

BILLING CODE 8010-10-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 1, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Flowers Industries, Inc.
Common Stock, $0.62½ Par Value (File No. 7-3102)
Lawson Mardon Group Limited
Class A Shares, No Par Value (File No. 7-3103)
Norton Company
Common Stock, $5.00 Par Value (File No. 7-3104)
Businessland, Inc.
Common Stock, No Par Value (File No. 7-3105)
Loctite Corporation
Common Stock, No Par Value (File No. 7-3106)
USACafes, L.P.
Units of Limited Partnership Interest (File No. 7-3107)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 22, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-4904 Filed 3-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16293; II File No. 812-6947]

March 1, 1988.

Western Life Insurance Co.; Application for Exemption

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940.

Applicants: Western Life Insurance Company, Variable Account D of Western Life Insurance Company, and AMEV Investors, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to permit them to issue variable annuity contracts which provide for the deduction of mortality and expense risk charges from net asset value.

Filing Date: December 31, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on March 28, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with the proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Western Life Insurance Company, Variable Account D of Western Life Insurance Company, and AMEV Investors, Inc., at 500 Bielenberg Drive, Woodbury, Minnesota 55125.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney at (202) 272-2026 or Lewis B. Reich, Special Counsel at (202) 272-2027 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the

Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Western Life Insurance Company (the "Company"), is a stock life insurance company organized under the laws of Minnesota, and Variable Account D of Western Life Insurance Company (the "Variable Account") is a separate account of the Company registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, and AMEV Investors, Inc., is the principal underwriter for the Variable Account. These entities are hereinafter referred to as "Applicants." The Variable Account is divided into sub-accounts, each of which invests solely in the shares of one of the corresponding portfolios of AMEV Series Funds, Inc. (the "Fund"). The Variable Account was established to fund the individual flexible premium deferred variable annuity Contract (the "Contract") to be issued by the Company. The Company proposes to deduct from the Variable Contract Account a daily asset charge for mortality and expense risks at a nominal aggregate rate of 1.25% per annum (consisting of approximately .8% for mortality risks and approximately .45% for expense risks).

2. The Company assumes a mortality risk by its contractual obligation to pay a death benefit prior to the annuity date. The death benefit, if paid in a lump sum, is the greater of: (1) The total value of the Contract owner's fixed accumulation account and variable accumulation account or (2) the excess of (a) the amount of all net purchase payments over (b) any previous partial surrenders, including surrenders effected to pay contingent deferred sales charges. No contingent deferred sales charge is imposed upon payment of a death benefit, which places a further mortality risk on the company. The Company assumes a further mortality risk by its contractual obligations to base annuity payments on an annuity table not less favorable to Annuitants than that contained in the Contract and to continue to make annuity payments to each annuitant for the entire life of the annuitant under annuity options involving life contingencies.

3. The Company assumes an expense risk by assuming the risk that the administrative charges (a $35 annual charge assessed against each Contract, plus a daily charge at a nominal effective annual rate of .1% charged against the assets of the Variable Account) may be insufficient to cover administrative expenses incurred by the Company in connection with the Contracts.

4. Applicants state that the level of the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as guaranteed minimum death benefits; guaranteed annuity purchase rate; minimum initial and subsequent purchase payments, other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability to individual qualified and non-tax-qualified plans. Based upon this review, Applicants have concluded the mortality and expense risk charge is within the range of charges determined by industry practice.

5. Applicants will maintain at their principal office, and make available on request to the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, the Company's comparative review.

6. No front-end sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A contingent deferred sales charge of 5% will be assessed against certain purchase payments which are withdrawn or surrendered. The amounts obtained from this charge will be used to reimburse the Company for expenses incurred for the sale of the Contracts, including commissions and other promotional or distribution expenses associated with the marketing of the Contracts and costs associated with the printing and distribution of prospectuses and other sales material.

7. The contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the Contracts and, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and Contract owners.

8. The basis for that conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available on request to the Commission or its staff.

9. The Company also represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

10. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Legal Conclusions

Applicants submit, for all of the reasons stated herein, that their exemptive requests meet the standards set out in section 6(c) and that an order should, therefore, be granted. Accordingly, Applicants request an exemption pursuant to section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment of the mortality and expense risk charge with respect to the Contracts.

Applicants' Conditions

If the requested order is granted, it will be expressly conditioned on Applicants' compliance with the undertakings set forth in paragraphs 5 and 8 above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–4848 Filed 3–4–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, April 22, 1988, at the Federal Office Building, 301 South Park, Room 289, Helena, Montana, to duscuss 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 John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626, (406) 449–5381.

Jean M. Nowak,

Director, Office of Advisory Council.

March 1, 1988.

[FR Doc. 88–4927 Filed 3–4–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88–012]

Coast Guard Academy Advisory Committee; Open Meeting

AGENCY: Coast Guard, DOT.

ACTION: Open 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 a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT on Monday, Tuesday, and Wednesday, April 11, 12, and 13, 1988. Open Sessions will be held from 1:30 p.m. to 3:30 p.m. on Monday, and 9:00 a.m. to 11:00 a.m. on Tuesday and Wednesday. The agenda for this meeting includes a review of Academy curricula and faculty.

The Coast Guard Academy Advisory Committee was established in 1937 by Pub. L. 75–38 to advise on the course of instruction at the Academy and to make recommendations as necessary.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: CAPT David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, telephone (203) 444–8275.

Issued in Washington, DC on March 1, 1988.

T.T. Matteson,

Rear Admiral, U.S. Coast Guard Chief, Office of Personnel.

[FR Doc. 88–4881 Filed 3–4–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–013]

Discontinuance of Radio Safety Services From Coast Guard Communications Station NMR, San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Because of reduced resources, increased radiocommunications requirements within the Coast Guard and a need to increase our overall radiocommunications efficiency, we plan to close our Communications Station NMR at San Juan, Puerto Rico, on or after March 31, 1988. Services ceasing on that date include distress and safety watchkeeping on the Morse Code radiotelegraphy frequency 500 kHz, transmissions of maritime safety information using Morse Code radiotelegraphy, and communications with commercial vessels using medium and high frequency Morse Code radiotelegraphy. Present distress and safety watchkeeping on the popular radiotelephone frequencies 2182 kHz and 156.9 MHz, and transmissions of maritime safety information on NAVTEX, remain unaffected.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Hersey, Chief, Marine Radio Policy Branch, Telecommunications Systems Division, Office of Command, Control and Communications, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1231. Normal Office hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Coast Guard Communications Station San Juan presently keeps watch on the radiotelegraphy distress and safety frequency 500 kHz, transmits notices to mariners, weather, and other safety information using Morse Code on 466 kHz, and responds to Automated Mutual-Assistance Vessel Rescue System (AMVER), weather observation, search and rescue, and medical emergency (MEDICO) messages, and other calls from commercial vessels using Morse Code on 500 kHz and on 8, 12 and 16 MHz. Although these services from San Juan will cease upon closing the station, the actual effects should be minimal. The amount of Morse Code traffic in the medium frequency band has significantly diminished during the last several years. Traffic in the high frequency bands can be handled by other Coast Guard Communications Stations.

In order to improve overall maritime safety for the public, we plan to continue transmitting NAVTEX broadcasts safety information from San Juan after the closing of Communication Station, and will improve our service on high frequency Morse Code and radioteletype from our Communication Station NMN in Portsmouth, Virginia. NAVTEX transmissions began from San Juan in February 1988. Present watchkeeping in Puerto Rico on the radiotelephony distress and safety frequencies 2182 kHz and 156.8 MHz will not be affected by these changes.

The NAVTEX system is an internationally-adopted, automated system for instantly distributing maritime safety information such as navigational warnings, weather forecasts, weather warnings, ice warnings, Gulf stream location, radionavigation information and search and rescue messages to all types of ships. Transmissions are made on 518 kHz using narrow-band direct printing technology. A small, low-cost and self-contained "smart" printing radio receiver installed in the pilot house of a ship or boat checks each incoming message to see if it has been received during an earlier transmission, or if it is of a category of no interest to the ship's master. If it is a new and wanted message, it is printed on a roll of adding-machine size paper; if not, the message is ignored. The ship's master can, at his convenience, read the latest notices he needs to know. A new ship coming into the area will receive many prevously-broadcast messages for the first time; ships already in the area which had already received the message won't receive it again. No person needs to be present during a broadcast to receive vital information. NAVTEX presently operates from Coast Guard Communication Stations in Boston Massachusetts, Portsmouth, Virginia, Miami, Florida, New Orleans, Louisiana, as well as San Juan, Puerto Rico. NAVTEX will eventually replace all transmissions of medium frequency

maritime safety information using Morse Code.

Dated: March 1, 1988.

D.W. Starkweather,

Captain, U.S. Coast Guard, Chief, Telecommunications Systems Divison by Direction of the Commandant.

[FR Doc. 88-4880 Filed 3-4-88; 8:45 am]

BILLING CODE 491-014-M

Federal Highway Administration

Federal Motor Carrier Safety Regulations; Qualifications of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this document is to set forth the text of previous correspondence prepared by the FHWA containing clarifications and interpretations regarding certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs). In particular, the correspondence responds to questions raised concerning requirements of 49 CFR Part 391 that pertain to physical qualifications and examinations which are used to determine whether an individual is qualified to drive a truck.

It has come to the attention of the FHWA that the interpretations contained in the above-referenced correspondence have proven very useful to various segments of the motor carrier industry and medical profession in clarifying the requirements of 49 CFR Part 391. By publishing the contents of this correspondence, the FHWA is giving the general public, as well as all interested parties, the benefit of FHWA's policies and analyses so as to avoid misinterpretation of the requirements of Part 391.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Chief, Standards Development Division, (202) 366-1790, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1355, Federal Highway Administration, 400th Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

Issued on: March 1, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

Part A: General Interpretations

1. Under 49 CFR 391.1(b), may a motor carrier direct its doctor to administer any relevant diagnostic test which, in the carrier's judgment, is important to determine whether a driver meets the physical requirements set forth in 49 CFR 391.41(a)? Is a doctor given the discretion to select any relevant diagnostic tool which, in the doctor's professional judgment, is important to determine whether a driver meets the physical requirements set forth in 49 CFR 391.41(a)?

A. The answer to both these questions is yes. Under the FMCSRs, a motor carrier may direct its doctor to administer any relevant diagnostic test to help it determine whether a driver meets the minimum physical qualification requirements of 49 CFR 391.41(a) (1986) and 49 CFR 391.1(b) (1986). Moreover, the examining physician may select the diagnostic tests which will, in the doctor's opinion, enable the doctor to make an informed judgment regarding the driver's qualifications to operate a commercial motor vehicle in interstate or foreign commerce. *See* 49 CFR 391.43(c) (1986), Instructions for Performing and Recording Physical Examinations, General Information.

2. Section 391.41(a) specifies that a driver must be "physically qualified" *and* carry a medical examiner's certificate. Is a motor carrier in violation of the FMCSRs if the motor carrier allows a driver who has a medical examiner's certificate to continue driving after the motor carrier is advised by its doctor that the driver is medically unqualified, based on additional medical examinations? If the driver drives for another company, is the driver in violation of the FMCSRs?

A. The answer to both of these questions is also yes. If a driver does not meet the medical qualification standards, the driver is not qualified to drive. If a motor carrier learns that a driver is unqualified, for example as a result of a report by the motor carrier's physician, the motor carrier will be in violation of the FMCSRs if the motor carrier continues to use that driver. If a physically unqualified person drives, whether for the first motor carrier or for another motor carrier, that person is in violation of 49 CFR 391.41(a) (1986).

Further, 49 CFR 391.45 (1986) provides that persons must be medically examined and certified as physically qualified to drive in three situations. First, if the person has not been medically examined and so certified.

Second, if it has been two years since the person was last medically examined and certified as physically qualified. Third, if the person's ability to perform his or her duties has been impaired by a physical or mental injury or disease. The FHWA interprets this latter provision as imposing a continuing responsibility on a motor carrier to assure itself that its drivers are physically qualified. If a driver, for example, should have a myocardial infarction and, later, seek to return to work, then, even if the driver had last been examined within two years but not since the myocardial infarction, the motor carrier would be required to assure itself that the driver had recovered from the myocardial infarction and was now medically qualified to drive.

3. We would like to be able to turn to one agency for authoritative interpretations of the FMCSRs. Does FHWA, as the agency responsible for promulgating the FMCSRs, have primary responsibility to render administrative interpretations of the purpose, meaning, and scope of its regulations? If so, should other agencies defer to your interpretations?

A. The FHWA has been delegated the authority of the Secretary of Transportation to issue regulations pertaining to commercial motor vehicle safety. 49 CFR 1.48 (f) and (aa) (1986). As such, we believe that the FHWA has the primary responsibility for interpreting those regulations. It is well settled that courts and others typically defer to the agency when the agency expresses a view with respect to the purpose, meaning, and scope of that agency's regulations, unless such view is clearly unsupported by the words of the regulation or is otherwise contrary to law.

Part B: Hypothetical Fact Situation Posed to FHWA

In order to assure that drivers being newly hired are in compliance with 49 CFR 391.11(b)(6), a motor carrier requires all driver applicants who are otherwise qualified to have the medical examination provided for in 49 CFR 391.43. The examination is given by a licensed doctor of medicine selected by the motor carrier. The doctor has standing instructions from the motor carrier to have X-rays taken of the lumbar region of the spine of all applicants examined.

A driver applicant who holds an unexpired medical examiner's certificate of physical qualification as a driver is given an office medical examination by the doctor. During the examination, the applicant answers in the negative to all "Health History" questions in the examination form provided for in 49 CFR 391.43(c). The office medical examination does not indicate the presence of physical, mental or organic defects of the applicant of such character and extent as to affect the applicant's ability to operate a motor vehicle safely. At the conclusion of the

examination, the doctor advises the applicant that X-rays of the lumber spine region will be required and makes arrangements for such X-rays to be taken. However, at that time, the doctor also executes a medical examiner's certificate in the form provided for by 49 CFR 391.43(e) stating the applicant is a qualified driver under the FMCSRs (49 CFR 391.41—391.49), copies of which are supplied both to the motor carrier and the applicant.

Within a few days after the execution of the medical examiner's certificate, X-rays are taken of the lumbar region of applicant's spine. Those X-rays reveal defects which, in the opinion of the doctor, would interfere with the applicant's ability to control and operate a motor vehicle safely. The doctor thereupon advises the motor carrier that, by reason of additional information as to applicant's physical condition disclosed by the X-rays, the applicant is not then physically qualified as a driver under the requirements of the FMCSRs. The motor carrier conveys the doctor's current diagnosis to the applicant and rejects that applicant for employment as a driver because the applicant does not meet the physical qualifications for a driver specified in 49 CFR 391.11(b)(6).

The following questions were asked with respect to the specific facts set forth above.

1. Was the applicant "physically qualified as a driver in accordance with"§ 391.41, as that term is used in 49 CFR 391.11(b)(6), at the time the motor carrier rejected the applicant's request for employment as a driver? Does the fact that the driver was previously granted a medical examiner's certificate affect this determination?

A. In determining whether a driver is medically qualified to drive, the DOT relies, in the first instance, on the medical judgment of the examining physician who is familiar with the driver's condition, the requirements and responsibilities of the position to which the driver would be assigned if qualified, and the requirements of the regulations. If an examining physician determines that a driver or driver-applicant is not qualified under the regulations, the motor carrier may not use that driver in interstate or foreign commerce. The fact that a driver may have previously been issued a medical examiner's certificate does not change this fact. The issuance of a medical examiner's certificate does not preclude additional testing of a person's medical qualifications by the employing carrier or by a prospective employer. In this factual situation it appears that a medical examiner's certificate was issued prematurely. Once the motor carrier knew, or should have known, that the driver in question was not qualified, the motor carrier was required to cease using the driver to drive in interstate or foreign commerce.

2. Does the fact that the office examination of the applicant failed to disclose any "deformities, limitations of motion, or any history of pain, injuries or disease, past or presently experienced in the cervical or lumbar region" [49 CFR 391.43(c) ("Spine")] preclude the medical examiner from using information disclosed by applicant's X-rays as the basis for a diagnosis of the applicant's physical qualifications as a driver under 49 CFR 391.41(7)?

A. No. Title 49 CFR 391.1(b) (1986) specifically provides that, "The rules in this part, and in other parts of this subchapter, do not prevent a motor carrier from imposing more stringent or additional qualifications, requirements, examinations, or certificates than are imposed by those rules." The motor carrier may require employees or prospective employees to undergo additional medical testing in order to determine whether the employee or prospective employee tested meets the requirements of the FMCSRs.

Nothing in the regulations prohibits the use of additional medical tests by employers or prospective employers. Physicians should review all available data in order to determine whether a driver is qualified.

3. Does the diagnosis of the medical examiner made after review of applicant's X-rays that applicant was not then physically qualified to operate a motor vehicle safely because of spinal defects disclosed by such X-rays preclude any further use of either (i) the medical examiner's certificate issued at the conclusion of applicant's office examination or (ii) the earlier but then unexpired medical examiner's certificate as proof of physical qualification of applicant as a driver?

A. A person shall not drive a motor vehicle unless the person is qualified to do so. 49 CFR 391.11(a) (1986). In order to be qualified, a person must, among other things, be physically qualified in accordance with Subpart E of Part 391 of the FMCSRs. 49 CFR 391.11(b)(6) (1986). In order to comply with the requirements of Subpart E, a person must be physically qualified in accordance with the physical qualification requirements established in 49 CFR 391.41(b) (1986) and also must possess a medical examiner's certificate. 49 CFR 391.41(a) (1986). A medical examiner's certificate alone does not satisfy the requirements of the regulations. Consequently, a driver who possesses an unexpired medical examiner's certificate, but who nonetheless is not physically qualified because of some condition, is not qualified to drive within the meaning of 49 CFR 391.11 (1986).

4. Does the applicant have an "established medical history or clinical diagnosis" of a spinal defect (of such a character and extent as to affect applicant's ability to operate a motor vehicle safely within the meaning of 49 CFR 391.41(b)(7)) when the applicant and the motor carrier are advised of the applicant's spinal defects by the medical examiner and of his diagnosis that such defects disqualified the applicant as a driver?

