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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: May 26; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
Reservations: Laurice Clark, 202–523–3517

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WHERE: Room 147–148, Federal Building, 601 East 12th Street, Kansas City, MO
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WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C, 26 Federal Plaza, New York, NY
Reservations: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4310.

Contents

Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

Agricultural Marketing Service
RULES
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 17169

Agriculture Department
See Agricultural Marketing Service; Farmers Home Administration; Forest Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 17239, 17240 (5 documents)

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

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Cooperative agreement awards:
Southeastern Occupational and Environmental Health Clinical Examination Center, 17248

Commerce Department
See also Export Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 17236

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1988:
Additions and deletions, 17238 (2 documents)

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 17306 (2 documents)

Customs Service
PROPOSED RULES
Tariff classifications:
Television tubes and chassis; imported, 17226

Defense Department
See also Air Force Department; Navy Department
RULES
Civilian health and medical programs of uniformed services (CHAMPUS):
Adult adoptees' eligibility for medical benefits, 17190
PROPOSED RULES
Acquisition regulations:
Government-furnished mapping, charting, and geodesy property, 17233
Small purchase and other simplified purchase procedures, 17232
NOTICES
Agency information collection activities under OMB review, 17238
Contracts; data acquisiton reduction from contractors, 17239

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Sundry, Vincent A., D.O., 17257

Education Department
NOTICES
Agency information collection activities under OMB review, 17241

Employment and Training Administration
NOTICES
Job Training Partnership Act:
Lower living standard income level determination, 17258

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
University of California, 17242

Energy Research Office
NOTICES
Meetings:
Magnetic Fusion Advisory Committee, 17242

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Poly-d-glucosamine (chitosan), 17191
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Arizona, 17378
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 17228
NOTICES
Pesticides; temporary tolerances:
E.I. du Pont de Nemours & Co., 17244
Toxic and hazardous substances control:
Trade secret access, 17244
Water pollution control:
Clean Water Act violations; proposed administrative penalty assessment, 17245

Executive Office of the President
See Presidential Documents

Export Administration
NOTICES
Meetings:
Telecommunications Equipment Technical Advisory Committee, 17236

Farmers Home Administration
PROPOSED RULES
Program regulations:
Agricultural loan mediation program, 17198
Intermediary relending program, 17201

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 17176
Enstrom, 17177
Schweizer Aircraft Corp., 17178
Airworthiness standards:
Special conditions—
Boeing Model 767 Series airplanes, 17171
Transition areas, 17179
PROPOSED RULES
Airworthiness directives:
Short Brothers, PLC, 17222
Transition areas, 17223
VOR Federal airways, 17224, 17225
(2 documents)

Federal Communications Commission
RULES
Practice and procedure:
Common carrier applications; signatures, 17192
Radio stations; table of assignments:
Nevada, 17193
New York, 17193
PROPOSED RULES
Common carrier services:
Satellite communications—
Automatic transmitter identification system for video satellite uplinks, 17230
Radio stations; table of assignments:
California, 17231
Oklahoma, 17231
West Virginia, 17232
Wisconsin, 17232
NOTICES
Applications, hearings, determinations, etc.:
Vizcarrondo, Nomar, 17245

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 17306
(2 documents)

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Duke Power Co. et al., 17243
Applications, hearings, determinations, etc.:
Cascade Natural Gas Corp. et al., 17243

Federal Maritime Commission
NOTICES
Agreements filed, etc., 17246
(2 documents)

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 17306

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 17246

Fish and Wildlife Service
NOTICES
Marine mammal permit applications, 17253

Food and Drug Administration
RULES
Organization, functions, and authority delegations:
Director and Deputy Director, Division of Animal Feeds, et al.; medicated feeds, 17185
PROPOSED RULES
Medical devices:
Hematology and pathology devices—
Automated blood cell separator intended for routine collection of blood and blood components; premarket approval, 17227
NOTICES
Committees; establishment, renewal, termination, etc.:
Veterinary Medicine Advisory Committee, 17250
Meetings:
Advisory committees, panels, etc., 17250

Forest Service
PROPOSED RULES
Administration:
Appeal of decisions—
National Forest System, 17310

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration

Housing and Urban Development Department
PROPOSED RULES
Real Estate Settlement Procedures Act; implementation:
Controlled business provisions, etc., 17424

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

International Trade Administration
See Export Administration

Interstate Commerce Commission
PROPOSED RULES
Practice and procedure:
Abandonment proceedings; cost, 17234
Reasonably expected costs, 17234
NOTICES
Railroad operation, acquisition, construction, etc.:
Bluegrass Railway Museum, Inc., et al., 17256
Railroad services abandonment:
CSX Transportation, Inc., 17257