A. Whether a person has an "established medical history or clinical diagnosis" of a spinal defect of such a character as to make the driver unqualified to drive in interstate or foreign commerce is to be determined, in the first instance, by the examining physician. If there is a conflict in medical opinion by two or more physicians, 49 CFR 391.47 (1986) sets forth a procedure by which a person may petition the FHWA for a resolution of the conflicts in the medical evaluation and a determination of the person's qualification to drive. If an examining physician provides a current clinical diagnosis of a spinal defect which makes that person unqualified to drive under 49 CFR 391.41(b)(7) (1986), that person may not drive until such time as that physician, or another examining physician, indicates that the person no longer has a clinical diagnosis of such a spinal defect.

5. If so, is the applicant required to disclose the existence of such diagnosis in any and all medical examinations thereafter made for the purpose of establishing compliance with the provisions of 49 CFR 391.11(b)(6)?

A. Title 49 CFR 391.43(c) (1986) provides that the required medical examination be performed substantially in accordance with the instructions and examination form set forth in the regulations. These instructions contemplate a detailed disclosure of the driver's health history by the driver to the examining physician. We believe that full disclosure would require a driver to advise an examining physician that the driver had been diagnosed by another physician as having a condition which made the driver unqualified.

6. If a motor carrier directs a doctor to use X-rays of the lumbar spinal region as part of all medical examinations of

prospective drivers, are these diagnostic examinations within the scope permitted under 49 CFR Part 391, Subpart E? If not, are these tests "more stringent or additional qualifications, requirements, examinations, or certificates than are imposed by those rules" permissible under 49 CFR 391.1(b)?

A. While the regulations do not require that X-rays of the lumbar spinal region be conducted as part of the medical examination, nothing in the regulations precludes a motor carrier from requiring this additional medical examination. *See* 49 CFR 391.1(b) (1986). The "General Information" section of the instructions provided for examining physicians provides that, "The examination should be made carefully and at least as complete as indicated by the attached form.

History of certain defects may be cause for rejection or indicate the need for making certain laboratory tests or a further, and more stringent, examination." 49 CFR 391.43(c) (1986).

The specific instructions relating to the spine recommend that the examining physician, "[n]ote deformities, limitation of motion, or any history of pain, injuries, or disease, past or presently experienced in the cervical or lumbar spine region. If foundings so dictate, radiologic and other examinations should be used to diagnose congenital or acquired defects; or spondylolisthesis and scoliosis." *Id.*

It is the policy of the FHWA that the determination of the medical qualifications of a driver should be made, in the first instance, by the examining physician relying on that physician's expert medical opinion. Accordingly, if a driver fails to disclose the driver's complete medical history, the examining physician is not precluded from conducting or ordering additional tests to satisfy the physician as to the driver's medical condition.

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Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in December 1987. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-P	DOT-E 2582	Advance Research Chemicals, Inc., Catoosa, OK.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)
3004-X	DOT-E 3004	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302, 175.3	To authorize use of a non-DOT specification cylinder, for transportation of certain flammable and nonflammable compressed gases. (Modes 1, 2, 4, and 5.)
4453-P	DOT-E 4453	Roundup Powder Co., Inc., Miles City, MT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453-P	DOT-E 4453	Harrison Explosives, Inc., Allentown, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453-X	DOT-E 4453	El Dorado Chemical Co., St. Louis, MO.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4719-P	DOT-E 4719	Ausimont, Morristown, NJ	49 CFR 173.314(c), 173.315(a)(1), 179.102-11.	To become a party to exemption 4719. (Modes 1, 2.)
4850-X	DOT-E 4850	Halliburton Co., Duncan, OK	49 CFR 173.100(cc), 175.3	To authorize shipment of flexible linear shaped charges, metal clad, in 100' lengths, containing not more than 50 grains per lineal foot of high explosive, as a Class C explosive. (Modes 1, 2, and 4.)
4850-X	DOT-E 4850	GOEX, Inc., Cleburne, TX	49 CFR 173.100(cc), 175.3	To authorize shipment of flexible linear shaped charges, metal clad, in 100' lengths, containing not more than 50 grains per lineal foot of high explosive, as a Class C explosive. (Modes 1, 2, and 4.)
4884-P	DOT-E 4884	Liquid Carbonic Specialty Gas Corp., Chicago, IL.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To become a party to exemption 4884. (Modes 1, 2, 3, 4, and 5.)
5206-X	DOT-E 5206	El Dorado Chemical Co., St. Louis, MO.	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5749-X	DOT-E 5749	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of an insulated nickel-steel DOT Specification MC-331 cargo tank, for transportation of a certain flammable gas. (Mode 1.)
5951-X	DOT-E 5951	Dixie Petro-Chem, Inc., Dallas, TX	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxide, in a DOT Specification 106A500 type tank. (Modes 1, 2.)
5951-X	DOT-E 5951	Jones Chemicals, Inc., Caledonia, NY.	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxide, in a DOT Specification 106A500 type tank. (Modes 1, 2.)
6122-X	DOT-E 6122	Pennwalt Corp., Buffalo, NY	49 CFR 173.154(a)(12), 173.158(a)(3), 178.205-16.	To authorize use of a full telescope half slotted fiberboard box meeting the requirements of DOT Specification 12B fiberboard box, for shipment of certain dry organic peroxides. (Modes 1, 2.)
6293-P	DOT-E 6293	Atlas Powder Co., Dallas, TX	49 CFR 173.21(b), 173.248	To become a party to exemption 6293. (Mode 1.)
6452-X	DOT-E 6452	Pennwalt Corp., Buffalo, NY	49 CFR 173.154	To authorize shipment of certain organic peroxides in one pound bags, overpacked in a DOT Specification 12B fiberboard box. (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6501-X	DOT-E 6501	GOEX, Inc., Cleburne, TX	49 CFR 173.62	To authorize transport of liquid high explosives in DOT Specification 6D steel drums overpacked with a DOT Specification 2SL liner. (Mode 1.)
6530-X	DOT-E 6530	National Welders, Charlotte, NC	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Union Carbide Corp., Danbury, CT	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6922-P	DOT-E 6922	Great Lakes Chemical Corp., West Lafayette, IN.	49 CFR 173.314(c), 179.300-15	To become a party to exemption 6922. (Modes 1, 2, and 3.)
6922-P	DOT-E 6922	Shin-Etsu Silicones of America, Inc., Torrance, CA.	49 CFR 173.314(c), 179.300-15	To become a party to exemption 6922. (Modes 1, 2, and 3.)
6922-P	DOT-E 6922	Shin-Etsu Chemical Co., Ltd., Tokyo, Japan.	49 CFR 173.314(c), 179.300-15	To become a party to exemption 6922. (Modes 1, 2, and 3.)
7051-P	DOT-E 7051	Advance Research Chemicals, Inc., Catoosa, OK.	49 CFR 173.246(a), 175.3	To become a party to exemption 7051. (Modes 1, 4.)
7052-X	DOT-E 7052	Honeywell Inc., Horsham, PA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Halliburton Services, Duncan, OK	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	DURACELL, Inc., Bethel, CT	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	EG&G Environmental Equipment, Cataumet, MA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	DYMEC, Inc., Winchester, MA	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Power Conversion, Inc., Elmwood Park, NJ.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Geophysical Research Corp., Tulsa, OK.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Martin Marietta Corp., Denver, CO	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Plainview Electronics, Boca Raton, FL.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	National Aeronautics and Space Administration, Washington, DC.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	The Boeing Co., Seattle, WA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	ENMET Corp., Ann Arbor, MI	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Eagle-Picher Industries, Inc., Joplin, MO.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Telonics, Inc., Mesa, AZ	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Leigh Instruments, Limited, Carleton Place, Ontario, VA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Magnavox Government & Industrial Electronics Corp., Fort Wayne, IN.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Battery Assemblers Inc., Bohemia, NY.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	American Meter Co., Philadelphia, PA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Battery Engineering, Inc., Hyde Park, MA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7052-X	DOT-E 7052	Beckman Instruments, Inc., Fullerton, CA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Gearhart Industries, Inc., Fort Worth, TX.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	General Dynamics Corp., Fort Worth, TX.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	GTE Government Systems Corp., Waltham, MA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	In-Situ, Inc., Laramie, WY	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Moli Energy, Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Northrop Corp., Hawthorne, CA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Smith International, Houston, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Sparton Corp., Jackson, MI	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	TNR Technical, Inc., Deer Park, NY	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Eastman Christensen, Salt Lake City, UT.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	GN Lithium Batteries as Koege, Denmark.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Schlumberger Well Services, Rosharon, TX.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Hughes Electronics Products Corp., Livonia, MI.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Jet Propulsion Laboratory, Pasadena, CA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Sonatech, Inc., Ventura, CA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Teledyne Systems Co., Northridge, CA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Flow Research Corp., Houston, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Macrodyne, Inc., Schenectady, NY	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	NL Industries, Inc., Houston, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Bren-Tronics, Inc., Commack, NY	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Sippican Ocean Systems, Inc., Marion, MA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	ITT Barton Instruments Co., City of Industry, CA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Interstate Electronics Corp., Anaheim, CA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	DME Corp., Ft. Launderdale, FL	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Electrochem Industries, Inc., Clearence, NY.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7052-X	DOT-E7052	McDonnell Doughlas Corp., St. Louis, MO.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Wilson Greatbatch Ltd., Clarence, NY.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Atlus Corp., San Jose, CA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	SAFT America, Inc., Cockeysville, MD.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	Flopetrol Johnston, a Division of Schlumberger, Houston, TX.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E7052	ACR Electronics, Inc., Fort Lauderdale, FL.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Hazeltine Corp., Braintree, MA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	ECO Energy Conversion, Sommerville, MA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Toshiba Battery Co., Limited, Tokyo, Japan.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	ENDECO, Inc., Marion, MA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	ECELATRON, Inc., Chimacum, WA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Ballard Technologies Corp., North Vancouver, B.C., Canada.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7073-X	DOT-E 7073	Ethyl Corp., Baton Rouge, LA	49 CFR 173.354(a)(6), 174.63(b)	To authorize use of non-DOT specification portable tanks for transportation of a Class B poisonous liquid. (Modes 1, 2, and 3.)
7544-X	DOT-E 7544	Eastman Kodak Co., Rochester, NY.	49 CFR 173.245, 173.249, 173.272	To authorize an additional non-DOT specification fiberboard box as overpack for shipment of materials classed as corrosive material. (Modes 1, 2, and 3.)
7595-X	DOT-E 7595	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	49 CFR 173.358, 173.359	To authorize transport of certain poison B liquids in DOT Specification MC-312 cargo tanks. (Mode 1.)
7595-X	DOT-E 7595	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	49 CFR 173.358, 173.359	To authorize transport of certain poison B liquids in DOT Specification MC-312 cargo tanks. (Mode 1.)
7607-P	DOT-E 7607	Dynamac Corp., Fort Lee, NJ	49 CFR 172.101, 175.3	To become a party to exemption 7607 (Mode 5.)
7753-X	DOT-E 7753	Monsanto Co., Saint Louis, MO	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum. (Modes 1, 2, and 3.)
7770-X	DOT-E 7770	Eurotainer, S.A., Paris, France	49 CFR 173.143, 173.264(b)(4), 174.63(b).	To authorize transport of anhydrous hydrogen fluoride or anhydrous methychloromethyl ether in certain non-DOT specification portable tanks. (Modes 1, 2, and 3.)
7835-P	DOT-E 7835	Amerigas Inc., Valley Forge, PA	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7943-X	DOT-E 7943	Hasa, Inc., Saugus, CA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943-X	DOT-E 7943	GPS Industries, City of Industry, CA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7946-X	DOT-E 7946	Westinghouse Electric Corp., Horseheads, NY.	49 CFR 173.306(b)(4), 175.3	To authorize use of non-DOT specification nonrefillable containers, for shipment of nonflammable gases. (Modes 1, 2, 3, 4, and 5.)
8006-P	DOT-E 8006	Esquire Novelty Corp., Amsterdam, NY.	49 CFR 172.400(a), 172.504 Table 2.	To become a party to exemption 8006. (Mode 1)
8006-X	DOT-E 8006	Kilgore Corp., Toone, TN	49 CFR 172.400(a), 172.504 Table 2.	To authorize transport of unlabeled packages of toy paper or plastic caps complying with the requirements of 173.100(p) and 173.109, in motor vehicles with placards, when the gross weight of the caps is 1,000 pounds or more. (Mode 1.)
8063-X	DOT-E 8063	Taylor-Wharton, Division of Harsco Corp., Indianapolis, IN.	49 CFR 173.304(a)	To authorize alternative packagings for the shipment of refrigerated liquids classed as nonflammable gases. (Mode 1.)
8077-P	DOT-E 8077	Liquid Carbonic Speciality Gas Corp., Chicago, IL	49 CFR 173.119, 173.136(a)(3), 173.247(a)(7).	To become a party to exemption 8077 (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8084-X	DOT-E 8084	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.65(a)(5)	Approval for an alternative packaging; identified as "Tovex T-1 Coils", a 50 foot long, ⅜ inch diameter tube overpacked in outside packaging prescribed in 173.65(a)(1) and (a)(2). (Modes 1, 2, and 3.)
8156-X	DOT-E 8156	Liquid Carbonic Specialty Gas Corp., Chicago, IL.	49 CFR 173.121, 173,302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8162-X	DOT-E 8162	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8180-P	DOT-E 8180	Liquid Carbonic Specialty Gas Corp., Chicago, IL.	49 CFR 173.119(m), 173.136(a)(3), 173.247(a)(7).	To become party to exemption 8180. (Modes 1, 2.)
8194-X	DOT-E 8194	Pennwalt Corp., Buffalo, NY	49 CFR 173.119(m)(6), 173.221(a)(3), 178.205, 173.210-10.	To authorize use of a fiberboard box complying with DOT Specification 12B (except for closure method and its one-piece, die-cut design), for shipment of liquid organic peroxides. (Modes 1, 3.)
8213-X	DOT-E 8213	Trailmaster Tanks, Inc., Fort Worth, TX.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8273-X	DOT-E 8273	TRW Vehicle Safety Systems, Washington, MI.	49 CFR 173.153, 173.154, 175.3	To authorize transport of a passive restraint module, and the inflator, containing a Class B explosive as a flammable solid. (Modes 1, 2, 3, and 4.)
8354-X	DOT-E 8354	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.123, 173.315	To authorize butane-1 and vinyl chloride, classed as flammable gas, as additional commodities. (Modes 1, 2, and 3.)
8390-P	DOT-E 8390	KTI Chemicals, Inc., Danbury, CT	49 CFR 173.272, 178.210, 178.24a	To become a party to exemption 8390. (Mode 1.)
8426-P	DOT-E 8426	Pacific Vacuum Truck Co., Inc., Gardena, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426. (Mode 1.)
8445-X	DOT-E 8445	Dow Chemical Co., Midland, MI	49 CFR 173, Subpart D, E, F, H	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	Thomas Gray & Associates, Inc., Orange, CA.	49 CFR Part 173, Subpart D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-P	DOT-E 8445	Chem-Clear of Baltimore, Baltimore, MD.	49 CFR Part 173, Subpart D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445-X	DOT-E 8445	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	U.S. Department of Defense, Falls Church, VA.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8451-P	DOT-E 8451	Olin Chemicals Group Research Center, Cheshire, CT.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8478-X	DOT-E 8478	West-Mark, Ceres, CA	49 CFR 173.119 (a), (m), 173.245(a), 177.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of flammable and corrosive liquids. (Mode 1.)
8526-P	DOT-E 8526	Key Way Transport, Inc., Baltimore, MD.	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526. (Mode 1.)
8526-P	DOT-E 8526	Stanley J. Clark, Emden, IL	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526. (Mode 1.)
8552-X	DOT-E 8552	Brenner Tank, Inc., Fond du Lac, WI.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8554-X	DOT-E 8554	E.I. du Pont de Nemours Co., Inc., Wilmington, DE.	49 CFR 173.114a, 173.154, 173.93, 178.341-5, 178.342-5, 178.343-5.	To authorize shipment of certain Class B explosives, blasting agents or oxidizers in DOT-MC-306, MC-307 and MC-312 cargo tanks without internal self closing shutoff valves on the bottom outlet.

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8554-P	DOT-E 8554	W.A. Murphy, Inc., El Monte, CA	49 CFR 173.114a, 173.154, 173.93, 178.341-5, 178.342-5, 178.343-5.	To become a party to exemption 8554. (Mode 1.)
8554-P	DOT-E 8554	Amos L. Dolby Co., Corsica, PA	49 CFR 173.114a, 173.154, 173.93, 178.341-5, 178.342-5, 178.343-5.	To become a party to exemption 8554. (Mode 1.)
8554-P	DOT-E 8554	ECONEX Inc., Wheaton, IL	49 CFR 173.114a, 173.154, 173.93, 178.341-5, 178.342-5, 178.343-5.	To become a party to exemption 8554. (Mode 1.)
8620-X	DOT-E 8620	Polar Tank Trailer, Inc., Holdingford, MN.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8673-X	DOT-E 8673	MarkAir, Inc., Anchorage, AK	49 CFR 172.101 Column 6(b), 175.30.	To authorize reinstatement and renewal of exemption. (Mode 4.)
8698-P	DOT-E 8698	Taylor-Wharton, Division of Harsco Corp., Theodore, AL.	49 CFR Part 173.320, 176.76	To become a party to exemption 8698. (Mode 3.)
8718-X	DOT-E 8718	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinder for use as an equipment component aboard aircraft and marine craft, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8723-P	DOT-E8723	Northern Ohio Explosives, Inc. Forest, OH.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	Armstrong Explosives Co., Kittanning, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415,176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8723-P	DOT-E 8723	Wampum Hardward Co. New Galilee, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 3.)
8725-X	DOT-E 8725	CNG Cylinder Corp. Long Beach, CA.	49 CFR 173.302(a)	To authorize manufacture, marking and sale of non-DOT Specification Fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Mode 1.)
8758-X	DOT-E 8758	Union Carbide Corp. Danbury, CT	49 CFR 173.318(a)	To authorize manufacture, marking and sale of non-DOT specification portable tanks, for transportation of certain nonflammable gases. (Mode 1.)
8767-X	DOT-E 8767	H.R. Textron, Inc. Pacoima, CA	49 CFR 173.302(a), 175.3	To authorize manufacturer, marking and sale on non-DOT specification welded high pressure non-refillable cylinders, for shipment of nonflammable, nonliquefied gases. (Modes 1, 2, and 4.)
8845-P	DOT-E 8845	Pro-Log Denver City, TX	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845. (Modes 1, 3.)
8910-X	DOT-E 8910	Canbar Inc. Waterloo, Ont., Canada.	49 CFR 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear low desity polyethylene portable tank enclosed in a steel cage, for shipment of corrosive liquids (Modes 1, 2.)
8923-P	DOT-E 8923	Liquid Carbonic Speciality Gas Corp., Chicago, IL.	49 CFR 173.119(m), 173.3a	To become a party to exemption 8923. (Mode 1.)
8931-X	DOT-E 8931	C-I-L, Inc., North York, Ontario	49 CFR 173.272, 179.201-1	To authorize removal of restriction for origination and destination points for DOT Specification 111A100W2 tank cars containing sulfuric acid shipped in unit trains configuration. (Mode 2.)
8967-X	DOT-E 8967	Hercules, Inc., Wilmington, DE	49 CFR 173.93(a)(11)	To authorize shipment of a solid propellant explosive, in a non-DOT specification fiberboard tube, overpacked in a non-DOT specification palletized metal cage. (Mode 1.)
9302-P	DOT-E 9302	Airplanes, Inc dba Cal-West Aviation, Concord, CA.	49 CFR 175.702(b)(1), 175.702(b)(2)(i), 175.702(b)(2)(ii), 175.702(b)(2)(iii), 175.75(a)(3)(ii).	To become a party to exemption 9302. (Modes 4.)
9364-P	DOT-E 9364	The Gowan Co., Yuma, AZ	49 CFR 173.359	To become a party to exemption 9364. (Mode 1.)
9400-X	DOT-E 9400	Poly Cal Plastics, Inc. French Camp, CA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, spherical polyethylene portable tank enclosed in a steel skid unit, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, and 3.)
9414-X	DOT-E 9414	Union Carbide Corp. Danbury, CT	49 CFR 173.119, 173.245, 173.302(a)(5) 178.253.	To authorize shipment of tetrafluoromethane (halocarbon 14) non-liquefied, nonflammable gas, in DOT Specification 3AL aluminum cylinders. (Modes 1, 3.)
9440-X	DOT-E 9440	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks enclosed with a protective steel frame, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, and 3.)
9462-X	DOT-E 9462	Aztec Metal Fabricating Co., Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9480-X	DOT-E 9480	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane and mixture thereof in DOT Specification 3AL cylinders. (Modes 1, 2, 3, and 4.)
9499-X	DOT-E 9499	Cleveland Container Corp., Cleveland, OH.	49 CFR 178.19, Part 173, Subparts D, F.	To authorize manufacture, marking and sale of 3½, 5, 5½, and 6-gallon capacity DOT Specification 35 removable head polythylene drums, for shipment of corrosive and flammable liquids. (Modes 1, 2, and 3.)
9507-P	DOT-E 9507	Union Carbide Corp., Danbury, CT	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507. (Mode 1.)
9513-X	DOT-E 9513	American Cyanamid Co., Wayne, NJ.	49 CFR 173.343, 173.377	To authorize transport of an organic phosphate formulation in a bulk motor vehicle. (Mode 1.)
9533-X	DOT-E 9533	B.A.G. Corp., Dallas, TX	49 CFR Part 173, Subparts E, F	To authorize shipment of a material classed as poison B and to acknowledge materials classed as oxidizer or corrosive material in non-DOT packaging, flexible intermediate bulk container. (Modes 1, 2, and 3.)
9555-X	DOT-E 9555	E.I. du Pont de Nemours & Co., Inc., Washington, DE.	49 CFR 173.346	To authorize use of DOT Specification MC-330 and MC-331 cargo tanks for shipment of a poison B liquid. (Mode 1.)
9577-X	DOT-E 9577	Altus Corp., San Jose, CA	49 CFR 173.206, 173.247	To authorize an alternative battery design. (Mode 1.)
9610-P	DOT-E 9610	IMR Powder Co., Plattsburgh, NY	49 CFR 172.203 (a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189.	To become a party to exemption 9610. (Modes 1 and 2.)
9652-X	DOT-E 9652	Western Atlas International, Inc., Houston, TX.	49 CFR 173.103, 173.66(e)(2), 175.3.	To authorize an alternative packaging arrangement for the shipment of acceptor assemblies, described as Detonators, Classed as Class C explosives. (Modes 1, 4, and 5.)
9666-X	DOT-E 9666	Stauffer Chemical Co., Westport, CT.	49 CFR 173.34(e), Part 107, Appendix B.	Reinstatement of exemption that authorizes materials classed as metal alkyls solution for shipment in DOT Specification 4BA and 4BW cylinders, which are hydrostatically tested every 10 years rather than 5 years. (Modes 1 and 3.)
9750-P	DOT-E 9750	LaRoche Industries Inc., Atlanta, GA.	49 CFR 173.154(a) (18)	To become a party to exemption 9750. (Mode 1.)
9769-P	DOT-E 9769	Safety-Kleen Corp., Elgin, IL	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 3.)
9769-P	DOT-E 9769	Safety-Kleen Envirosystems Co., Inc., Manati, PR.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 3.)
9797-P	DOT-E 9797	National Aeronautics and Space Administration, Houston, TX.	49 CFR 173.304(a)(2)	To become a party to exemption 9797. (Mode 1.)
9854-X	DOT-E 9854	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92	To authorize transport of rocket motors via highway. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9596-N	DOT-E 9596	L'Air Liquide Corp., Paris, France	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To authorize use of non-DOT specification insulated portable tanks for transportation of liquified helium. (Modes 1, 3)
9708-N	DOT-E 9708	U.S. Department of Energy, Washington, DC.	49 CFR 173.220(b)	To authorize shipment of magnesium metal pellets, classed as a flammable solid, in DOT Specification 44-C multiwall paper bags lined with plastic film. (Mode 1)
9723-N	DOT-E 9723	Aqua-Tech, Inc., Port Washington, WI.	49 CFR 177.848(b)	To authorize shipment of "lab-packs" containing cyanides and cyanide mixtures with "lab-packs" containing acids and corrosive liquids in the same transport vehicle. (Mode 1.)
9751-N	DOT-E 9751	C-I-L Inc., North York, Ont., Canada.	49 CFR 173.81(c), 175.3	To authorize transport of a Class A explosives device in limited quantities as a Class C explosive. (Modes 1, 2, 3, 4, and 5.)
9755-N	DOT-E 9755	Explosive Technology, Inc., Fairfield, CA.	49 CFR 173.65	To authorize transport of packages Class A explosive which exceed the weight limitation in 49 CFR 173.65(a)(4) in a non-DOT Specification wooden box. (Mode 1.)
9784-N	DOT-E 9784	Worthington Cylinder Corp., Columbus, OH.	49 CFR 173.302(a), 178.51-11(a), 178.61-11(a).	To authorize manufacture, marking and sale of DOT Specification 4BA and 4BW cylinders fitted with rubber footrings attached by welding after heart treatment. (Modes 1, 2, 3, and 4.)
9797-N	DOT-E 9797	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.304(a)(2)	To authorize shipment and anhydrous ammonia, classed as nonflammable gas, in non-DOT specification cotainers, identified as aluminum alloy heat pipes. (Mode 1.)
9804-N	DOT-E 9804	Rotational Molding, Inc., Gardena, CA.	49 CFR 173.119, 173.125, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specifiction rotationally molded, polyethylene portable tank enclosed in a steel frame, for the shipment of corrosive materials, flammable liquids, or an oxidizer. (Modes 1, 2.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9806-N	DOT-E 9806	Stone Container Corp., Schaumburg, IL.	49 CFR 173.183, 173.217, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2200 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2, and 3.)
9898-N	DOT-E 9808	Apache Powder Co., Benson, AZ	49 CFR 173.182(a)(1), 175.3	To authorize shipment of ammonium nitrate-potassium nitrate, identified as ANKN 90/10, classed as an oxidizer, in a moisture resistant, multi-ply paper bag. (Modes 1, 3, and 4.)
9810-N	DOT-E 9810	Martin Marietta Orlando Aerospace, Orlando, FL.	49 CFR Parts 100-199	To authorize transport of a laser device containing a small quantity of methane. (Modes 1, 4.)
9811-N	DOT-E 9811	Container Products Corp., Wilmington, NC.	49 CFR 173.365	To authorize shipment of non-DOT specification steel portable tanks containing scrap metal pipe that is contaminated with asbestos and poison B materials for disposal. (Mode 1.)
9813-N	DOT-E 9813	Advanced Materials Laboratories, Inc., New York, NY.	49 CFR 173.385, 175.3	To authorize packages of tear gas grenades in DOT Specification 32A metal, military type ammunition boxes. (Modes 1, 4, and 5.)
9822-N	DOT-E 9822	U.S. Department of Defense, Washington, DC.	49 CFR 173.328(a)(2), 175.3, 173.331(b)(1).	To authorize shipment of poisonous liquid R & D Samples in packagings conforming to 49 CFR 173.331(b)(1). (Modes 1, 4.)
9824-N	DOT-E 9824	Maremont Corp., Nashville, TN	49 CFR 173.306(f)(2)(iii), 173.306(f)(3)(i), 175.3.	To authorize use of accumulators which deviate from the required test criteria in 49 CFR 173.306(f) for shipment of compressed gas mixtures. (Modes 1, 4, and 5.)
9844-N	DOT-E 9844	Theodor Fries Gesellschaft MBH & Co., Sulz, Austria.	49 CFR 173.266(a), 178.19	To authorize use of a non-DOT specification polyethylene container of 15-gallon capacity, similar to a DOT Specification 34, for shipment of hydrogen peroxide, 60%. (Modes 1, 2, and 3.)
9845-N	DOT-E 9845	C-I-L, Inc., North York, Ont., Canada.	49 CFR 173.31(c), Retest Table I	To authorize transport of sulfuric acid, sulfuric acid, spent, or oleum in a DOT Specification 111A100W2 tank car tank with a modified periodic tank retest interval. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE-7052-X	DOT-E 7052	Syntron, Inc., Houston, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
EE 8917-X	DOT-E 8917	Morrison-Knudsen Company, Inc., Boise, ID.	49 CFR 173.182, 176.400	To authorize transport of ammonium nitrate prills in a large, lined steel container. (Modes 1, 2, and 3.)
EE 9880-N	DOT-E 9880	G.E. Reuter-Stokes, Twinsburg, OH.	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of non-DOT specification containers described as hermetically sealed electron tube devices. (Modes 1, 4, and 5.)
EE 9881-N	DOT-E 9881	G.E. Reuter-Stokes, Twinsburg, OH.	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of non-DOT specification metal, single trip, inside container described as hermetically sealed electron tube devices, for transportation of nonliquefied, nonflammable gases. (Modes 1, 4, and 5.)
EE 9895-N	DOT-E 9895	The W.A. Murphy Co., Sylmar, CA	49 CFR 173.51(b), 173.86(b)	To authorize a one time shipment of explosives by motor vehicles. (Mode 1.)
EE 9896-N	DOT-E 9896	Stauffer Chemical Co., Westport, CT.	49 CFR 172.301, Part 107, Appendix B(i).	To authorize shipment of approximately 100,000 bags marked with the shipping description RQ-Captan, ORM-E, NA 9099 instead of the description RQ-Hazardous Substance, solid, n.o.s., ORM-E, NA 9188 (Captan) which is required beginning January 1, 1988. (Modes 1, 3.)
EE 9897-N	DOT-E 9897	DOW Chemical Co., Midland, MI	49 CFR 173.314(c), Part 107, Appendix (B)(1).	To authorize a one-time shipment of hydrogen chloride, refrigerated liquid in a DOT Specification 105A600W tank car tank loaded to less than the minimum required filling density. (Mode 2.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8567-P	ACE Pipe Cleaning, Inc., Kansas City, MO	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7,178.342-5, 178.343-5.	To become a party to exemption 8567. (Mode 1.)

Issued in Washington, DC, on February 10, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-4921 Filed 3-4-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 2, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0190.

Form Number: ATF F 5100.11.

Type of Review: Revision.

Title: Withdrawal of Spirits, Denatured Spirits, or Wines for Exporation (Supplemental).

Description: ATF F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits and wines from internal revenue bonded premises, without payment of tax for direct exporation, transfer to a foreign trade zone, customs manufacturers bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.

Respondents: Businesses or other-for profit, Small businesses or organizations.

Estimated Burden: 6,000 hours.

OMB Number: 1512-0298.

Form Number: ATF REC 5120/1.

Type of Review: Extension.

Title: Usual and Customary Business Records Relating to Wine.

Description: Usual and customary business records relating to wine are routeinely inspected by ATF officers to ensure the payment of alcohol Taxes due the Federal Government.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-4886 Filed 3-4-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 2, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1002.

Form Number: 8621.

Type of Review: Resubmission.

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

Description: Form 8621 is used by shareholders of foreign investment companies. Shareholders of passive investment companies use Form 8621 to report distributions from the fund, and a deferred tax amount when an excess distribution is made. Shareholders of qualified electing funds are taxes on current income from the fund. The IRS uses Form 8621 to verify that shareholders have included the correct amount of income from these entities.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Burden: 7,896 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 88-4887 Filed 3-4-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supp. to Dept. Circ.—Public Debt Series—No. 5-88]

Treasury Notes, Series X-1990

February 25, 1988.

The Secretary announced on February 24, 1988, that the interest rate on the notes designated Series X-1990, described in Department Circular—Public Debt Series—No. 5-88 dated February 18, 1988, will be 7⅛ percent. Interest on the notes will be payable at the rate of 7⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-4794 Filed 3-4-88; 8:45 am]

BILLING CODE 4810-40-M

[Supp. To Dept. Circ.—Public Debt Series—No. 6-88]

Treasury Notes, Series K-1993

February 26, 1988.

The Secretary announced on February 25, 1988, that the interest rate on the notes designated Series K-1993, described in Department Circular—Public Debt Series—No. 6-88 dated February 18, 1988, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-4795 Filed 3-4-88; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on March 16 and 17, 1988. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue NW., Washington, DC. The meeting will begin at 8:00 A.M. on Wednesday, March 16 and 8:00 A.M. on Thursday, March 17, 1988. The agenda will include the following topics:

Wednesday, March 16, 1988

Tax Systems Redesign (TSR)
Tax Reform Act

Correspondence

Thursday, March 17, 1988

In Camera Session to Discuss June Agenda Planning

Commissioner's Areas of Emphases [1]

General Discussion

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than March 10, 1988. Mr. Hilgen may be reach on (202) 566–4143 [not toll-free].

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Avenue NW., Room 3014, Washington, DC 20224.

[1] There are five (5) areas: Technology, Tax Reform, Customer Service/Quality, Enhance Resources, Strengthen Voluntary Compliance. The first three areas will be addressed in the three topics scheduled for discussion on the first day, Wednesday, March 16. Resources (including a discussion of the budget process) and Voluntary Compliance will be discussed on Thursday morning, March 17.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, [202] 566–4143 [Not toll-free].

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88–4873 Filed 3–4–88; 8:45 am]

BILLING CODE 4830–01–M

Veterans Administration

Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study; Meeting

In accordance with Pub. L. 92–463, the Veterans Administration gives notice that a meeting of the Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study will be held in the Roanoke Room, Stouffer Concourse Hotel, 2399 Jefferson Davis Hwy., Arlington, VA, 22202, on March 21, 1988, at 9 a.m. The purpose of this meeting is to review the progress, to date, of the National Vietnam Veterans Readjustment Study, mandated by Pub. L. 98–160, and provide recommendations as the Committee deems appropriate.

The meeting will be open to the public (to the seating capacity of the room) at the start of the March 21st meeting for approximately one hour to cover administrative matters and to discuss the general status of the study. During the closed session, the Committee will be reviewing preliminary research findings and survey research procedures. Disclosure of these findings and specific survey techniques could serve as a source of sample contamination that could invalidate the total research effort. In addition, the qualifications and performance of involved staff will be open to review. Disclosure of such information would be a clearly unwarranted invasion of personal privacy. Thus, the closing is in accordance with section 552b, subsections (c)(6) and (c)(9)(B), 5 U.S.C., and the determination of the Administrator of Veterans Affairs under section 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Dr. Thomas L. Murtaugh, Project Officer, National Vietnam Veterans Readjustment Study, 1521 A South Edgewood St., Baltimore, MD 21227 (Phone—301/646–5604) at least 5 days before the meeting.

Dated: February 29, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–4825 Filed 3–4–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 44
Monday, March 7, 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).

CONSUMER PRODUCT SAFETY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, No. 41, Page 6731, March 2, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: Thursday, March 3, 1988.

CHANGES: The meeting for March 3, 1988 was canceled.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
March 3, 1988.

[FR Doc. 88–4991 Filed 3–3–88; 1:13 pm]
BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, No. 37, Page 5682, February 25, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: Friday, March 4, 1988.

CHANGES: The meeting for March 4, 1988 was canceled.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
March 3, 1988.

[FR Doc. 88–4992 Filed 3–3–88; 1:13 pm]
BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Friday, March 11, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS #3530

The Commission will consider Enforcement Matter OS #3530.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
March 3, 1988.

[FR Doc. 88–4993 Filed 3–3–88; 1:13 pm]
BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, March 1, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum re: Request for approval to issue a contract for professional services.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

Dated: March 2, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Assistant Executive Secretry (Operations).

[FR Doc. 88–4982 Filed 3–3–88; 1:12 pm]
BILLING CODE 6714-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME: March 18, 1988—

8:30 a.m. Closed Session
8:55 a.m. Open Session

PLACE: National Science Foundation, Washington, DC.

STATUS:

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED MARCH 18:

Closed Session (8:30 a.m. to 8:55 a.m.)

1. Minutes—February 1988 Meeting
2. NSB and NSF Staff Nominees
3. Alan T. Waterman Award
4. Grants, Contracts, and Programs

Open Session (8:55 a.m. to 11:00 a.m.)

5. Chairman's Report
6. Minutes—February 1988 Meeting
7. Director's Report
8. R&D Strategy for High Performance Computing/Networking
9. Other Business

Thomas Ubois,
Executive Officer.

[FR Doc. 88–4978 Filed 3–3–88; 1:11 pm]
BILLING CODE 7555-01-M

federal register

Monday
March 7, 1988

Part II

Department of Education

Handicapped Special Studies Program; Proposed Annual Evaluation Priorities; Invitation of Applications for New Awards for Fiscal Year 1988; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program; Proposed Annual Evaluation Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed annual evaluation priorities.

SUMMARY: The Secretary proposes annual evaluation priorities for the Handicapped Special Studies program. These studies have been selected to ensure effective use of program funds and to meet requirements of the Education of the Handicapped Act (EHA).

DATE: Comments must be received on or before June 6, 1988.

ADDRESS: Comments should be addressed to: Susan Sanchez, Research Projects Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Susan Sanchez. Telephone: (202) 732–1117.