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration

Land Management Bureau
RULES
Minerals management:
Oil, gas, and geothermal resources leasing, 17340
NOTICES
Environmental statements; availability, etc.:
Burlington Northern, Inc.; Yellowstone and Musselshell Counties, MT, 17251
Management framework plans, etc.:
Wyoming, 17253

Legal Services Corporation
NOTICES
Grants; availability, etc.:
Louisiana (Tri-Parish area) legal services, 17260

Minerals Management Service
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations:
Consolidated offshore operating rules, 17254
Outer Continental Shelf operations:
Blowout and/or fires; accident investigation reports; availability, 17254

Minority Business Development Agency
NOTICES
Business development center program applications:
Ohio, 17236

National Aeronautics and Space Administration
NOTICES
Meetings:
Space Station Advisory Committee, 17261

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Dance Advisory Panel, 17261
Design Arts Advisory Panel, 17261
Partnership Office Advisory Panel, 17262
Theater Advisory Panel, 17262

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Labor Relations Board
NOTICES
Privacy Act; systems of records, 17262

National Oceanic and Atmospheric Administration
RULES
Gulf of Mexico and South Atlantic spiny lobster, 17194
NOTICES
Deep seabed mining; exploration licenses; mine site area revisions:
Deep Seabed Hard Mineral Resources Exploration, 17237

National Park Service
NOTICES
Environmental statements; availability, etc.:
Congaree Swamp National Monument, SC, 17254
Glacier Bay National Park and Preserve, AK, 17255
Noatak National Preserve, AK, 17255
Meetings:
National Capital Memorial Commission, 17256

Navy Department
NOTICES
Privacy Act; systems of records, 17240

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Dairyland Power Cooperative, 17280
Detroit Edison Co. et al., 17281
Southern California Edison Co. et al., 17282
Yankee Atomic Electric Co., 17283
Meetings:
Reactor Safeguards Advisory Committee, 17283
Applications, hearings, determinations, etc.:
University of California, Berkeley, 17284

Presidential Documents
PROCLAMATIONS
Special observances:
Tuberous Sclerosis Awareness Week, National (Proc. 5822), 17167

Public Health Service
See Centers for Disease Control; Food and Drug Administration

Railroad Retirement Board
RULES
Railroad Retirement Act:
Retirement annuities; reporting and recordkeeping requirements, 17182

Securities and Exchange Commission
RULES
Securities:
Transactions exempt from transaction fees, 17180
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 17284–17287 (3 documents)
Philadelphia Stock Exchange, Inc., 17292
Applications, hearings, determinations, etc.:
Connecticut Mutual Life Insurance Co., 17294

Small Business Administration
NOTICES
Meetings; regional advisory councils:
Indiana, 17294
New Jersey, 17295
North Carolina, 17295
Texas, 17295
Washington, 17295
Applications, hearings, determinations, etc.:
Raffensperger Hughes Venture Corp., 17295

Surface Mining Reclamation and Enforcement Office
RULES
Abandoned mine land reclamation program:
Plan submission—
Navajo Indian Nation, 17186

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 17307

Transportation Department
See also Federal Aviation Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 17295

Treasury Department
See also Customs Service
NOTICES
Bonds, Treasury:
2018 series, 17296
Notes, Treasury:
B-1998 series, 17300
S-1991 series, 17304

Separate Parts In This Issue

Part II
Department of Agriculture, Forest Service, 17310

Part III
Department of the Interior, Bureau of Land Management, 17340

Part IV
Environmental Protection Agency, 17378

Part V
Department of Housing and Urban Development, 17424

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.

3 CFR
Proclamations:
5822 17167

7 CFR
905 17169
Proposed Rules:
1946 17198
1948 17201
1951 17201
1955 17201

14 CFR
21 17171
25 17171
39 (3 documents) 17176–17178
71 17179
Proposed Rules:
39 17222
71 (3 documents) 17223–17225

17 CFR
240 17180

19 CFR
Proposed Rules:
177 17226

20 CFR
209 17182
210 17182
211 17182

21 CFR
5 17185
Proposed Rules:
864 17227

24 CFR
Proposed Rules:
3500 17424

30 CFR
756 17186

32 CFR
199 17190

36 CFR
Proposed Rules:
211 17310
217 17310
228 17310
251 17310

40 CFR
180 17191
Proposed Rules:
52 17378
300 17228

43 CFR
3000 17340
3040 17340
3100 17340
3130 17340
3150 17340
3160 17340
3180 17340
3200 17340
3210 17340
3220 17340
3240 17340
3250 17340
3260 17340