SUPPLEMENTARY INFORMATION: The Handicapped Special Studies program, authorized by section 618 of Part B of the Education of the Handicapped Act (EHA), as amended, supports studies to evaluate the impact of the Act, including efforts to provide a free appropriate public education to handicapped children. The results of these studies must be included in the annual report submitted to the Congress by the Department.

Under section 618(c) the Secretary is expressly required to submit to the appropriate committees of each House of the Congress and publish in the **Federal Register** for review and comment proposed annual priorities for evaluations conducted under section 618.

Proposed Priorities

The Secretary proposes priorities under the Handicapped Special Studies Program, CFDA No. 84.159, for fiscal year 1988 applications. The Secretary proposes under priority 1 to invite applications for cooperative agreements to support certain types of studies. Priority 2 will also be addressed through cooperative agreements.

Priority 1: State Agency/Federal Evaluation Studies Projects (CFDA No. 84.159A)

This proposed priority supports evaluation studies by State agencies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act. Within this proposed priority, the Secretary particularly invites studies that: (1) Assess the effect of State and local fiscal policies on the delivery of pre-referral services and special education in regular classrooms at either the elementary or secondary school levels; (2) document experiences of special education students after they exit secondary school, and determine the relationship between secondary programming and post-secondary outcomes; (3) evaluate the effect of alternative assessment practices on multilingual and limited English speaking children and youth; and (4) assess program effectiveness and impact through utilization of student outcome indicators. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), (3), and (4) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities under the Education of the Handicapped Act.

Priority 2: Study of Anticipated Services for Students with Handicaps Existing From School (CFDA No. 84.159B)

Section 618(b)(3) of the Education of the Handiapped Act requires the Secretary to report annually on the number of handicapped children and youth existing the educational system through program completion or otherwise, by disability category and age, and anticipated services for the next year. The anticipated services data are intended to provide national and State-level information for planning the adult services required by these youths after they leave school. Data to respond to this requirement have been collected through reports from each of the States. Most States gather these data from local school districts. However, State educational agencies report that local educational agency staff have difficulty inferring the type or nature of anticipated adult services individual youths will require. Because of this difficulty, the Secretary believes that more useful information for adult service planning can be obtained from information on the characteristics of existing students from which adult service needs could be inferred.

Under this priority, the Secretary supports cooperative agreements to identify, define and operationalize student performance indicators and other descriptive indicators (e.g., reading level, mobility) to determine adult service needs. Projects must develop an array of indicators related to the services these youths will require from adult service agencies to live independently and achieve gainful employment. Indicators must be supported by research findings, conceptual rationales, or both. Further, alternative methods of measurement for each indicator must be developed. Indicators must be developed in cooperation with State adult service agencies. Projects should provide evidence that the indicators have significant practical utility in planning adult servies for students with handicaps existing from school Finally, alternative strategies for collecting data on these indicators on a State by State basis need to be specified. These strategies must address sampling issues, the burden involved in collecting the data, instrument administration, data verification and data aggregation at State and national levels, and issues related to periodic (e.g., annual) collection of data. The Secretary is particularly interested in indicators of in-school as well as out-of-school functioning so that a program of services can be designed to enhance the effectiveness of the individual in educational, home, community, and work environments. Performance indicators on students with a wide range of limitations and disabilities must be addressed.

These projects would cumulatively provide potential designs by which schools, rather than inferring anticipated adult service needs, could provide relevant student performance characteristics to adult service agencies for the purpose of planning.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened

federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the contact person named in this notice.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3522, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1418)
(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies Program)

Dated: January 22, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-4807 Filed 3-4-88; 8:45 am]

BILLING CODE 4000-01-M

Invitation of Applications for New Awards Under the Handicapped Special Studies Program for Fiscal Year 1988; CFDA No.: 84.159

Purpose: To support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act, and to provide Congress and others with this information.

Applicable Regulations: (a) The regulations for the Handicapped Special Studies Program, 34 CFR Part 327 as amended by the Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, and (c) when adopted in final form, the annual funding priorities for this program. A notice of proposed annual funding priorities is published in this issue of the **Federal Register.** Applicants should prepare their applications based on the program regulations and the proposed priorities. If there are substantive changes made when the final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Susan Sanchez, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3094-M/S 2313), Washington, DC 20202. Telephone: (202) 732-1117.

Program Authority: 20 U.S.C. 1418.

Dated: March 1, 1988.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

HANDICAPPED SPECIAL STUDIES PROGRAM APPLICATION NOTICES FOR FISCAL YEAR 1988

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
State agency/Federal evaluation studies projects (CFDA No. 84.159A).	05/13/88	07/12/88	$750,000	$90,000-$140,000	$110,000	7	Up to 18.
Study of anticipated services for students with handicaps exiting from school (CFDA No. 84.159B).	05/13/88	07/12/88	600,000	100,000-200,000	150,000	4	Up to 12.

[FR Doc. 88-4808 Filed 3-4-88; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
March 7, 1988

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 60

Patent Term Restoration Regulations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 60

[Docket No. 85N-0300]

Patent Term Restoration Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations to implement the patent term restoration provisions (Title II) of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417). Patent term restoration, also referred to as patent extension, is available for certain patents related to certain human drug products, including biologics and antibiotics, medical devices, food additives, and color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of July 11, 1986 (51 FR 25338), the Secretary of Health and Human Services and the Commissioner of Food and Drugs proposed regulations implementing FDA's duties under the patent term restoration provisions of the Drug Price Competition and Patent Term Restoration Act of 1984. The proposed rule consisted of five subparts. Subpart A contained general provisions and definitions. Subpart B explained FDA's role in assisting the Patent and Trademark Office (PTO) in determining eligibility for patent term restoration. Subpart C provided details for determining the length of a product's regulatory review period. Subpart D contained provisions for challenging regulatory review period determinations on the ground that an applicant did not diligently pursue premarketing approval. Subpart E proposed regulations governing informal hearings on "due diligence" issues.

The final rule retains all five subparts. In preparing the final rule, the agency carefully reviewed comments submitted by pharmaceutical and food additive manufacturers, biotechnology companies, and trade associations. The agency also worked closely with the Patent and Trademark Office (PTO) to ensure that FDA's and PTO's regulations will complement each other. Both FDA's and PTO's regulations complement a memorandum of understanding, which was executed in September 1986 and published in the **Federal Register** of May 12, 1987 (52 FR 17830). The memorandum of understanding delineates each agency's responsibilities under the patent term restoration program and provides for interagency cooperation and exchange of information.

II. Highlights of the Final Rule

As stated in the proposal, the purposes of the rule are to facilitate determinations of patent term restoration eligibility and regulatory review period length, to ensure that parties interested in due diligence challenges have an opportunity to participate in that process, and to complement the regulations promulgated by the Patent and Trademark Office. The major features of the final rule are as follows:

A. General Provisions

Subpart A contains general provisions and defines various terms for purposes of Title II. Generally, the definitions either are taken from the statute itself or are derived from specific provisions in the Federal Food, Drug, and Cosmetic Act or FDA regulations.

B. Eligibility Assistance

Subpart B explains how FDA advises and assists PTO on eligibility issues. Under the statute, a patent term restoration applicant must satisfy six conditions in order to be eligible for patent term restoration. First, the applicant must show that the patent has not expired (35 U.S.C. 156(a)(1)). Second, the applicant must show that the patent has not been extended previously (35 U.S.C. 156(a)(2)). Third, the patent owner, or its agent, must submit the application including details regarding the patent and activities undertaken to secure FDA approval (35 U.S.C. 156(a)(3)). Fourth, the applicant must establish that the product was subject to a regulatory review period before its commercial marketing or use (35 U.S.C. 156(a)(4)). Fifth, the applicant must show that the product either represents the first permitted commercial marketing or use of the product after such regulatory review period or, in the case of a product manufactured under a patent which claims a process which uses primarily recombinant deoxyribonucleic acid (DNA) technology, represents the first permitted commercial marketing or use of a product manufactured under that process (35 U.S.C. 156(a)(5)). Finally, the applicant must submit the patent term restoration application within 60 days of FDA approval of the commercial marketing application (35 U.S.C. 156(d)(1)).

The Commissioner of Patents and Trademarks has the authority to decide whether an applicant has satisfied these six conditions. However, because FDA possesses the information essential to determining whether the last four requirements have been met, FDA and PTO have developed a procedure whereby FDA informs PTO whether the product mentioned in the application underwent a regulatory review period within the meaning of 35 U.S.C. 156(g) before its commercial marketing and whether such marketing represents the first permitted commercial marketing or use of that product. FDA also informs PTO whether the application was submitted within 60 days of the product's approval. This eligibility assistance system, which is already in practice, enables both agencies to process applications efficiently and to conserve resources. A memorandum of understanding between FDA and PTO addresses this eligibility assistance in greater detail.

C. Regulatory Review Period Determinations

Subpart C of the final rule describes FDA's actions on regulatory review period determinations from initial determination to notification to PTO that the FDA finding is final. The regulatory review period is the maximum potential length of patent extension. PTO determines the actual length of patent extension to be awarded by applying prescribed statutory limitations to the length of a product's regulatory review period.

The final rule retains the proposed rule's provisions concerning a product's regulatory review period and FDA's notification and **Federal Register** publication of that review period. For example, the final rule describes and further clarifies what constitutes the testing phase and the approval phase components of a regulatory review period and the events marking each phase. The **Federal Register** notice of a regulatory review period determination will state the applicant's name, the product's trade name (and generic name, if the product is a drug or medical device), the product's approved uses, patent number, and the length of the regulatory review period as determined by FDA. The notice will include an explanation of any discrepancies between the information contained in the application and FDA records.

The final rule also retains the provision permitting FDA to revise a regulatory review period determination upon the discovery of errors in the information submitted to or used by FDA in calculating the review period.

D. Due Diligence Petitions

Subpart D governs the format, content, and procedures to be followed when due diligence petitions are submitted to FDA, and describes the standard by which due diligence will be measured. This subpart implements 35 U.S.C. 156(d)(2)(B)(i), which allows any person to file a petition with FDA challenging its regulatory review period determination. The statute also requires a petition to be filed within 180 days of publication of the **Federal Register** notice of the regulatory review period determination and to allege that the applicant did not act with "due diligence" in pursuing FDA approval of its product (35 U.S.C. 156(d)(2)(B)(i)).

The final rule modifies slightly some of the provisions set forth in the proposed rule. The time allowed an applicant to respond to a due diligence petition has been increased. If the applicant does not respond to the due diligence petition, FDA will decide the issue on the basis of the information in the patent extension application, the due diligence petition, and FDA records. Additionally, the agency's position on due diligence standards has been clarified.

E. Due Diligence Hearings

Subpart E of the final rule governs the conduct of due diligence hearings which are available under 35 U.S.C. 156(d)(2)(B)(ii). The final rule incorporates all of the provisions contained in the proposed rule with little modification. Any person may request a hearing within 60 days of FDA's due diligence determination by filing a written request with FDA. The hearing will be conducted generally in accordance with agency procedures set forth in 21 CFR Part 16. Within 30 days after the hearing's completion, the Commissioner of Food and Drugs will issue a decision which will be published in the **Federal Register**.

The final rule has been clarified to require that notice of the Commissioner's decision be provided, not only to the parties interested in the hearing, but also to the requesting party, the applicant, and the petitioner.

III. Comments on the Proposed Rule

A. Subpart A—General Provisions

1. *Scope (§ 60.1).* No comments were received on this section. Consequently, the final rule retains the wording set forth in the proposed rule, except for minor editorial changes.

2. *Purpose (§ 60.2).* No comments were received on this section. Consequently, the final rule retains the wording set forth in the proposed rule, except for minor editorial changes.

3. *Definitions (§ 60.3).* Three comments were received on this section.

One comment suggested that FDA revise the section by inserting the phrase "The term" before each word to be defined. The comment also suggested that the defined words not be capitalized pointing out that they are not capitalized elsewhere in the rule.

The agency agrees with the suggestion only as it pertains to the capitalization of the term "Act." The proposed format is similar to that employed by the agency in many other regulations. For consistency, therefore, FDA declines to insert the phrase "The term" before each definition. With respect to the suggestion that the terms being defined not be capitalized, the agency believes that any confusion that might result from capitalizing words in the definition section, but not in the remainder of the rule, will be negligible. However, because the proposed rule used the term "act" to denote the Federal Food, Drug, and Cosmetic Act and, at different places, as a verb meaning to carry out an action, the agency has clarified the final rule. The final rule capitalizes "Act" only to denote the Federal Food, Drug, and Cosmetic Act.

Two comments opposed FDA's definition of "active ingredient" in proposed § 60.3(b)(2) as being too limiting. The comments asserted that the proposed definition would exclude prodrugs from patent term restoration because prodrugs have pharmacological effect only after their "bioconversion to the agent affording the direct effect." As a remedy, the comments suggested that the word "other" be deleted from the first sentence of the proposed definition so that the definition would read, " 'Active ingredient' means any component that is intended to furnish pharmacological activity or direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals." The comments expanded on this concept by saying that the second sentence of the proposed definition should be deleted. One comment also suggested that the phrase "or other animals" be deleted because FDA approval of a component for animal use is not a disqualification for patent term extension. As for the remainder of the definition, the comments recommended that FDA delete the second sentence of the proposed definition, which stated that the term active ingredient "includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect," because it would "include degradation products produced by the manufacture of the final dosage form of the human drug."

FDA disagrees with the majority of the comments. As stated in the proposed rule, the definition of active ingredient was taken from the current good manufacturing practices regulations at 21 CFR 210.3(b)(7). The agency believes that this established definition does, in fact, encompass prodrugs because prodrugs are components that are "*intended* to furnish pharmacological activities or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man * * *." (Emphasis added.) The definition does not require that the active ingredient have a direct pharmacological activity; it merely states that the active ingredient must be intended to furnish pharmacological activity. Products with an indirect pharmacological effect, therefore, are not necessarily excluded from the definition of active ingredient.

The agency also declines to delete the second sentence of the definition which pertains to "components that may undergo chemical change." FDA does not believe that this sentence would bring "minute impurities or degradation products present in an approved drug" within the definition of "active ingredient." Such impurities and degradation products are not "intended to furnish the specified activity or effect."

FDA does agree, however, to delete the phrase "or other animals" from the first sentence of the definition. Currently, Federal law does not provide patent extension to veterinary products. The language regarding pharmacological effect in "other animals," therefore, is meaningless for patent extension purposes.

FDA, on its own initiative, is amending the definition of "clinical investigation or study" to conform to the definition already established in 21 CFR 50.3(c) and 21 CFR 56.102(c). Consequently, the term is now defined as "any experiment that involves a test article and one or more human subjects and that is either subject to requirements for prior submission to the Food and Drug Administration under

section 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act, or is not subject to the requirements for prior submission to FDA under those sections of the Federal Food, Drug, and Cosmetic Act, but the results of which are intended to be submitted later to, or held for inspection by, FDA as part of an application for a research or marketing permit. The term does not include experiments that are subject to the provisions of Part 58 regarding nonclinical laboratory studies."

B. Subpart B—Eligibility Assistance

FDA assistance on eligibility (§ 60.10). Five comments were submitted on various aspects of this subpart.

Three comments sought confirmation that FDA will not be determining the scope of patent claims.

The agency readily acknowledges that it has no role in determining the scope of patent claims. Only PTO has the expertise to determine the scope of patent claims and the rights attached to them. FDA's involvement in patent term restoration is limited to informing PTO about FDA-related actions, events, and information within FDA's expertise. Therefore, FDA defers to PTO on all matters involving the construction and validity of patent claims.

One comment recommended that proposed § 60.10(a)(2)(i) be changed from "Under the provision of law under which the regulatory review period occurred * * *" to "As approved under the provision of law under which the regulatory review period occurred * * *." The same comment also suggested that proposed § 60.10(a)(2)(ii) be changed from "Under the process claimed in the patent * * *" to "As manufactured under the process claimed in the patent * * *." The comment said that these changes would "clarify the distinction made for 'DNA' inventions."

The agency declines to adopt these suggestions. Patent extension is provided only to products approved under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act. Thus, amending § 60.10(a)(2)(i) to read "*As approved* under the provision of law * * *" is unnecessary. As for § 60.10(a)(2)(ii), it clearly states that "the patent claims a *method of manufacturing* the [approved] product that *primarily uses recombinant (DNA) technology* in the manufacture of the product * * *." (Emphasis added.) Further distinction of the recombinant DNA provisions is unnecessary.

Two comments expressed concern that proposed § 60.10(a)(4) could be interpreted as enabling FDA to provide PTO with confidential information from FDA's marketing files. One comment argued that the section, as proposed, would exceed FDA's statutory authority and recommended that FDA modify § 60.10(a)(4) to state that FDA could provide PTO "with any other information *relevant to review of the dates contained in the application and determination* of the applicable regulatory review period." (Emphasis added.) The other comment suggested that FDA develop "appropriate controls * * * to prevent release of such documents not otherwise available."

FDA declines to adopt the comments. Under FDA regulations in 21 CFR 20.85, FDA is prohibited from disclosing "trade secrets and confidential commercial or financial information prohibited from disclosure by 21 U.S.C. 331(j), 21 U.S.C. 360(j)(c), 42 U.S.C. 263g(d) and 42 U.S.C. 263i(e)" except under the conditions provided for in those sections. Furthermore, the regulation states that any disclosure "shall be pursuant to an agreement that the record shall not be further disclosed by the other department or agency except with the written permission of the Food and Drug Administration." The confidential information contemplated by the comments, therefore, is adequately protected.

FDA also believes that the limitations suggested by the comments would hinder its ability to assist PTO in determining eligibility. As noted above, only FDA has the ability to verify whether: (1) The product for which patent extension is sought has undergone a regulatory review period, (2) the product represents the first permitted commercial marketing or use, and (3) the application for patent extension was submitted within 60 days of the product's approval. Informing PTO whether the product underwent a regulatory review period and whether the patent extension application's filing date is within 60 days of the product's approval are usually uncomplicated administrative tasks. Determining whether the product represents the "first permitted commercial marketing or use," however, can pose difficult problems. For example, in regard to drug products, the agency is obliged to search its product files to determine whether the active ingredient mentioned in the patent term restoration application is present in a different, previously-approved drug product. This search includes drug products which were approved by FDA but are no longer on the market. Once the agency finishes its review of its product files, FDA notifies PTO of its findings so that PTO will be able to make an informed decision on eligibility. Adopting the comment's suggestion would prevent FDA from providing PTO with this kind of information regarding previously approved products that is necessary for effective implementation of the limitation at 35 U.S.C. 156(a)(5), and would undermine PTO's ability to determine eligibility. Consequently, the final rule retains the provision without change.