47 CFR
1 17192
73 (2 documents) 17193
Proposed Rules:
25 17230
73 (4 documents) 17231–17232

48 CFR
Proposed Rules:
213 17232
245 17233
252 17233

49 CFR
Proposed Rules:
1140 17234
1152 17234

50 CFR
640 17194

Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

Presidential Documents

Title 3—

The President

Proclamation 5822 of May 12, 1988

National Tuberous Sclerosis Awareness Week, 1988

By the President of the United States of America

A Proclamation

Tuberous sclerosis is an inherited disease whose neurological symptoms can run the gamut from speech disorders, mental retardation, and behavioral problems to motor difficulties and seizures. Small benign tumors may grow on the face and eyes, as well as in the brain, kidneys, and other organs. In its most devastating form, tuberous sclerosis leaves patients completely helpless and dependent.

Approximately one in every 10,000 Americans has tuberous sclerosis, placing this malady among the more common genetic disorders. Yet it often goes unrecognized. White spots that generally appear on the skin early in life are one characteristic sign, but symptoms often take considerable time to develop and are easily misdiagnosed.

There is currently no cure for tuberous sclerosis, but some of its symptoms are treatable. Seizures may be controlled by new anticonvulsant drugs. Children with learning, speech, and language disabilities may benefit from sophisticated educational techniques. People with motor handicaps can learn skills to increase their mobility and enhance daily living.

The best hope for alleviating the suffering brought on by this disease lies in biomedical research. The National Institute of Neurological and Communicative Disorders and Stroke (NINCDS), the focal point within the Federal government for research on neurogenetic disorders, encourages studies on tuberous sclerosis. Some investigators are striving to develop improved methods of treatment; others search for the location of the responsible gene so that the defect that leads to tuberous sclerosis can one day be identified, analyzed, and corrected.

Two private, voluntary health agencies, the American Tuberous Sclerosis Association and the National Tuberous Sclerosis Association, share with the NINCDS the task of informing Americans about this disorder and stimulating more scientific research. All Americans can take heart in the success of this cooperative effort, which is fundamental to the conquest of this disorder.

To further enhance public awareness of tuberous sclerosis, the Congress, by Senate Joint Resolution 212, has designated the week of May 8 through May 14, 1988, as "National Tuberous Sclerosis Awareness Week" and has authorized and requested the President to issue a proclamation in observance of the week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 8 through May 14, 1988, as National Tuberous Sclerosis Awareness Week, and I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, 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. 88-11062
Filed 5-13-88; 10:18 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Handling Requirements for Remainder of 1987–88 Shipping Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the minimum size requirement for shipments of domestic and imported white seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter). In addition, the rule relaxes the minimum external grade requirement for domestic, export, and import shipments of pink and white seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet. Also, the rule relaxes the minimum grade requirement for domestic shipments of Valencia and other late type oranges from U.S. No. 1 to U.S. No. 1 Golden. The grade, size, and maturity of the remaining 1987–88 season crop, and market demand conditions for these fruits warrant these relaxations.

DATES: The white seedless grapefruit size relaxation is effective for the period May 9, 1988 through August 21, 1988; and the pink and white seedless grapefruit grade relaxation is effective for the period June 1, 1988, through August 21, 1988. Effective August 22, 1988, tighter handling requirements will resume for seedless grapefruit. The Valencia orange grade relaxation is effective for the period July 1, 1988, through September 25, 1988. Effective September 26, 1988, tighter handling requirements will resume for Valencia and other late type oranges. Comments which are received by June 15, 1988, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order, approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, producers, and importers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (§ 905.306). This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I. Paragraph (b) of § 905.306 provides that no handler shall ship fruit to any destination outside the continental United States, other than Canada or Mexico, unless the specified varieties meet the requirements prescribed in Table II.

The Citrus Administrative Committee, which administers the program locally, meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The minimum grade and size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to relax the minimum size requirements applicable

to domestic and import shipments of white seedless grapefruit; the minimum grade requirement applicable to the domestic, export, and import shipments of pink and white seedless grapefruit; and the minimum grade requirement applicable to domestic shipments of Valencia oranges. This rule recognizes current and prospective supply and demand for these fruits and is necessary to permit handlers to ship such fruit to meet market needs. No problems with fruit quality, maturity, and size are expected in the marketplace because of the relaxations.