C. Subpart C—Regulatory Review Period Determinations

1. *FDA action on regulatory review period determinations (§ 60.20).* Two comments were submitted on this section regarding FDA's regulatory review period determinations. Both suggested that the agency send copies of the determination to the marketing applicant as well as to PTO and the patent extension applicant.

FDA must decline to adopt the suggestion because many patent extension applicants do not identify the marketing applicant or an appropriate contact for patent matters. Additionally, the contact persons listed in the marketing applications on file at FDA usually do not handle patent matters. Identifying a proper contact in the marketing applicant's company or firm becomes further complicated when licensees, subsidiaries, and foreign companies are involved. FDA does not possess the resources or the authority which would be necessary to undertake the comment's suggestion.

2. *Regulatory review period determinations (§ 60.22).* FDA received six comments on various aspects of this section.

Two comments sought clarification of the definition of the testing phase for human drugs in § 60.22(a)(1). Specifically, the comments asked (1) when does an exemption become effective under sections 505(i) and 507(d) of the act, and (2) in cases where more than one exemption is in effect for the same drug, which exemption triggers the start of the testing phase?

The effective date for exemptions for investigational new drugs (IND's) depends on the circumstances surrounding the exemption. Typically, an IND becomes effective 30 days after FDA receives it (21 CFR 312.40(b)(1)). However, an IND can become effective before the 30-day period expires if FDA notifies the sponsor that the investigations under the IND may begin (21 CFR 312.40(b)(2)). In such cases, the earlier date will be accepted for patent extension purposes. In contrast, if the agency issues an order placing the IND on clinical hold, the IND will be effective only when the clinical hold is lifted. Generally, a clinical hold can be

lifted in either of two ways: (1) If the terms of the clinical hold permit resumption of the investigation without notice to FDA, the investigation may proceed as soon as the correction or modification requested by FDA is made, or (2) in all other cases, the investigation may proceed when the agency has notified the sponsor that the study may proceed (21 CFR 312.42(e)). In the event of a clinical hold, these events also mark the IND's effective date for patent extension purposes.

For drugs for which more that one exemption is in effect, the provisions of the patent extension statute specifically state that the testing phase for human drug products begins on the date an exemption "under subsection (i) of section 505 or subsection (d) of section 507 became effective for the *approved* human drug product * * *" (35 U.S.C. 156(g)(1)(B)(i)). (Emphasis added.) Thus, while the drug's dosage form and strength during the IND phase need not be identical to that of the approved drug product, the information from the IND studies must have been material to the approval of the drug product. Where multiple IND's are in effect, the agency will consider the testing phase to have begun when the first IND for the approved human drug product became effective. The agency has clarified this point by amending § 60.22(a)(1) to state that the exemption must be for the approved drug product.

FDA received two comments concerning the interpretation of a "major health or environmental effects test" for food and color additives under § 60.22(b). One comment requested that FDA adopt a flexible approach in determining the start of a major health or environmental effects test and suggested that compliance with certain FDA regulations, such as the good laboratory practice (GLP) regulations in 21 CFR Part 58, could mark the beginning of the statutorily required 6-month period. The second comment expressed concern that FDA's interpretation would exclude tests such as the 3-month rat or dog feeding study which, despite their names, may take more than 6 months to complete. The comment stated that subchronic feeding studies and histopathologic examinations may extend several months.

The final rule does not contain an exhaustive list of the types of tests that will be considered to be a "major health or environmental effects test." As stated in the preamble to the proposed rule, FDA will review each patent extension application for a food or color additive on its own merits until it has acquired more experience in this area. FDA does not disagree with the suggestion that compliance with GLP regulations could mark the start of a major health or environmental effects test for patent extension purposes. However, because of the statutory language and the wide variety of health and environmental effects tests, FDA declines to treat any specific event as the start of the required 6-month period. In response to the concern that test names, rather than the actual time spent testing a food or color additive, might be determinative in marking the beginning of the 6-month period for a major health or environmental effects test, FDA points out that § 60.22(b)(1)(iii) states that the controlling fact is the time spent conducting the test. This interpretation is consistent with the statutory definition of "major health or environmental effects test" at 35 U.S.C. 156(f)(3). However, that definition also states that periods of analysis or evaluation of test results are not to be included in determining whether the conduct of a test required at least 6 months. Thus, for example, histopathologic examinations may be part of a major health or environmental effects test, but the statistical analysis for such examinations will not.

Four comments requested that drugs that are regulated by the Drug Enforcement Administration as controlled substances should not be considered to be approved until they are scheduled domestically under the Controlled Substances Act.

The agency declines to adopt the suggestion. The statute specifically defines the approval phase of a regulatory review period for a human drug product as "the period beginning on the date an application was initially submitted for the approved human drug product under *section 351, subsection (b) of section 505, or section 507* and *ending on the date such application was approved under such section*" 35 U.S.C. 156(g)(1)(B)(ii) (emphasis added). The phrase "approved under such section" clearly refers only to section 351 of the Public Health Service Act and sections 505(b) and 507 of the Federal Food, Drug, and Cosmetic Act. The statute makes no reference to the Controlled Substances Act. Applying the principle of statutory interpretation, *expressio unius est exclusio alterius*, one cannot assume that Congress meant to include scheduling under the Controlled Substances Act as a necessary condition to a drug's marketing approval under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act.

FDA's position is further supported by the recent decision of the U.S. Court of Appeals for the Sixth Circuit in *Norwich Eaton Pharmaceuticals, Inc.* v. *Bowen*, 808 F.2d 486 (6th Cir. 1987). In that case, the appellee claimed that its drug product was approved when FDA received final printed labeling following the drug's rescheduling under the Controlled Substances Act. The government maintained that the drug product was approved on the date FDA issued a letter notifying the marketing applicant that the NDA was approved. After reviewing FDA's regulations and relevant sections of the Federal Food, Drug, and Cosmetic Act and the Drug Price Competition and Patent Term Restoration Act, the court found FDA's interpretation to be correct and ruled accordingly. Although the *Norwich Eaton Pharmaceuticals, Inc.* case involved the abbreviated new drug approval provisions of the Drug Price Competition and Patent Term Restoration Act of 1984, its principles apply to the patent term restoration provisions as well. Approval of a new drug product, therefore, occurs on the date FDA notifies the marketing applicant that the NDA for the drug product is approved, regardless of the status of domestic drug scheduling activities.

Three comments focused on the phrase "initially submitted" in § 60.22 (a) and (d). Two comments expressed concern that, because in accordance with 21 CFR 314.101(b), an NDA is not considered to be filed until 60 days after it is received by the agency, FDA would not consider a marketing application to be "initially submitted" until the expiration of the 60-day period. One comment suggested that the agency consider a marketing application to be "initially submitted" on the date the application is mailed to FDA.

The agency's interpretation of the term "initially submitted" is derived from the legislative history of the statute. According to the House Committee on Energy and Commerce's Report:

> * * * an application for agency review is considered to be "initially submitted" if the applicant has made a deliberate effort to submit an application containing all information necessary for agency review to begin. The Committee recognizes that the agency receiving the application might decide it needs additional information or other changes in the application. As long as the application was complete enough so that agency action could be commenced, it would be considered to be 'initially submitted.'

H. Rept. 98–857, 98th Cong., 2d Sess. 44 (1984). The House Committee on Energy

and Commerce also stated that it deliberately did not use the term "filed" instead of "initially submitted" because an application might not be considered to be "filed" even though agency review has begun. *Id.* Consequently, for purposes of a regulatory review period determination, neither the 60-day delay nor the filing date requirements found in 21 CFR 314.101(b) are controlling as to when an application is "initially submitted." A marketing application is "initially submitted" when it contains sufficient information to permit the agency to begin a substantive review. If the agency requires additional information after beginning its review, the application will nevertheless be considered to have been "initially submitted" for patent extension purposes.

The agency disagrees with the suggestion that the marketing application should be considered "initially submitted" on the date the marketing applicant mails or transmits the application. As discussed above, the legislative history states that a marketing application is "initially submitted" if it contains "all information necessary for agency review to begin" and if it is "complete enough so that agency action could be commenced." *Id.* These statements support the agency's position that a marketing application is "initially submitted" only when it is physically received by FDA because, before that time, FDA cannot begin any action on the marketing application. Furthermore, unlike the mailing or transmittal date, FDA can readily verify the date on which it receives a marketing application. Accordingly, a marketing application will be considered to be "initially submitted" on the date FDA receives a sufficiently complete application.

3. *Revision of regulatory review period determinations (§ 60.24).* Six comments were directed at this section. One comment suggested that § 60.24(a) be revised to read that any person "may request a revision of the regulatory review period determination within 60 days after its *initial* publication in the **Federal Register.**" The comment stated that the change would "clarify the intent that there be only one 60-day period for requesting a revision of the regulatory review period determination."

The agency agrees with the comment and has amended the provision accordingly. As stated in the proposed rule (51 FR 25341), FDA intends that § 60.24 "apply to those situations in which a person believes that there was an error in the dates used by or supplied to FDA to determine a product's regulatory review period." A revision of a regulatory review period determination, therefore, is equivalent to a correction rather than to another regulatory review period determination. FDA does not intend that the publication of a revision in the **Federal Register** "restart" either the 60-day comment period or the 180-day period in which due diligence petitions may be filed. Those two time periods will not be affected by the submission of a request for a revision. Requests for revision of a regulatory review period may be submitted only within 60 days of the original notice of a regulatory review period determination in the **Federal Register.**

Five comments objected to § 60.24(b), which stated that "FDA will review the information contained in the request [for revision] and, if necessary, give the applicant the opportunity to respond * * *." The comments said that the agency should always offer the applicant the opportunity to respond to a request for revision. Two comments recommended that, when responding to a request for revision, the applicant should be permitted to submit information that was not included in the patent extension application. One comment also stated that, while the applicant should be given an opportunity to respond, a response should not be required and a failure to respond should not "be presumptive of his or her acquiescence to the request."

FDA agrees with the comments. The phrase "if necessary" was included in the proposed section so that notice to the applicant would not be required in those instances where the applicant itself requested the revision to the regulatory review period determination. For clarity, however, the agency has amended § 60.24 to provide that, unless the applicant requested the revision, the applicant has 15 days to respond to a request for a revision after FDA has notified the applicant of the request. As the comments suggested, the applicant will be permitted to present information that was not included in the patent extension application, but such information must be directly relevant to events in the regulatory review period.

FDA rejects the suggestion that a response to a request for a revision should not be required. Absent a response by the applicant, FDA cannot know whether the applicant opposes or acquiesces to the request for a revision. Moreover, the agency cannot wait indefinitely for a response from the applicant. However, FDA has modified the rule to provide that a failure to respond will not be treated as acquiescence to the request for a revision. In such cases, FDA will decide the matter on the basis of the materials submitted in the patent extension application, request for revision, and FDA records.

One comment recommended that § 60.24(c) be revised to state that FDA will notify PTO of any revision to the regulatory review period determination and will publish the revision in the **Federal Register** "if FDA revises its prior determination * * *." The comment explained that, by beginning the sentence with the word "if" instead of "when," the sentence would show that there might be situations in which a request for revision will not be granted.

The agency agrees and has revised the sentence accordingly.

4. *Final action on regulatory review period determinations (§ 60.26).* FDA received one comment on this provision. The comment suggested that § 60.26(b) be redrafted to show clearly that FDA will consider its regulatory review period determination to be final after either of the following events: (1) Expiration of the 180-day period for filing a due diligence petition, or, (2) upon resolution of a timely-filed request for revision, due diligence petition, or request for a hearing.

The agency agrees with the suggestion and has revised § 60.26(b) accordingly.

5. *Timeframe for determining regulatory review periods (§ 60.28).* FDA received two comments on proposed § 60.28(b), which listed the circumstances under which FDA may extend the 30-day time period for determining a product's regulatory review period. One comment argued that the agency lacked authority to extend the timeframe and, therefore, paragraph (b) should be deleted. The other comment suggested that FDA create "procedural safeguards with respect to the showing that must be made (e.g., the basis for need of such extension, restrictions upon the length of the extension, and mechanisms for appealing any such extensions) before any extensions of the 30-day period may be implemented."

The agency disagrees with the comments but wishes to clarify the provision's intent. Section 60.28(b) is intended to permit the agency to avoid unnecessary regulatory review period determinations where the eligibility of the patent for patent term restoration is in question or where additional information relevant to determining the regulatory review period is dependent upon the outcome of other activities. For example, if the validity of the patent for which an extension is sought were being

challenged in court, PTO might request FDA to temporarily suspend the regulatory review period determination process until the patent is found valid. Similarly, if the patent extension applicant filed a petition with FDA contesting various aspects of the regulatory review period determination, e.g., the filing date of a premarketing application, inclusion of prior research activities in the review period, the resolution of such a petition would affect the agency's final regulatory review period determination. In these examples, agency resources would be conserved by awaiting a final decision on the preliminary issues.

FDA disagrees with the suggestion that procedural safeguards, such as administrative appeals, should be added to the section. FDA's experience with the patent term restoration program thus far has shown that patent extension applicants usually have several years of patent life remaining for their products. Thus, a temporary suspension of the 30-day time period will not prejudice the patent holder's rights. In the few cases where a patent might expire during the patent extension process, the statute provides for interim extensions for periods up to 1 year. (See 35 U.S.C. 156(e)(2).)

D. Subpart D—Due Diligence Petitions

1. *Filing, format, and content of petitions (§ 60.30).* FDA received two comments on this section. Both comments recommended that the agency require a party filing a due diligence petition to specify the dates and times during which it believes the marketing applicant was not diligent.

The agency agrees in part with these comments and has modified § 60.30 accordingly. While precise dates will not be required, petitioners should, whenever possible, specify the dates during which they believe the marketing applicant was not diligent in pursuing FDA approval. Such information will facilitate consideration of a due diligence petition by both the agency and the applicant. As for specifying the times or hours when the marketing applicant was supposedly not diligent, FDA believes that it is not necessary that petitioners engage in such detail because patent extensions are granted for days rather than hours.

2. *Applicant response to petition (§ 60.32).* FDA received six comments on this section, urging that the 10-day period allowed a patent extension applicant to respond to a due diligence petition be increased. One comment added that, in responding to a due diligence petition, the applicant should be permitted to submit documents that were not included in the patent extension application.

FDA agrees with the comments and has increased the applicant's response time to 30 days. For reasons discussed below, FDA has also amended the section so that the applicant must issue some response within the 30-day period. The agency affirms that an applicant may submit documents that were not a part of the original patent extension application. FDA has adopted this position because it believes that an applicant should not have to prove due diligence in the patent extension application.

3. *FDA action on petitions (§ 60.34).* Five comments were received on this section.

Two comments suggested that the agency amend § 60.34(b)(1) to allow FDA to reject a petition that is not filed in accordance with the requirements of § 60.30.

FDA agrees with the comment and has amended § 60.34(b)(1) accordingly.

Two other comments were directed at the language in proposed § 60.34(c), which would permit FDA to reduce a regulatory review period determination where "the applicant acquiesces to a reduction." The comments objected that the provision could be construed as creating a presumption that the applicant acquiesces to a reduction by failing to reply to a due diligence petition. The comments recommended that the applicant be required to respond to a due diligence petition in writing and that acquiescence by the applicant to a reduction would be without prejudice and would have no precedential value in any other proceeding.

The agency has modified § 60.32 so that the applicant must issue a response within 30 days after receiving a copy of any due diligence petition. As modified, the section imposes a duty, rather than simply an opportunity, to respond to applicants who wish to oppose a due diligence petition. If the applicant does not respond, § 60.32(c) states that the failure to respond will not be treated as acquiescence to the due diligence petition. In such cases, FDA will decide the matter on the basis of the materials presented in the patent extension application, due diligence petition, and FDA records. Thus, proposed § 60.34(c), regarding the effect of an applicant's acquiescence, is no longer necessary and the agency has removed it from the final rule. FDA has created new § 60.32(c) in the final rule to explain what documents FDA will examine if the applicant does not respond to a due diligence petition.

One comment expressed concern that, if FDA revises a regulatory review period determination based upon a finding of a lack of due diligence, and PTO subtracts such time from the length of patent extension (as provided in PTO's final rule) (52 FR 9386; March 24, 1987), the applicant would be penalized twice for the same lack of due diligence. The comment asked that FDA and PTO coordinate their rules to prevent such a double penalty.

FDA disagrees with the comment. PTO does not determine the actual period of patent extension or issue patent extension certificates until FDA notifies PTO that FDA's regulatory review period determination is final. These procedures are set forth in a memorandum of understanding between the two agencies. After FDA publishes its determination of a product's regulatory review period in the **Federal Register**, FDA waits 180 days to see whether any due diligence petitions are submitted. If no petitions are submitted, FDA considers its regulatory review period to be final and notifies PTO of that fact. If a petition is received, FDA will notify PTO that the regulatory review period determination is final after FDA has acted on the petition and made any necessary revisions to the regulatory review period. Thus, the patent holder will not be penalized twice for the same due diligence determination.

FDA advises that the due diligence provisions of FDA's and PTO's patent term restoration regulations are complementary and do not conflict. The rules implement different portions of the statute. Under both the statute and this final rule, only the Secretary of Health and Human Services and, by delegation, the Commissioner of Food and Drugs, is authorized to determine whether a marketing applicant acted with due diligence (35 U.S.C. 156(d)(2)(B)(i)), and to publish in the **Federal Register** a "notice of such [due diligence] determination together with the factual and legal basis for such determination," (35 U.S.C. 156(d)(2)(B)(ii)). Under the statute and PTO's final rule, the Commissioner of Patents and Trademarks is empowered to grant patent extensions (35 U.S.C. 156(e)). The statute creates a two-part system: FDA determines whether there has been a lack of due diligence, and the Commissioner of Patents and Trademarks must take that determination into account in extending the patent term. FDA's and PTO's regulations reflect this system.

4. *Standard of due diligence (§ 60.36).* FDA received three comments

pertaining to the relevant factors for determining due diligence in § 60.36(a) of the proposed rule. All three comments claimed that the factors listed, especially § 60.36(a)(1), pertaining to the "length of the regulatory review period for comparable products," were vague or inappropriate. One comment objected that the factors were too subjective and would create administrative problems for FDA. This same comment suggested that FDA propose additional rules as to the criteria FDA will employ and "at the least should compile and publish information regarding products, regulatory review periods and the types of product in a concise listing as well as the basis upon which the FDA has determined the regulatory review period." Moreover, the comment continued, FDA "should make known any standard or factor such as those quoted * * * which it is using and how they were determined numerically, and the FDA should also make known what actions or inactions of the applicant it has relied upon in concluding whether the applicant proceeded with due diligence." Another comment stated that comparisons of regulatory review periods for similar products "are entirely without validity since each regulatory review period is unique unto itself." That comment also argued that § 60.36(a)(2), pertaining to "compliance or failure to comply with FDA requirements," was inappropriate on the ground that a marketing applicant might have a bona fide dispute with FDA over its interpretation of applicable laws. The comment suggested that FDA eliminate the list of relevant factors set forth in § 60.36(a).

Several comments also objected to the proposed rule's reference to the patent law concept of diligence. They argued that the application of patent law concepts to due diligence issues under Title II would create an unduly harsh standard for judging the marketing applicant's actions during the regulatory review period and would be inconsistent with the statutory purpose of compensating patent holders for lost patent time.

The agency agrees with the comments in part and has revised § 60.36(a) to replace the list of relevant factors with the general criteria taken from the legislative history. FDA again emphasizes that these types of events are not exhaustive but rather are intended only to provide potential due diligence petitioners with some idea of the types of events FDA will consider in its due diligence determinations. The types of events cited are in accord with the legislative history. (See H. Rept. 98-857, Part 1, 98th Cong., 2d Sess. 42 (1984)). FDA did not intend that the list of relevant factors contained in the proposed rule serve as a definitive statement of the criteria to be employed in evaluating due diligence. Indeed, in the preamble to the proposed rule, FDA emphasized that the listed factors "merely illustrate the kinds of factors that FDA will consider in due diligence determinations" (51 FR 25343). However, because the list has generated concern and confusion and is an unnecessary part of the regulation, FDA has eliminated the list from the final rule. FDA declines to propose additional criteria or rules detailing measures and values it will use in determining due diligence or to develop a new publication for due diligence purposes as suggested by the comments. As stated in the proposed rule, FDA believes it is important to adopt a flexible approach to due diligence issues.

With respect to the application of patent law concepts of diligence, FDA agrees that marketing applicants should not be held to the same standard of diligence which is used in determining priority of invention under 35 U.S.C. 102(g). The agency's reference to patent law in the preamble to the proposed rule (51 FR 25342) was intended only to show by analogy that due diligence determinations will depend on the facts and circumstances of each case. FDA will apply a rule of reason or balancing approach in making due diligence determinations.

E. Subpart E—Due Diligence Hearings

1. *Request for hearing (§ 60.40).* No comments were submitted on this section. Consequently, the final rule retains the proposed provision without change.

2. *Notice of hearing (§ 60.42).* FDA received five comments concerning FDA's notice to the parties in a hearing and the persons who may participate in a hearing. Because of a typographical error in the proposed rule, four comments sought clarification of the time frame for FDA to notify parties of a hearing's location and date. One comment also suggested that parties should be given 30 days notice of a hearing date and location.

A correction to the proposed rule was published in the **Federal Register** of September 25, 1986 (51 FR 34094), correcting § 60.42 to provide that FDA will notify parties of the date, time, and location 10 days before a hearing is to be conducted. FDA declines to extend this 10-day period to 30 days. Section 156(d)(2)(B)(ii) of the statute requires the agency to conduct due diligence hearings within 30 days of a request unless the party seeking the hearing requests a date after that time. If the agency adopted the comment's suggestion, FDA would be required to provide notice of the hearing and make all necessary arrangements for the hearing as soon as it received the request for a hearing. In addition to the administrative burden such a requirement would impose, FDA would have no time to review the request. The agency believes that the 10-day notice period and the other notice requirements in the rule, specifically § 60.40(b)(4), which requires the requesting party to serve notice of the request for a hearing on the due diligence petitioner and the applicant, and § 60.40(c), which requires a hearing request to state whether the party requesting a hearing seeks a hearing within 30 or 60 days of FDA's receipt of the request, are adequate to provide parties with sufficient notice to prepare for a hearing.

Two comments recommended that FDA add a provision to the rule that would allow the agency to summarily deny a request for a hearing where the request is incomplete, lacks sufficient information, or, even if granted, will not affect the maximum patent extension sought by the applicant.

FDA has not included such a section in the final rule for two reasons. First, the statute defines "informal hearing" as having "the meaning prescribed for such term by section 201(y) of the Federal Food, Drug, and Cosmetic Act." Accordingly, a request for an informal hearing under § 60.44 will be considered in accordance with the current procedures for all informal hearings. Second, the addition of such a section for purposes of due diligence may be unnecessary. Under § 60.44, FDA states that due diligence hearings are to be conducted in accordance with the nonconflicting procedures contained in 21 CFR Part 16. On February 17, 1988 (53 FR 4613), FDA issued a final rule amending Part 16 to permit the Commissioner of Food and Drugs or an FDA official to whom the authority to make "the final decision in the matter" has been delegated to deny a hearing where "no genuine and substantial issue of fact has been raised by the material submitted." The agency believes that this amendment sufficiently addresses the suggestions made by the comments.

Another comment suggested that FDA revise the section to state explicitly that the party requesting a hearing will be allowed to participate in the hearing. The agency agrees and has amended the section accordingly.

3. *Hearing procedure (§ 60.44).* The agency did not receive any comments on this section. Therefore, the final rule retains the proposed provision with only minor editorial changes.

4. *Administrative decision (§ 60.46).* One comment suggested that the agency revise this section to provide the person requesting the hearing, the applicant, and the due diligence petitioner with copies of FDA's decision regardless of whether those parties actually participated in the hearing.

The agency has adopted the suggestion and amended the section accordingly.

IV. Economic Assessment

The patent term restoration provisions in Title II of Pub. L. 98–417 will produce economic consequences for both eligible patent holders and their competitors. By design, the statute increased the economic returns to eligible patent holders by extending the duration of their patents, while it concomitantly deferred the economic returns to the patent holders' competitors by delaying their market entry. The statute legislated these changes to increase the present and future incentives for innovation. This effect seems assured, although it is difficult to measure. Many factors besides the period of exclusive marketing will influence the future incentives for innovation, including the changes in Title I of this Law. For this reason, the legislative history was understandably silent regarding any projections of the economic consequences of extended patent life. Although the numerous uncertainties surrounding future rates of innovation continue to preclude useful projection of the effects of the statute, it is possible to determine if this rule itself poses significant incremental impact.

This rule essentially sets forth procedures by which FDA will supply information to the Commissioner of Patents and Trademarks who must verify the eligibility of applicants seeking patent term restoration under conditions set forth in the statute. The degree of interpretation and administrative discretion that this rule gives FDA in supplying the required information to the Commissioner of Patents and Trademarks defines the potential for incremental impact of this rule. FDA's experience over the past several years indicates that there is little if any interpretative or discretionary latitude in FDA's role. The dates of events which define the regulatory review period are factual matters upon which FDA and applicants almost always agree. Since enactment of the statute, only 2 of 58 applicants have commented on FDA's initial determination of the regulatory review period, and none of these applications have resulted in a due diligence petition by third parties who disagreed with the determination. The requests for determinations of regulatory review periods do not in themselves carry any significant costs. Accordingly, FDA concludes that this rule is not a major rule as defined in Executive Order 12291.

For the reasons stated above, FDA also certifies, under the Regulatory Flexibility Act (Pub. L. 96–354) that the procedures set forth in this rule will not have a significant impact on a substantial number of small entities. Neither the comments on the proposed rule nor FDA's experience to date give any reason to suspect that small firms have difficulties with respect to the procedures in this rule.

V. Paperwork Reduction Act of 1980

Sections 60.24(a), 60.30(a), and 60.40 of this final rule contain collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0233.

List of Subjects in 21 CFR Part 60

Administrative practice and procedure, Color additives, Drugs, Food additives, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Drug Price Competition and Patent Term Restoration Act of 1984, new Part 60 is added to read as follows:

PART 60—PATENT TERM RESTORATION

Subpart A—General Provisions

Sec.
60.1 Scope.
60.2 Purpose.
60.3 Definitions.

Subpart B—Eligibility Assistance

60.10 FDA assistance on eligibility.

Subpart C—Regulatory Review Period Determinations

60.20 FDA action on regulatory review period determinations.
60.22 Regulatory review period determinations.
60.24 Revision of regulatory review period determinations.
60.26 Final action on regulatory review period determinations.
60.28 Time frame for determining regulatory review periods.

Subpart D—Due Diligence Petitions

60.30 Filing, format, and content of petitions.
60.32 Applicant response to petition.
60.34 FDA action on petitions.
60.36 Standard of due diligence.

Subpart E—Due Diligence Hearings

60.40 Request for hearing.
60.42 Notice of hearing.
60.44 Hearing procedures.
60.46 Administrative decision.

Authority: Secs. 409, 505, 507, 515, 520, 701, 706 (21 U.S.C. 348, 353, 355, 357, 360e, 360j, 371, 376); Sec. 351 (42 U.S.C. 262); Sec. 201 (35 U.S.C. 156).

Subpart A—General Provisions

§ 60.1 Scope.

(a) This part sets forth procedures and requirements for the Food and Drug Administration's review of applications for the extension of the term of certain patents under 35 U.S.C. 156. Patent term restoration is available for certain patents related to human drug products (as defined in 35 U.S.C. 156(f)(2)), and to medical devices, food additives, or color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act. Food and Drug Administration actions in this area include:

(1) Assisting the United States Patent and Trademark Office in determining eligibility for patent term restoration;

(2) Determining the length of a product's regulatory review period;

(3) If petitioned, reviewing and ruling on due diligence challenges to the Food and Drug Administration's regulatory review period determinations; and

(4) Conducting hearings to review initial Food and Drug Administration findings on due diligence challenges.

(b) References in this part to the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

§ 60.2 Purpose.

(a) The purpose of this part is to establish a thorough yet efficient process for the Food and Drug Administration review of patent term restoration applications. To achieve this purpose, the regulations are intended to: (1) Facilitate determinations of patent term restoration eligibility and regulatory review period length, and (2) ensure that parties interested in due diligence challenges will have an opportunity to participate in that process, including informal hearings.

(b) The regulations are intended to complement those promulgated by the United States Patent and Trademark Office to implement those parts of the law which are under that agency's

jurisdiction. These regulations shall be construed in light of these objectives.

§ 60.3 Definitions.

(a) The definitions contained in 35 U.S.C. 156 apply to those terms when used in this part.

(b) The following definitions of terms apply to this part:

(1) The term "Act" means the Federal Food, Drug, and Cosmetic Act (secs. 201–901, 52 Stat. 1040 et seq. as amended (21 U.S.C. 301–392)).

(2) "Active ingredient" means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

(3) "Applicant" means any person who submits an application or an amendment or supplement to an application under 35 U.S.C. 156 seeking patent term restoration.

(4) "Application" means an application for patent term restoration submitted under 35 U.S.C. 156.

(5) "Clinical investigation or study" means any experiment that involves a test article and one or more human subjects and that is either subject to requirements for prior submission to the Food and Drug Administration under section 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act, or is not subject to the requirements for prior submission to FDA under those sections of the Federal Food, Drug, and Cosmetic Act, but the results of which are intended to be submitted later to, or held for inspection by, FDA as part of an application for a research or marketing permit. The term does not include experiments that are subject to the provisions of Part 58 regarding nonclinical laboratory studies.

(6) "Color additive" means any substance that meets the definition in section 201(t) of the Act and which is subject to premarketing approval under section 706 of the Act.

(7) "Due diligence petition" means a petition submitted under § 60.30(a).

(8) "FDA" means the Food and Drug Administration.

(9) "Food additive" means any substance that meets the definition in section 201(s) of the Act and which is subject to premarketing approval under section 409 of the Act.

(10) "Human drug product" means the active ingredient of a new drug, antibiotic drug, or human biologic product (as those terms are used in the Act and the Public Health Service Act), including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

(11) "Marketing applicant" means any person who submits an application for premarketing approval by FDA under:

(i) Section 505(b) or 507 of the Act or section 351 of the Public Health Service Act (human drug products);

(ii) Section 515 of the Act (medical devices); or

(iii) Section 409 or 706 of the Act (food and color additives).

(12) "Marketing application" means an application for:

(i) Human drug products submitted under section 505(b) or 507 of the Act or section 351 of the Public Health Service Act;

(ii) Medical devices submitted under section 515 of the Act; or

(iii) Food and color additives submitted under section 409 or 706 of the Act.

(13) "Medical device" means any article that meets the definition in section 201(h) of the Act and which is subject to premarketing approval under section 515 of the Act.

(14) "Product" means a human drug product, medical device, food additive, or color additive, as those terms are defined in this section.

(15) "PTO" means the United States Patent and Trademark Office.

Subpart B—Eligibility Assistance

§ 60.10 FDA assistance on eligibility.

(a) Upon written request from PTO, FDA will assist PTO in determining whether a patent related to a product is eligible for, patent term restoration by:

(1) Verifying whether the product was subject to a regulatory review period before its commercial marketing or use;

(2) Determining whether the permission for commercial marketing or use of the product after the regulatory review period is the first permitted commercial marketing or use of the product either:

(i) Under the provision of law under which the regulatory review period occurred; or

(ii) Under the process claimed in the patent when the patent claims a method of manufacturing the product that primarily uses recombinant deoxyribonucleic acid (DNA) technology in the manufacture of the product;

(3) Informing PTO whether the patent term restoration application was submitted within 60 days after the product was approved for marketing or use; and

(4) Providing PTO with any other information relevant to PTO's determination of whether a patent related to a product is eligible for patent term restoration.

(b) FDA will notify PTO of its findings in writing, send a copy of this notification to the applicant, and file a copy of the notification in the docket established for the application in FDA's Dockets Management Branch (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Subpart C—Regulatory Review Period Determinations

§ 60.20 FDA action on regulatory review period determinations.

(a) FDA will consult its records and experts to verify the dates contained in the application and to determine the length of the product's regulatory review period under § 60.22. The application shall contain information relevant to the determination of the regulatory review period as stated in the "Guidelines for Extension of Patent Term Under 35 U.S.C. 156" published on October 9, 1984, in PTO's *Official Gazette* and as required by 37 CFR Chapter I.

(b) After determining the length of the regulatory review period, FDA will notify PTO in writing of its determination, send a copy of this determination to the applicant, and file a copy of the determination in the docket established for the application in FDA's Dockets Management Branch (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

(c) FDA will also publish the regulatory review period determination in the **Federal Register**. The notice will include the following:

(1) The name of the applicant;

(2) The trade name and generic name (if applicable) of the product;

(3) The number of the patent for which an extension of the term is sought;

(4) The approved indications or uses for the product;

(5) An explanation of any discrepancies between the dates in the application and FDA records;

(6) Where appropriate, an explanation that FDA has no record in which to review the date(s) contained in the application; and

(7) The regulatory review period determination, including a statement of the length of the testing and approval phases and the dates used in calculating each phase.

§ 60.22 Regulatory review period determinations.

In determining a product's regulatory review period, which consists of the sum of the lengths of a testing phase and an approval phase, FDA will review the information in each application using the following definitions of the testing phase and the approval phase for that class of products.

(a) For human drugs:

(1) The testing phase begins on the date an exemption under section 505(i) or 507(d) of the Act becomes effective for the approved human drug product and ends on the date a marketing application under section 351 of the Public Health Service Act or section 505 or 507 of the Act is initially submitted to FDA, and

(2) The approval phase begins on the date a marketing application under section 351 of the Public Health Service Act or section 505(b) or 507 of the Act is initially submitted to FDA and ends on the date the application is approved.

(b) For food and color additives:

(1) The testing phase begins on the date a major health or environmental effects test is begun and ends on the date a petition relying on the test and requesting the issuance of a regulation for use of the additive under section 409 or 706 of the Act is initially submitted to FDA. For purposes of this part, a "major health or environmental" effects test may be any test which:

(i) Is reasonably related to the evaluation of the product's health effects, environmental effects, or both;

(ii) Produces data necessary for marketing approval; and

(iii) Is conducted over a period of not less than 6 months-duration, excluding time required to analyze or evaluate test results.

(2) The approval phase begins on the date a petition requesting the issuance of a regulation for use of the additive under section 409 or 706 of the Act is initially submitted to FDA and ends upon whichever of the following occurs last:

(i) The regulation for the additive becomes effective; or

(ii) Objections filed against the regulation that result in a stay of effectiveness are resolved and commercial marketing is permitted; or

(iii) Proceedings resulting from objections to the regulation, after commercial marketing has been permitted and later stayed pending resolution of the proceedings, are finally resolved and commercial marketing is permitted.

(c) For medical devices:

(1) The testing phase begins on the date a clinical investigation on humans is begun and ends on the date an application for premarket approval of the device or a notice of completion of a product development protocol is initially submitted under section 515 of the Act. For purposes of this part, a clinical investigation is considered to begin on whichever of the following dates applies:

(i) If an investigational device exemption (IDE) under section 520(g) of the Act is required, the effective date of the exemption.

(ii) If an IDE is not required, but institutional review board (IRB) approval under section 520(g)(3) of the Act is required, the IRB approval date.

(iii) If neither an IDE nor IRB approval is required, the date on which the device is first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device.

(2) The approval phase either:

(i) Begins on the date an application for premarket approval of the device is initially submitted under section 515 of the Act and ends on the date the application is approved; or

(ii) Begins on the date a notice of completion of a product development protocol is initially submitted under section 515 of the Act and ends on the date the protocol is declared to be completed.

(d) For purposes of determining the regulatory review period for any product, a marketing application, a notice of completion of a product development protocol, or a petition is "initially submitted" on the date it contains sufficient information to allow FDA to commence review of the application. A marketing application, a notice of completion of a product development protocol, or a petition is "approved" on the date FDA sends the applicant a letter informing it of the approval or, by order declares a product development protocol to be completed, or, in the case of food and color additives, on the effective date of the final rule listing the additive for use as published in the **Federal Register.**

§ 60.24 Revision of regulatory review period determinations.

(a) Any person may request a revision of the regulatory review period determination within 60 days after its initial publication in the **Federal Register.** The request shall be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. The request shall specify the following:

(1) The type of action requested;

(2) The identity of the product;

(3) The identity of the applicant;

(4) The FDA docket number; and

(5) The basis for the request for revision, including any documentary evidence.