Some Florida orange and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This rule temporarily relaxes the minimum size requirement for domestic and import shipments of white seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter). Also, the minimum external grade requirement for domestic, export, and import shipments of pink and white seedless grapefruit is temporarily relaxed from Improved No. 2 to U.S. No. 2 Russet. In addition, the minimum grade requirement for domestic shipments of Valencia and other late type oranges is temporarily relaxed from U.S. No. 1 to U.S. No. 1 Golden. The relaxations for grapefruit will remain in effect through August 21, 1988, and for Valencia oranges through September 25, 1988, by which times 1987–88 season shipments of these fruits will be finished.

The committee unanimously recommended relaxation of the size requirements for grapefruit and Valencia oranges at its May 3, 1988 meeting. It recommended that the size relaxation for white seedless grapefruit be made effective as soon as possible; that the grade relaxation for pink and white seedless grapefruit be made effective June 1, 1988; and that the grade relaxation for Valencia and other late type oranges be made effective July 1, 1988. The committee reports that only a small portion of the Florida 1987–88 season grapefruit crop remains to be harvested, and that the crop will not remain in a condition to ship fresh much longer. Also, much of the remaining grapefruit crop is not in a condition to be shipped to distant export markets, and very few processing plants are utilizing grapefruit this time of the season. The committee also estimates that most of the Valencia orange crop will have been shipped by July 1, 1988, and that much of the fruit remaining for shipment at that time will have increased amounts of external discoloration. The changes in grade and size requirements reflect the composition of the remaining crop and prospective supply conditions, and will tend to maximize shipments to fresh market channels.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action relaxes the minimum size requirement for domestically produced white seedless grapefruit and the minimum external grade requirement for domestically produced pink and white grapefruit, the relaxation would also be applicable to imported pink and white seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), which requires that the various varieties of grapefruit imported into the United States meet the same grade and size requirements as those specified for Florida grapefruit in Table I of paragraph (a) in § 905.306. Section 944.106 was issued under Section 8e of the Act. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed 4/5-bushel cartons exempt from the import requirements.

The relaxation of the handling requirements for pink and white seedless grapefruit and Valencia and other late type oranges is only for the remainder of the 1987–88 shipping seasons for these fruits. The resumption of tighter requirements for 1988–89 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

Therefore, the Department's view is that the impact of this action upon producers, handlers, and importers would be beneficial because it will enable handlers to provide grapefruit and Valencia oranges consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and Valencia oranges, and to imported grapefruit over the past several years, has resulted in fruit of acceptable size being shipped to fresh markets.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes handling requirements currently in effect for Florida grapefruit and Valencia and other late type oranges; (2) handlers of these fruits are aware of this action which was recommended unanimously by the committee at a public meeting and they will need no additional time to comply with the requirements; (3) shipment of the 1987–88 season Florida grapefruit crop is nearly finished, and shipment of the Florida Valencia orange crop will be nearly finished by July 1, 1988; (4) the grapefruit import requirements are mandatory under Section 8e of the Act; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

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

2. The provisions of § 905.306 are amended by revising the following

entries in Table I of paragraph (a) applicable to domestic shipments, and Table II of paragraph (b) applicable to export shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 46.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
* * *	* * *	* * *	
ORANGES			
Valencia and other late type	7/1/88—9/25/88	U.S. No. 1 Golden	2-8/16
	On and after 9/26/88	U.S. No. 1	2-8/16
* * *	* * *	* * *	
GRAPEFRUIT			
Seedless, pink	6/1/88—8/21/88	U.S. No. 2 Russet (External), U.S. No. 1 (Internal).	3-5/16
	On and after 8/22/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3-9/16
GRAPEFRUIT			
Seedless, except pink	5/9/88—5/31/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3-5/16
	6/1/88—8/21/88	U.S. No. 2 Russet (External), U.S. No. 1 (Internal).	3-5/16
	On and after 8/22/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3-9/16
* * *	* * *	* * *	

(b) * * *

TABLE II

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
* * *	* * *	* * *	
GRAPEFRUIT			
Seedless, pink	6/1/88—8/21/88	U.S. No. 2 Russet (External), U.S. No. 1 (Internal).	3-5/16
	On and after 8/22/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3-5/16
GRAPEFRUIT			
Seedless, except pink	6/1/88—8/21/88	U.S. No. 2 Russet (External), U.S. No. 1 (Internal).	3-5/16
	On and after 8/22/88	Improved No. 2 (External), U.S. No. 1 (Internal)	3-5/16
* * *	* * *	* * *	

Dated: May 9, 1988.

Robert C. Keeney,

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

[FR Doc. 88-10697 Filed 5-13-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-28; Special Conditions No. 25-ANM-18]

Special Conditions; Boeing Model 767 Series Airplanes With Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101 of the Federal Aviation Regulations (FAR) for the Boeing Model 767 series airplanes with PW4000 series engines. The airplanes with these series engines will have novel or unusual design features associated with the installation of the digital electronic propulsion control system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning, the susceptibility to external radio frequency (RF) energy sources, and the overall propulsion control system integrity. These special conditions contain the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical, are maintained.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1986, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, applied for a change to Type Certificate No. A1NM to include the installation of Pratt & Whitney PW4000 engines in Boeing 767 series airplanes in lieu of the

currently approved Pratt & Whitney JT9D or General Electric CF6 series engines.

The Boeing 767 series are twin-engine transport category airplanes with a maximum passenger capacity of 290 and a maximum takeoff weight of 351,600 pounds. They are approved for operation to a maximum altitude of 43,100 feet. The 767-300 series airplanes differ from the 767-200 series airplanes primarily in that the fuselages of the former are 21 feet longer. Unlike the currently approved engine installations, the installation of PW4000 series engines incorporates a full authority digital electronic engine control system with no mechanical backup.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate (i.e., the original type certification basis), or with the applicable regulations in effect on the date of the application for the change. In addition, if the proposed change consists of a new design or a substantially complete redesign of a component, equipment installation, or system installation, and the regulations incorporated by reference do not provide adequate standards with respect to the proposed change, the applicant must comply with regulations in effect on the date of the application for the change, and special conditions established under the provisions of § 21.16 as necessary to provide a level of safety equal to that established by the regulations incorporated by reference.

The regulations incorporated by reference in Type Certificate No. A1NM for the Model 767 series airplanes are Part 25 of the FAR, as amended by Amendments 25-1 through 25-45, with certain exceptions and exemptions which are identified on Data Sheet No. A1NM. These exceptions and exemptions, as well as certain noise and environmental requirements and a Special Federal Aviation Regulation, are not pertinent to the installation of PW4000 series engines. Because neither the regulations incorporated by reference nor the regulations in effect on the date of the application include adequate standards, special conditions are adopted.

Novel or Unusual Design Features

The Model 767 with PW4000 series engines will incorporate the following novel or unusual design features:

1. Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.581). These standards do not, however, provide the level of safety for the electronic propulsion control system that is inherently provided by traditional designs which utilize mechanical means to connect the engines to the flight deck.

The Model 767 with PW4000 engines is being designed with the propulsion systems using only electrical interfaces for critical functions such as crew inputs to the engines. These systems can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a Special Condition is needed to ensure that these components are designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the lightning protection special condition. It is based on SAE Report AE4L-87-3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including test on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke* (Severe Strike—Component A, or Restrike—Component D): This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation,

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown burst of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component

H). These components are defined by the following double exponential polynominal equations:

$i(t) = I_o (e^{-at} - e^{-bt})$

where;

t = time in seconds,

i = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple Stroke (½ Component D)	Mulitple Burst (Component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics;					
i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and:					
$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t = 0+sec	1.4×10^{11} @t = 0+sec	0.7×10^{11} @t = 0+sec	2.0×10^{11} @t = 0+sec
(di/dt), (amp/sec)	=	1.0×10^{11} @t = .5 us	1.0×10^{11} @t = .25 us	0.5×10^{11} @t = .25 us	—
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

2. Protection from Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Based on surveys and analysis of existing RF emitters, and adequate level of protection exists when compliance with the RF special condition is shown with paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz-3 MHz	100	100
3 MHz-30 MHz	1,000	1,000
30 MHz-100 MHz	100	100
100 MHz-200 MHz	200	3,000
200 MHz-1 GHz	2,000	6,000
1 GHz-2 GHz	2,000	14,000
2 GHz-8 GHz	600	14,000
8 GHz-10 GHz	2,000	14,000
10 GHz-40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