(b) Unless the applicant is the person requesting the revision, the applicant shall respond to the request within 15 days. In responding to the request, the applicant may submit information which is relevant to the events during the regulatory review period but which was not included in the original patent term restoration application. A request for a revision is not equivalent to a due diligence petition under § 60.30 or a request for a hearing under § 60.40. If no response is submitted, FDA will decide the matter on the basis of the information in the patent term restoration application, request for revision, and FDA records.

(c) FDA shall apply the provisions of § 60.22 in considering the request for a revision of the regulatory review period determination. If FDA revises its prior determination, FDA will notify PTO of the revision, send a copy of this notification to the applicant, and publish the revision in the **Federal Register,** including a statement giving the reasons for the revision.

(Information collection requirements approved by the Office of Management and Budget under number 0910–0233.)

§ 60.26 Final action on regulatory review period determinations.

(a) FDA will consider a regulatory review period determination to be final upon expiration of the 180-day period for filing a due diligence petition under § 60.30 unless FDA receives:

(1) New information from PTO records, FDA records, or FDA centers that affects the regulatory review period determination;

(2) A request under § 60.24 for revision of the regulatory review period determination;

(3) A due diligence petition filed under § 60.30; or

(4) A request for a hearing filed under § 60.40.

(b) FDA will notify PTO that the regulatory review period determination is final upon:

(1) The expiration of the 180-day period for filing a due diligence petition; or

(2) If FDA has received a request for a revision, a due diligence petition, or a request for a hearing, upon resolution of the request for a revision, the petition, or the hearing, whichever is later. FDA will send a copy of the notification to the applicant and file a copy of the notification in the docket established for

the application in FDA's Dockets Management Branch (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

§ 60.28 Time frame for determining regulatory review periods.

(a) FDA will determine the regulatory review period for a product within 30 days of the receipt of a written request from PTO for such a determination and a copy of the patent term restoration application.

(b) FDA may extend the 30-day period if:

(1) A related FDA action that may affect the regulatory review period determination is pending; or

(2) PTO requests that FDA temporarily suspend the determination process; or

(3) PTO or FDA receives new information about the product that warrants an extension of the time required for the determination of the regulatory review period.

(c) This section does not apply to applications withdrawn by the applicant or applications that PTO determines are ineligible for patent term restoration.

Subpart D—Due Diligence Petitions

§ 60.30 Filing, format, and content of petitions.

(a) Any person may file a petition with FDA, no later than 180 days after the publication of a regulatory review period determination under § 60.20, that challenges FDA's determination by alleging that the applicant for patent term restoration did not act with due diligence in seeking FDA approval of the product during the regulatory review period.

(b) The petition shall be filed in accordance with § 10.20, under the docket number of the **Federal Register** notice of the agency's regulatory review period determination, and shall be in the format specified in § 10.30. The petition shall contain the information specified in § 10.30 and any additional information required by this subpart. If any provision of § 10.20 or § 10.30 is inconsistent with any provision of this part, FDA will consider the petition in accordance with this part.

(c) The petition shall claim that the applicant did not act with due diligence during some part of the regulatory review period and shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence.

(d) The petition shall contain a certification that the petitioner has served a true and complete copy of the petition upon the applicant by certified or registered mail (return receipt requested) or by personal delivery.

(Information collection requirements approved by the Office of Management and Budget under number 0910–0233.)

§ 60.32 Applicant response to petition.

(a) The applicant shall file with FDA a written response to the petition no later than 30 days after the applicant's receipt of a copy of the petition.

(b) The applicant's response may present additional facts and circumstances to address the assertions in the petition, but shall be limited to the issue of whether the applicant acted with due diligence during the regulatory review period. The applicant's response may include documents that were not in the original patent extension application.

(c) If the applicant does not respond to the petition, FDA will decide the matter on the basis of the information submitted in the patent term restoration application, due diligence petition, and FDA records.

§ 60.34 FDA action on petitions.

(a) Within 90 days after FDA receives a petition filed under § 60.30(a), the agency will either deny the petition under paragraph (b) or (c) of this section or investigate and determine under § 60.36 whether the applicant acted with due diligence during the regulatory review period. FDA will publish its due diligence determination in the **Federal Register**, notify PTO of the due diligence determination in writing, and send copies of the notice to PTO, the applicant, and the petitioner.

(b) FDA may deny a due diligence petition without considering the merits of the petition if:

(1) The petition is not filed in accordance with § 60.30;

(2) The petition is not filed in accordance with § 10.20;

(3) The petition does not contain the information required by § 10.30;

(4) The petition fails to contain information or allegations upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period; or

(5) The petition fails to allege a sufficient total amount of time during which the applicant did not exercise due diligence such that, even if the petition were granted, the petition would not affect the maximum patent extension the applicant sought in the application.

§ 60.36 Standard of due diligence.

(a) In determining the due diligence of an applicant, FDA will examine the facts and circumstances of the applicant's actions during the regulatory review period to determine whether the applicant exhibited that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period. FDA will take into consideration all relevant factors, such as the amount of time between the approval of an investigational exemption or research permit and the commencement of a clinical investigation and the amount of time required to conduct a clinical investigation.

(b) For purposes of this part, the actions of the marketing applicant shall be imputed to the applicant for patent term restoration. The actions of an agent, attorney, contractor, employee, licensee, or predecessor in interest of the marketing applicant or applicant for patent term restoration shall be imputed to the applicant for patent term restoration.

Subpart E—Due Diligence Hearings

§ 60.40 Request for hearing.

(a) Any person may request, not later than 60 days after the publication under § 60.34(a) of FDA's due diligence determination, that FDA conduct an informal hearing on the due diligence determination.

(b) The request for a hearing under this section shall:

(1) Be sent by mail, personal delivery, or any other mode of written communication to the Dockets Management Branch and filed under the relevant product file;

(2) Specify the facts and the action that are the subject of the hearing;

(3) Provide the name and address of the person requesting the hearing; and

(4) Certify that the requesting party has served a true and complete copy of the request upon the petitioner and the applicant by certified or registered mail (return receipt requested) or by personal delivery.

(c) The request shall state whether the requesting party seeks a hearing within 30 days or 60 days of FDA's receipt of the request.

(Information collection requirements approved by the Office of Management and Budget under number 0910–0233.)

§ 60.42 Notice of hearing.

Ten days before the hearing, FDA will notify the requesting party, the applicant, and the petitioner, orally or in writing, of the date, time, and location of the hearing. The agency will provide the

requesting party, the applicant, and the petitioner with an opportunity to participate as a party in the hearing.

§ 60.44 Hearing procedures.

The due diligence hearing shall be conducted in accordance with this part, supplemented by the nonconflicting procedures in Part 16. During the due diligence hearing, the applicant and the petitioner shall enjoy all the rights and privileges accorded a person requesting a hearing under Part 16. The standard of due diligence set forth in § 60.36 will apply in the due diligence hearing. The party requesting the due diligence hearing shall have the burden of proof at the hearing.

§ 60.46 Administrative decision.

Within 30 days after the completion of the due diligence hearing, the Commissioner will affirm or revise the determination made under § 60.34(a) and will publish the due diligence redetermination in the **Federal Register**, notify PTO of the redetermination, and send copies of the notice to PTO and to the requesting party, the applicant, and the petitioner.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: January 6, 1988.

[FR Doc. 88-4824 Filed 3-4-88; 8:45 am]

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Part IV

Department of Education

34 CFR Part 612

Drug Prevention Programs in Higher Education; Notice of Proposed Rulemaking and Notice Inviting Applications

DEPARTMENT OF EDUCATION

34 CFR Part 612

Drug Prevention Programs in Higher Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues a notice of proposed rulemaking for the implementation of Drug Prevention Programs in Higher Education. These programs support activities of drug abuse education and prevention for higher education students. The activities supported are consistent with the purpose of the Drug-Free Schools and Communities Act of 1986.

DATE: Comments must be received on or before April 21, 1988.

ADDRESS: All comments concerning these proposed regulations should be addressed to Donald R. Fischer, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, ROB–3, Stop 3331, 7th and D Streets SW., Washington, DC 20202–3331.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Donald R. Fischer. Telephone: (202) 245–8100.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the President signed into law the Anti-Drug Abuse Act of 1986. Subtitle B of Title IV of this Act, the Drug-Free Schools and Communities Act of 1986, provides for strong Federal leadership in establishing effective drug and alcohol abuse education and prevention programs. Sections 4131 (a) and (d) authorize contracts and grants to institutions of higher education to develop, implement, operate, and improve programs of drug abuse education and prevention, including rehabilitation referral, for students enrolled in institutions of higher education (IHEs).

The notice of proposed rulemaking for the Drug Prevention Programs in Higher Education contains several notable features. There are three categories of competitions: (a) Institution-wide Program competitions, which result in projects for comprehensive, institution-wide programs of drug abuse education and prevention, (b) Special Focus Program competitions, which focus on specific approaches or problem areas related to drug abuse education and prevention, and (c) Analysis and Dissemination Program competitions, which support the analysis and dissemination of results from projects previously supported under Institution-wide Program competitions and Special Focus Program competitions.

Recipients of awards for Institution-wide Program projects are required to conduct an initial and final assessment of the use of illegal drugs and the abuse of alcohol and other drugs by their students. They are also required to develop an institution-wide drug and alcohol policy or review and, if necessary, revise an existing one.

IHEs or consortia of IHEs are eligible to receive awards under all three categories of competitions. In the case of Analysis and Dissemination Program competitions, eligibility is limited to current or former recipients of an award under an Institution-wide Program or Special Focus Program competition.

The definition of the term "institution of higher education" used in these proposed regulations is the definition in section 1001 of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981, and is made applicable by section 4141 of the Drug-Free Schools and Communities Act of 1986.

Selection criteria used in evaluating applications are listed and described without points in one consolidated listing in § 612.23(b) (General criteria). The specific criteria used in each competition are drawn from the general criteria in § 612.23(b) and listed with the maximum possible points for each criterion in § 612.23(c) (Specific competition criteria). The Secretary may award up to 100 points, including designated maximum points and a reserved 15 points, for each application. In addition, after applications have been scored and placed in rank order, the Secretary may request oral information from applicants in order to verify or clarify information about projects or about applicants as an aid in making final funding decisions.

After applications are scored and placed in rank order, the Secretary, in selecting applications for funding, seeks to achieve an equitable distribution of funded projects for geographic regions, two-year and four-year IHEs, public and private IHEs, and IHEs with limited enrollments.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would not impose excessively burdensome or unnecessary requirements.

Paperwork Reduction Act of 1980

Section 612.23 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3100, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday on each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 612

Colleges and universities, Drug abuse, Grant programs—education, Reporting and recordkeeping requirements.

Dated: January 20, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.183 Drug Prevention Program in Higher Education)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 612 to read as follows:

PART 612—DRUG PREVENTION PROGRAMS IN HIGHER EDUCATION

Subpart A—General

Sec.

612.1 What are the Drug Prevention Programs in Higher Education?
612.2 Who is eligible to receive an award?
612.3 [Reserved]
612.4 What regulations apply?
612.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

612.21 What types of competitions does the Secretary conduct?
612.22 How does the Secretary evaluate an application?
612.23 What selection criteria does the Secretary use?
612.24 What additional factors does the Secretary consider?
612.25 What other information may the Secretary request?

Subpart D—What Conditions Must Be Met by a Grantee?

612.31 What shall a grantee ensure with regard to project materials?
612.32 What must an Institution-wide Program project include?

Authority: 20 U.S.C. 4641, unless otherwise noted.

Subpart A—General

§ 612.1 What are the Drug Prevention Programs in Higher Education?

The Drug Prevention Programs in Higher Education include the Institution-wide Program competitions, the Special Focus Program competitions, and the Analysis and Dissemination Program competitions. Awards under these competitions provide assistance to institutions of higher education (IHEs) and consortia of IHEs to develop, implement, operate, and improve programs of drug abuse education and prevention, including rehabilitation referral, for students enrolled in IHEs.

(Authority: 20 U.S.C. 4641)

§ 612.2 Who is eligible to receive an award?

(a) IHEs and consortia of IHEs are eligible to receive awards under these competitions.

(b) An applicant may receive no more than one award in any competition in any fiscal year.

(c) If an applicant has received an award in a competition, the applicant may not receive a new award in that competition in a subsequent year until—

(1) The Secretary determines that the applicant will satisfactorily complete the project previously supported; and

(2) The applicant has submitted every report that it must submit in connection with the prior project.

(d) In the case of Analysis and Dissemination Program competitions conducted under § 612.21(d), eligibility is limited to current or former recipients of an award under—

(1) An Institution-wide Program competition (see § 612.21(b)); or

(2) A Special Focus Program competition (see § 612.21(c)).

(Authority: 20 U.S.C. 4641)

§ 612.3 [Reserved]

§ 612.4 What regulations apply?

The following regulations apply to the Drug Prevention Programs in Higher Education:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 612.

(Authority: 20 U.S.C. 4641)

§ 612.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Fiscal Year
Grant
Private
Project
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Drug-Free Schools and Communities Act of 1986.

"Consortium," as used in this part, means a group of private or public institutions of higher education.

"Drug abuse education and prevention" means prevention, early intervention, rehabilitation referral, and education related to the use of illegal drugs and the abuse of other drugs and alcohol.

"Illicit drug use" means the use of illegal drugs and the abuse of other drugs and alcohol.

"Institution of higher education" means an educational institution in any State which—

(1) Admits as regular students only individuals having certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which requires the understanding and application of basic engineering, scientific, or mathematical principles or knowledge if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981, and shall also determine whether

particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

"Limited enrollment," as used in this part, means a total fall enrollment of no more than 1,000 full-time and part-time students.

(Authority: 20 U.S.C. 4641)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 612.21 What types of competitions does the Secretary conduct?

(a) *General.* The Secretary conducts the competitions described in paragraphs (b), (c), and (d) of this section.

(b) *Institution-wide Program competitions.*

(1) In these competitions, the Secretary supports projects to develop, implement, operate, and improve programs of drug abuse education and prevention, including rehabilitation referral, for students in IHEs.

(2) These projects are for comprehensive, institution-wide programs designed to prevent or eliminate students' use of illegal drugs and abuse of other drugs and alcohol, including activities whose direct or indirect purpose is to train students, faculty, and staff in drug abuse education and prevention.

(c) *Special Focus Program competitions*—(1) *General.* In these competitions, the Secretary supports projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs.

(2) *Approaches and problem areas.* The Secretary may conduct competitions based on the following individual approaches or problem areas:

(i) The formulation of promising new approaches to individual and institutional leadership and responsibility.

(ii) The development and implementation of programs conducted in conjunction with national student networks or organizations.

(iii) The development, implementation, operation, or improvement of programs that concentrate on the following individual items or combination of these:

(A) Specific types of drug use or alcohol abuse.

(B) Specific approaches to the prevention of drug use or alcohol abuse.

(C) Particular student activities or elements of campus life.

(d) *Analysis and Dissemination Program competitions.* In these competitions, the Secretary supports projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions and Special Focus Program competitions.

(Authority: 20 U.S.C. 4641)

§ 612.22 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application on the basis of the applicable selection criteria in § 612.23.

(b) The Secretary awards up to 100 points for the selection criteria, including a reserved 15 points to be distributed in accordance with paragraph (c) of this section. The maximum possible points for each criterion in a competition, exclusive of the reserved points, is indicated in parentheses in § 612.23(c) following the title of that criterion appearing in the list of criteria applicable to the competition.

(c) The Secretary distributes the reserved 15 points among the applicable criteria in § 612.23. The Secretary announces the distribution through a notice in the **Federal Register.**

(Authority: 20 U.S.C. 4641)

§ 612.23 What selection criteria does the Secretary use?

(a) *Use of selection criteria.* The Secretary uses the selection criteria described in paragraph (b) of this section to evaluate applications in the competitions conducted under this part. The selection criteria applicable to each competition are listed in paragraph (c) of this section.

(b) *General criteria*—(1) *Need.* The Secretary reviews each application to determine the extent to which the project meets specific needs in drug education and prevention for students enrolled in institutions of higher education that will participate, including—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs; and

(iii) The benefits to be gained by meeting those needs.

(2) *Design.* The Secretary reviews each application to determine the quality of the design of the project, including—

(i) The extent to which project activities are appropriate to and designed to meet the objectives of—

(A) The competition; and

(B) The proposed project;

(ii) The extent to which the project's design takes into account research findings, scholarly information, and information on exemplary practices; and

(iii) The extent and magnitude of the benefits that the design is likely to produce for students in the applicant's institution or students enrolled in institutions of higher education.

(3) *Methods and management plan.* The Secretary reviews each application to determine the quality of the methods and management plan proposed for implementing the design of the project, including—

(i) The extent to which the methods for implementing the design of the project and for achieving the objectives of the project are appropriate;

(ii) The extent to which the management plan is likely to be effective and will ensure proper and efficient administration of the project; and

(iii) The quality of the applicant's management plan to use its resources and personnel to achieve each objective.

(4) *Key personnel.* (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use in the project, including—

(A) The qualifications of the project director (if one is used) and of the other key personnel to be used in the project;

(B) The extent to which key personnel can provide specialized knowledge necessary for the success of the project or have access to that knowledge; and

(C) The time that each key person will commit to the project.

(ii) In evaluating personnel qualifications under paragraph (b)(4)(i)(A) of this section, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(5) *Evaluation.* The Secretary reviews each application to determine the quality of the plan for evaluating the project, including the extent to which the applicant's methods of evaluation—

(i) Are adequate and appropriate to the project; and

(ii) Are objective and will produce quantitative and qualitative data that are valid and reliable.

(6) *Cost-effectiveness and budget clarity.* The Secretary reviews each application to determine the extent to which—

(i) Costs are reasonable in relation to the objectives of the project;

(ii) The budget is adequate to support the project; and

(iii) Allocations of resources in the budget are clearly related to the objectives of the project.

(7) *Organizational commitment.* The Secretary considers the extent of the applicant's organizational commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project when Federal assistance ends.

(c) *Specific competition criteria.*—(1) *Institution-wide Program competitions.*—(i) *Need.* (5 points) (see § 162.23(b)(1)).

(ii) *Design.* (20 points) (see § 612.23(b)(2)).

(iii) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(iv) *Key personnel.* (10 points) (see § 612.23(b)(4)).

(v) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(vi) *Cost-effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(vii) *Organizational commitment.* (15 points) (see § 612.23(b)(7)).

(2) *Special Focus Program competitions.*—(i) *The formulation of promising new approaches to individual and institutional leadership and responsibility.*

(A) *Need.* (10 points) (see § 612.23(b)(1)).

(B) *Design.* (30 points) (see § 612.23(b)(2)).