3. Propulsion Control System

The Propulsion Control System for the Boeing Model 767 with PW4000 series engines is made up of: (1) A dual channel Full Authority Digital Electronic Control (FADEC) mounted on each engine's fan case; (2) an array of interfacing aircraft computers which provide data necessary for thrust management, data validation, and reversion modes; (3) power levers in the aisle stand; (4) the hydromechanical interfaces on the engines; (5) the power supplies; and (6) the interconnecting wiring. The electronic components of this array that are directly associated with setting and controlling the thrust of each engine, while meeting the requirements of §§ 25.901 and 25.903, may not necessarily exhibit a level of system integrity that was envisioned under the original B767 certification basis. Although the software function contained in the engine's FADEC has been validated to a "critical" level during the engine certification program, Part 25 contains no specific requirements for evaluating the design integrity of the FADEC and the overall control system, as installed in the airplane. Unlike conventional hydromechanical controls, the electronic control does not exhibit a "wear out" characteristic, but rather exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent design integrity as has been the case with mechanical systems evaluated in accordance with Part 33 of the FAR.

For the reasons discussed above, the applicable airworthiness requirements for the engine installation do not contain adequate standards with respect to a full authority digital electronic engine control system installed on a transport category airplane. A special condition was therefore proposed to provide a level of safety equal to that established by the regulations incorporated by reference in Type Certificate No. A1NM.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-88-2-NM for Boeing Model 767 series airplanes with PW4000 series engines was published in the **Federal Register** on February 3, 1988 (53 FR 3042). Comments were received from the Air Transport Association of America

(ATA), Pratt & Whitney, and the applicant.

Comments from ATA indicate that several members support the tests associated with the special conditions. Other members express no objection to the proposed special conditions.

Pratt & Whitney was concerned that the proposed special condition for RF protection seemed more restrictive than that applied to the Airbus A310-300 with engines of the same model. They indicate that the minimum RF threat level established for that airplane included the appendage: "* * * unless it can be demonstrated that other values are appropriate." The A310-300 was the first airplane for which RF protection requirements were included in the type certification basis. The final special condition published in the **Federal Register** on June 17, 1987 (52 FR 23024) for the Model A310-300 did not specify a protection level. Since that time, the FAA has determined that a specific minimum value must be established.

Extensive comments were made by Boeing on each of the special conditions; therefore, they will be discussed by topic.

Lightning Protection

Boeing does not concur that this special condition is required because, in their view, the existing regulations adequately cover lightning protection, and the certification of electronic propulsion control systems is neither novel or unusual.

The FAA does not consider that the existing lightning protection rules are adequate to provide the level of safety required for electrical and electronic systems that perform critical functions. Even though § 25.581(a) requires that the airplane structure must be protected against the catastrophic effects from lightning, and § 25.1309(a) states that the equipment must perform its intended function under any foreseeable operating condition, it is considered necessary to emphasize the need to prevent system degradation in light of the fact that airplanes may take multiple strikes. Under the provisions of § 21.101(b)(2), special conditions are prescribed if a level of safety equal to that established by the regulations incorporated by reference in the type certificate does not exist.

Boeing suggests that the SAE-AE4L committee's draft advisory circular on lightning protection could be used as an acceptable means for demonstrating that aircraft electrical/electronic systems are adequately protected against the effects of lightning, and that a special condition was not needed.

As indicated above, the existing standards were not considered adequate; therefore, the special conditions were proposed. The definition of the lightning environment contained in Notice No. SC-88-2-NM is based on SAE-AE4L Report AE4L-87-3. The FAA is currently preparing an advisory circular that will be based on that report; however, it would not be appropriate to use the advisory circular as a means of showing compliance with the special conditions until it is finalized.

An objection was expressed concerning the wording of the proposed special condition, "* * * operation and operational capabilities are not affected when the airplane is exposed to lightning." According to the commenter, the special condition should be constrained to apply only to operation and operational capabilities required for safe flight and landing.

The intent of the special condition was to require that critical functions not be adversely affected by lightning. The word "adversely" was not used in the proposed special condition because it is a difficult word to define explicitly. The determination of whether a critical function is adversely affected would be made on a case-by-case basis by the certification engineer or flight test pilot. If, for example, a system is designed to revert to a different mode of operation when it is upset by some disturbance such as lightning, it would not be considered adversely affected if it returns to its original mode before the system output is affected.

Boeing notes that the B767/PW4000 FADEC will be among the first systems to use the tenets of the draft advisory circular as the method of showing compliance. In this regard, Boeing expects that difficulties with the application of the draft advisory circular will be found, and agrees to cooperate with the FAA to amend and enhance the advisory circular, as applicable, for future programs.

FAA recognizes that tests for showing compliance with some of the requirements that came from the draft advisory circular have not been finalized by the SAE committee. Until this work has been completed, flexibility will be exercised in finding compliance.

Protection From Unwanted Effects of Radio Frequency (RF) Energy

Boeing does not concur that a special condition is the appropriate means for ensuring that aircraft are adequately protected from the adverse effects of RF energy considering the unknowns and uncertainties of the threat environment. They feel that an issue paper is the appropriate means for assuring adequate protection.

Issue papers are developed to identify and record the resolution status of significant issues. They carry no regulatory authority and would therefore be inappropriate as the means of issuing aircraft RF protection requirements. The FAA agrees that the threat environment is not very well defined at this time. As an interim measure, a minimum constant field strength has been specified for equipment qualification, similar to military requirements, as an option.

Boeing does not concur that the wording of the proposed special condition is appropriate for either a special condition or as an Issue Paper statement of issue. The wording does not constrain the requirement to considerations of safe flight and landing. Boeing recommends the following words be used:

> Each propulsion control system must be designed and installed to ensure that its operation and operational capabilities required for continued safe flight and landing are not affected when the airplane is exposed to externally radiated electromagnetic energy sources which may be reasonably anticipated in service.

Boeing's proposed wording for the special condition would allow performance degradation or loss of an engine due to RF exposure as long as the airplane could continue to fly and land safely. The FAA does not agree that this is a satisfactory level of safety for airplanes operating in an environment where they may be exposed to high energy RF emissions.

Propulsion Control System

Boeing does not concur that a special condition is required for propulsion control systems incorporating a FADEC. Boeing argues that the intent of the proposed special condition can be achieved within the current rules by showing compliance with the "single failure" requirements of § 25.901(c) and the "isolation" requirements of § 25.903(b). In addition, § 25.901(b) requires that for each powerplant, the components of the installation must be constructed, arranged and installed so as to ensure their continued safe operation between normal inspections and overhauls.

Sections 25.901(c) and 25.903(b) define propulsion system design requirements without specifying a minimum system reliability. The FAA has no quantitative guidance on what constitutes adequate reliability for compliance with § 25.901(c). Such a number has been deemed unnecessary for conventional

propulsion systems since sufficient experience and techniques are available to extrapolate limited time test results, such as those provided by the testing required by Part 33 of the FAR for engine type certification to longer term exposure. Whenever this proves false, the resultant in-service experience can be controlled through physical inspections, hard time replacement, etc. Today's electronic engine control systems have several unique characteristics that make this approach impractical. Among these is the tendency to fail hardware at random intervals and to be highly fault tolerant. The random failure characteristic makes it impractical to extrapolate reliability from limited test exposure, and fault tolerance requires that multiple failures be considered in order to fully evaluate the system design. While it may be true that the degree of safety achieved by compliance with §§ 25.901(c) and 25.903(b) may provide a level of reliability commensurate with the proposed special condition, it is not a guarantee. An electronic propulsion control system can be in total compliance with these two rules but fail so frequently so as to lower the overall level of safety below that which has been achieved by conventional hydromechanical type systems. The intent of the proposed special condition is to define an acceptable standard of control system reliability that is equivalent to that which has been achieved previously by Part 33 engine certification testing.

The Boeing reference to § 25.901(b) implies that there must exist a certain reliability in order to operate safely between normal inspections and overhauls. This assumption is true, and the process is valid for mechanical components whose wearout-to-failure characteristic can be controlled by inspections and overhauls at the proper intervals. Because electronic components do not exhibit a "wear out" characteristic like mechanical components, but instead fail at random intervals in a manner somewhat like a burned out light bulb, there is no practical inspection or overhaul period which could extend their operating life. Safety is achieved in electronic engine control systems by their inherent reliability, in combination with proper system design and the assessment of failure effects as provided by §§ 25.901(c) and 25.903(b). For these reasons, the FAA has determined that § 25.901(b) is inadequate for meeting the intent of the proposed special condition.

The remaining Boeing comments address specific aspects of compliance with the proposed special condition. Boeing references a similar notice of proposed special condition for the Airbus Model A320 airplane in which the FAA describes an acceptable method for demonstrating compliance with the special condition.

The FAA has defined to Boeing an acceptable means of compliance with this proposed special condition in an issue paper. It is substantively the same as that published in the **Federal Register** for the Model A320 in the "Discussion" section following proposed Special Condition No. 3a (52 FR 38781; October 19, 1987). It is quoted here for clarity.