(C) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(D) *Key personnel.* (20 points) (see § 612.23(b)(4)).

(E) *Evaluation.* (0 points) (see § 612.23(b)(5)).

(F) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(ii) *The development and implementation of programs conducted in conjunction with national student networks or organizations.*

(A) *Design.* (20 points) (see § 612.23(b)(2)).

(B) *Methods and management plan.* (20 points) (see §612.23(b)(3)).

(C) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(D) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(E) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(F) *Organizational commitment.* (10 points) (see § 612.23(b)7)).

(iii) *The development, implementation, operation, or improvement of programs that concentrate on specific types of drug use or alcohol abuse; specific approaches to the prevention of drug use or alcohol abuse; particular student activities or elements of campus life; or a combination of these.*

(A) *Need.* (15 points) (see § 612.23(b)(1)).

(B) *Design.* (20 points) (see § 612.23(b)(2)).

(C) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(D) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(E) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(F) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(3) *Analysis and Dissemination Program competitions.*—(i) *Design.* (30 points) (see § 612.23(b)(2)).

(ii) *Methods and management plan.* (20 points) (see § 612.23(b)(3)).

(iii) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(iv) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(v) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(Authority: 20 U.S.C. 4641)

§ 612.24 What additional factors does the Secretary consider?

After applications are scored and placed in rank order, the Secretary, in selecting applications for funding, seeks to achieve an equitable distribution of funded projects by considering the following factors:

(a) Geographic regions.

(b) Two-year and four-year IHEs.

(c) Public and private IHEs.

(d) IHEs with limited enrollments.

(Authority: 20 U.S.C. 4641)

§ 612.25 What other information may the Secretary request?

In any competition, after applications are scored and placed in rank order, the Secretary may request of an applicant oral information related to its application. The information requested will be relevant to the applicable criteria and will be used to verify or clarify information about a project or about the applicant in the Secretary's evaluation of an application.

(Authority: 20 U.S.C. 4641)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 612.31 What shall a grantee ensure with regard to project materials?

A grantee shall ensure that any materials the grantee produces or distributes with funds provided under this part reflect the message that illicit drug use is wrong and harmful.

(Authority: 20 U.S.C. 4664)

§ 612.32 What must an Institution-wide Program project include?

A recipient of an award under the Institution-wide Program competition shall—

(a) Conduct an initial and a final assessment of the extent to which the recipient's students use illegal drugs and abuse alcohol and other drugs; and

(b)(1) Develop an institution-wide drug and alcohol policy with respect to its students; or

(2) Review and, if necessary, revise an existing policy regarding drugs and alcohol.

(Authority: 20 U.S.C. 4641)

[FR Doc. 88-4882 Filed 3-4-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.183]

Notice Inviting Applications for New Awards Under the Drug Prevention Programs in Higher Education for Fiscal Year 1988

Purpose: Provide grants to institutions of higher education to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in institutions of higher education (IHEs).

This notice invites applications for three competitions: the Institution-wide Program competition, and two Special Focus Program competitions—the National College Student Organizational Network competition and the Approaches to Accountability in Prevention competition.

Institution-wide Program competition. This competition, described at proposed 34 CFR 612.21(b), provides funds for comprehensive, institution-wide programs designed to prevent or eliminate students' use of illegal drugs and abuse of other drugs and alcohol, including activities whose direct or indirect purpose is to train students, faculty, and staff in drug abuse education and prevention.

Special Focus Program competitions. These competitions, described at proposed 34 CFR 612.21(c), provide funds for projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs. In accordance with 34 CFR 75.105(c)(3), the Secretary has chosen as absolute priorities two approaches from the list at proposed 34 CFR 612.21(c)(2): (a) The National College Student Organizational Network competition; and (b) the Approaches to Accountability in Prevention competition.

The National College Student Organizational Network competition, described at proposed 34 CFR 612.21(c)(2)(ii), provides funds for the development and implementation of programs, conducted in conjunction with national student networks or organizations, that address drug abuse education and prevention for students in IHEs.

The Approaches to Accountability in Prevention competition, described at proposed 34 CFR 612.21(c)(2)(i), provides funds for the formulation of promising new approaches to individual and institutional leadership and responsibility as factors related to drug abuse education and prevention for students in IHEs.

Deadline for Transmittal of Applications: April 27, 1988
Applications Available: March 9, 1988
Available Funds: $8,600,000
Estimated Range of Awards:
Institution-wide—$10,000 to $250,000
National College Student Organizational Network—$100,000 to $250,000
Approaches to Accountability in Prevention—Up to $15,000
Estimated Number of Awards:
Institution-wide—75 to 125
National College Student Organizational Network—2 to 4
Approaches to Accountability in Prevention—6
Project Periods:
Institution-wide—24 months
National College Student Organizational Network—24 months
Approaches to Accountability in Prevention—Up to 13 months

(Approved OMB Number [insert number here].)

Applicable Regulations: (a) The notice of proposed rulemaking for the Drug Prevention Programs in Higher Education published in this issue of the **Federal Register**; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78. Applicants should prepare their applications based on the proposed regulations. If substantive changes are made in the final regulations when they are published, applicants will be given an opportunity to amend or resubmit their applications.

For Applications or Information Contact: Dr. Ronald B. Bucknam, Drug Prevention Programs in Higher Education, Fund for the Improvement of Postsecondary Education, Room 3100—ROB–3, 7th and D Streets SW., Washington, DC 20202–3331. Telephone: (202) 245–8091.

Program Authority: 20 U.S.C. 4641.

Dated: March 2, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–4883 Filed 3–4–88; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Monday
March 7, 1988

Part V

Department of Energy

48 CFR Part 970

Acquisition Regulation Concerning Contractor Lobbying Costs; Proposed Rule

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation Concerning Contractor Lobbying Costs

AGENCY: Department of Energy (DOE).

ACTION: Proposed Rule.

SUMMARY: This proposed rule, when issued as a final rule, will amend the Department of Energy Acquisition Regulation (DEAR) and implement section 1534(a)(2) of the Department of Defense (DOD) Authorization Act, 1986 (Pub. L. 99–145, November 8, 1985), as amended by section 3131 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100–180) and section 305(a) of the Act titled "Making Further Continuing Appropriations For the Fiscal Year Ending September 30, 1988" (Pub. L. 100–202). The proposed DEAR amendments apply to DOE's management and operating (M&O) contractors, including DOE's national laboratories, and are intended to clarify that, under M&O contracts, the costs of providing information in response to a request from Congress or a State legislature continue to be allowable and reimbursable but that costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature remain unallowable for reimbursement.

DATE: Written comments must be submitted no later than April 6, 1988. This proposed regulation, when issued as a final rule, will be applied retroactively with an effective date of January 14, 1987.

ADDRESS: Comments must be addressed to: Rudolph J. Schuhbauer, U.S. Department of Energy, Business and Financial Policy Division (MA–422), 100 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Rudolph J. Schuhbauer, Business and Financial Policy Division (MA–422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586–8175.
Edward Weber, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Ch. 9.

Section 1534(a)(2) of Pub. L. 99–145 provided that costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature are not allowable contract costs. The DOE's implementation of this lobbying cost prohibition involved two steps.

The existing contract clauses (DEAR 970.5204–13), Allowable costs and fixed-fee (CPFF management and operating contracts), and 970.5204–14, Allowable costs and fixed-fee (support contracts), which already specified that "Lobbying costs" were allowable even before section 1534(a)(2) was enacted, were reviewed, and a decision was made that the then existing lobbying cost prohibition found at DEAR 970.5204–13(e)(31) and 970.5204–14(e)(29) would be retained as written. Hence, the referenced contract clauses required to be included in M&O contracts were not amended. The DOE determined, however, that the then existing cost principle criteria (DEAR 970.3102–7, Lobbying costs, effective April 1, 1984) used by Contracting Officers for determining the allowability of an M&O contractor's legislative liaison costs required amendment for consistency with Congressional intent (e.g., see S. Rep. No. 118, 99th Congress, 1st Session, 515 (1985)). Accordingly, a completely revised lobbying cost principle was published as a final rule in the **Federal Register** (52 FR 1602, January 14 1987).

The purpose of this rule is to revise the DEAR as necessary to implement the requirements of section 305(a) of Pub. L. 100–202, which specified, in part, that:

> In any regulations issued pursuant to section 1534 of the Defense Authorization Act for 1986, the Secretary of Energy may not disallow the following costs associated with the activities of contractor personnel from the Department of Energy National Laboratories * * *:
>
> (1) Cost of providing to Congress or a State legislature, in response to a request (written or oral, prior or contemporaneous) from Congress or a State legislature, information or expert advice of a factual, technical, or scientific nature, with respect to:
>
> (A) topics directly related to the performance of the contract; or
>
> (B) proposed legislation; irrespective of whether such information or advice was requested or supplied through the Department of Energy.
>
> (2) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.

Section 3131 of Pub. L. 100–180 contains essentially similar provisions except that the statutory direction was not limited to personnel from DOE's laboratories. In addition, Section 3131 further provided that DOE's implementing regulations shall apply as if included in the original regulations prescribed on January 14, 1987, when DOE first implemented section 1534(a)(2) of Pub. L. 99–145. A brief description of the DEAR amendments follows:

Under Subpart 970.31, Contract Costs Principles and Procedures, existing subsection 970.3102–7, Lobbying costs, is deleted in its entirety.

Under DEAR Subpart 970.52, Contract Clauses for Management and Operating Contracts, subsection 970.5204–13, "Allowable costs and fixed-fee, (CPFF management and operating contracts)," and subsection 970.5204–14, "Allowable Costs and Fixed-Fee (support contracts)," are amended to incorporate certain language clarifications and additions required to implement the cost prohibitions specified in section 1534(a)(2) of Pub. L. 99–145, as amended by section 3131 of Pub. L. 100–180 and section 305(a) of Pub. L. 100–202.

Subsection 970.5204–17, Legislative Lobbying Cost Prohibition, is added as a new contract clause to be incorporated in all M&O contracts. The proposed contract clause incorporates the cost principle criteria currently contained in DEAR 970.3102–7, as amended for consistency with sections 3131 and 305(a) of the previously referenced legislation. DOE's intent is to clarify, in the contract, that the costs of self-initiated contractor lobbying activities to influence legislation are unallowable but that the cost of providing information or export advice of a factual, technical, or scientific nature by M&O contractor personnel in response to a request from Members of Congress and State legislatures, and their staff members, continues to be an allowable cost.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulations," requires that certain regulations be reviewed by OMB prior to their promulgation. OMB

Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring prior review under the bulletin and is accordingly exempt from such review.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No additional information collection and recordkeeping requirements are imposed by this proposed rule.

D. National Environmental Policy Act

DOE has concluded that promulgation of this proposed 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. 432 *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on March 1, 1988.

G.L. Allen,

Deputy Director, Procurement and Assistance Management Directorate.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

2. Subsection 970.3102–7 is revised to read as follows:

970.3102-7 Legislative lobbying costs.

(a) (See 970.5204–17).

3. In subsection 970.5204–13, the section heading, the title to the clause, and subparagraph (e)(31) of the clause, are revised to read as follows:

970.5204-13 Allowable costs and fixed-fee (management and operating contracts).

Allowable Costs and Fixed-Fee (Management and Operating Contracts) (Mar 1988).

* * * * *

(e) * * *

(31) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature as delineated in the clause titled "Legislative Lobbying Cost Prohibition" incorporated elsewhere in this contract.

* * * * *

4. In subsection 970.5204–14, the clause is amended by revising the title and subparagraph (e)(29), to read as follows:

970.5204-14 Allowable costs and fixed-fee (support contracts).

Allowable Costs and Fixed-Fee (Support Contracts) (Mar 1988).

* * * * *

(e) * * *

(29) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature as delineated in the clause titled "Legislative Lobbying Cost Prohibition" incorporated elsewhere in this contract.

* * * * *

5. Subsection 970.5204–17 is added to read as follows:

970.5204-17 Legislative lobbying cost prohibition.

Legislative Lobbying Cost Prohibition (Mar 1988).

(a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the out comes of elections;

(3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.

(b) Costs of the following activities are excepted from the coverage of (a) above; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:

(1) Providing members of Congress, State legislatures or subdivisions thereof, or their staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous, including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) from members of Congress, State legislatures or subdivisions therof, or their staff of cognizant legislative committees, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. Reasonable costs for transportation, lodging, or meals incurred by contractor employees for the purpose of providing such information or advice shall also be reimbursable; provided such costs

also comply with the allowable cost provisions of the contract.

(2) Any lobbying made unallowable under subparagraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract if authorized by the Contracting Officer.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Unallowable lobbing costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.

(d) The contractor's annual certification, submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract shall also serve as the contractor's certification that the requirements and standards of this clause have been complied with.

(e) The contractor shall maintain adequate records to demonstrate that the annual certifications of claimed cost as being allowable comply with the requirements of this clause.

(f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when: (1) an employee engages in lobbing (as defined in paragraphs (a) and (b) above) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the contractor has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) of this paragraph are met, the contractor is not required to establish records to support that allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) of the paragraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during any calendar month.

(g) During contract performance, the contractor should resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning compliance with this clause.

[FR Doc. 88-5024 Filed 3-4-88; 9:55 am]

BILLING CODE 6450-01-M

federal register

Monday
March 7, 1988

Part VI

The President

Proclamation 5774—Department of Commerce Day, 1988

Federal Register
Vol. 53, No. 44
Monday, March 7, 1988

Presidential Documents

Title 3—

The President

Proclamation 5774 of March 4, 1988

Department of Commerce Day, 1988

By the President of the United States of America

A Proclamation

This year marks the 75th year of service to our Nation by the United States Department of Commerce; three-quarters of a century ago, on March 4, 1913, the Department was established in its current form. Its mission of fostering, promoting, and developing the domestic and foreign commerce of the United States has ever since remained both vital and truly worthy of public recognition.

Throughout this century the Department of Commerce has helped Presidents and the Congress develop policies to support our economic growth, our scientific and technological advancement and security, and our international trade. The Department provides business and government planners with critical data they need for intelligent decision-making, urges inventors and entrepreneurs to bring products to the marketplace, encourages firms to seek legitimate export opportunities, and makes sure that fair trade laws are enforced vigorously. The Department of Commerce also supplies oceanic information and formulates telecommunications and information policy.

The employees of the Department of Commerce have always reflected the finest traditions of public service. That was surely true of the Department's late Secretary, Malcolm Baldrige, and our present Secretary, C. William Verity, Jr.

In recognition of the contributions of the Department of Commerce and the dedication of its officers and employees, the Congress, by Senate Joint Resolution 251, has designated March 4, 1988, as "Department of Commerce Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 4, 1988, as Department of Commerce Day, and I urge the people of the United States to observe this day with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 88-5067
Filed 3-4-88; 10:18 am]
Billing code 3195-01-M

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Federal Register

Vol. 53, No. 44

Monday, March 7, 1988

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 Parts:		
1-1199	25.00	Jan. 1, 1987
1200-End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0-45	25.00	Jan. 1, 1987
46-51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53-209	18.00	Jan. 1, 1987
210-299	22.00	Jan. 1, 1987
300-399	10.00	Jan. 1, 1987
400-699	15.00	Jan. 1, 1987
700-899	22.00	Jan. 1, 1987
900-999	26.00	Jan. 1, 1987
1000-1059	15.00	Jan. 1, 1987
1060-1119	13.00	Jan. 1, 1987
1120-1199	11.00	Jan. 1, 1987
1200-1499	18.00	Jan. 1, 1987
1500-1899	9.50	Jan. 1, 1987
1900-1944	25.00	Jan. 1, 1987
1945-End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
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10 Parts:		
0-199	29.00	Jan. 1, 1987
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500-End	24.00	Jan. 1, 1987
11	11.00	July 1, 1987
12 Parts:		
1-199	11.00	Jan. 1, 1987
200-299	27.00	Jan. 1, 1987
300-499	13.00	Jan. 1, 1987
500-End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1-59	21.00	Jan. 1, 1987
60-139	19.00	Jan. 1, 1987
140-199	9.50	Jan. 1, 1987
200-1199	19.00	Jan. 1, 1987
1200-End	11.00	Jan. 1, 1987
15 Parts:		
0-299	10.00	Jan. 1, 1987
300-399	20.00	Jan. 1, 1987
400-End	14.00	Jan. 1, 1987

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16 Parts:		
0-149	12.00	Jan. 1, 1987
150-999	13.00	Jan. 1, 1987
1000-End	19.00	Jan. 1, 1987
17 Parts:		
1-199	14.00	Apr. 1, 1987
200-239	14.00	Apr. 1, 1987
240-End	19.00	Apr. 1, 1987
18 Parts:		
1-149	15.00	Apr. 1, 1987
150-279	14.00	Apr. 1, 1987
280-399	13.00	Apr. 1, 1987
400-End	8.50	Apr. 1, 1987
19 Parts:		
1-199	27.00	Apr. 1, 1987
200-End	5.50	Apr. 1, 1987
20 Parts:		
1-399	12.00	Apr. 1, 1987
400-499	23.00	Apr. 1, 1987
500-End	24.00	Apr. 1, 1987
21 Parts:		
1-99	12.00	Apr. 1, 1987
100-169	14.00	Apr. 1, 1987
170-199	16.00	Apr. 1, 1987
200-299	5.50	Apr. 1, 1987
300-499	26.00	Apr. 1, 1987
500-599	21.00	Apr. 1, 1987
600-799	7.00	Apr. 1, 1987
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§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1987
§§ 1.401-1.500	21.00	Apr. 1, 1987
§§ 1.501-1.640	15.00	Apr. 1, 1987
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400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
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200–End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
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18–End	16.00	July 1, 1987
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40 Parts:		
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3–6	14.00	[6] July 1, 1984
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18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
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101	23.00	July 1, 1987
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201–End	8.50	July 1, 1987
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43 Parts:		
1–999	15.00	Oct. 1, 1987
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4000–End	11.00	Oct. 1, 1987
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45 Parts:		
1–199	14.00	Oct. 1, 1987
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*1200–End	14.00	Oct. 1, 1987
46 Parts:		
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**41–69	13.00	Oct. 1, 1987
70–89	7.00	Oct. 1, 1987
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140–155	12.00	Oct. 1, 1987
156–165	14.00	Oct. 1, 1987
166–199	13.00	Oct. 1, 1987
200–499	19.00	Oct. 1, 1987
500–End	10.00	Oct. 1, 1987
47 Parts:		
*0–19	17.00	Oct. 1, 1987
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*15–End	23.00	Oct. 1, 1987
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] 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.