> An acceptable method to demonstrate compliance with this special condition is to show that the control system associated with the PW4000 engine, when installed in the 767, has a level of design integrity equivalent to propulsion controls presently in commercial airline service. The inherent level of design integrity for present day propulsion controls is demonstrated by an inservice loss of thrust control approximately once per 100,000 hours of operation. A similar level of integrity need be demonstrated for a propulsion control system considering all dispatchable states. Appropriate sources of data to support compliance for the components of the control system necessary to set thrust and safely operate each engine are service experience on these components, service experience on similar systems, FAA approved reliability analysis and/or an FAA approved reliability life test. The minimum dispatch configuration will have to be taken into account.

Boeing generally agrees with the guidance given above for the PW4000 engine control system and agrees that guidelines for the management of non-fullup dispatch configurations are needed. Boeing agrees that the one per 100,000 hour loss-of-thrust-control number provides a reasonable guideline. However, the guidelines should allow an applicant to propose a target value for system integrity based on airplane configuration, propulsion system type and inservice experience of systems performing equivalent functions. The FAA selected the 100,000 hour number based on a determination of present day hydromechanical control system reliability that is intended to provide the applicant with a baseline indicator of electronic control system integrity for the purpose of meeting the objective of this special condition. This guidance is non-regulatory in nature and may change for future electronic control system installations based on an evaluation of specific installation design features and operating experience with previously certified electronic engine control systems. It is not intended that the outcome of a numerical probability analysis would be the sole basis for showing compliance with this special condition. The FAA is more concerned that there is enough operating experience, or its equivalent, on the control system hardware to provide high confidence in the associated system reliability. This confidence would not be obtained by merely calculating a failure rate that is less than once per 100,000 hours.

In regard to the management of FADEC dispatch configurations, Boeing believes the proper means for establishing these guidelines is an issue paper relative to the operation of these airplanes under Part 121 of the FAR in lieu of a special condition that amends the type certification basis for the airplane. The FAA disagrees with this position. The proposed special condition requires a minimum level of integrity and reliability for the electronic propulsion control system for each engine. The control system is designed such that it will continue to operate with various components of the system failed. In many cases, the pilot would not even be aware that a failure had occurred. Because of this fault tolerance, the overall control system reliability is based on a combination of many control configurations, whereas a conventional hydromechanical control reliability is based primarily on one configuration. As a result, the non-fullup dispatch configurations must be taken into account in order to adequately substantiate compliance with the special condition.

After careful review of the comments noted above, the FAA has determined that air safety and the public interest require adoption of the special conditions as proposed. Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.101.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**. As the intended type certification date for the installation of PW4000 series engines in Boeing 767 series airplanes is April 29, 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued for the Boeing Model 767 series airplanes with PW4000 series engines.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. *Lightning Protection.* In addition to compliance with the requirements of §§ 25.581 and 25.954 of the FAR concerning lightning protection, each electronic propulsion control system must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* Each propulsion control system must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiated electromagnetic energy sources which may be reasonably anticipated in service.

4. *Propulsion Control System.* In addition to the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

Issued in Seattle, Washington, on April 29, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10818 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-32-AD; Amdt. 39-5925]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Aerospatiale Model ATR-42-200 and -300 series airplanes by individual telegrams. This AD requires modification of a cable in the fuel indicator panel. This action is prompted by a report of accumulation of moisture or water in the area of the fuel indicator panel causing corrosion of the cable. This condition, if not corrected, could result in inaccurate and unreliable fuel readings.

DATES: Effective June 4, 1988. This AD was effective earlier to all recipients of telegraphic AD T88-07-52, dated March 31, 1988.

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

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

SUPPLEMENTARY INFORMATION: On March 31, 1988, the FAA issued telegraphic AD T88-07-52, applicable to Aerospatiale Model ATR-42-200 and -300 series airplanes, which requires modification of the cable in the fuel indicator panel. That action was prompted by reports of inaccurate fuel quantity readings due to moisture collecting inside the fuel indicator panel. The modification involves putting a protective cover over the cable and relocating the cable away from the area where moisture accumulates. This modification is necessary to prevent inaccurate and unreliable fuel readings.

Since the issuance of the telegraphic AD, Aerospatiale has issued Service Bulletin ATR42-28A-0011, dated April 6, 1988, which describes procedures for installing the modification of the cable in the fuel indicator panel. This service bulletin has been declared mandatory by the French airworthiness authority. The FAA has revised the final rule to reflect this service bulletin as an acceptable means of accomplishing the required modification.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42-200 and -300 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent erroneous fuel quantity readings in the fuel indication system, accomplish the following:

A. Within 7 days after the effective date of this AD, modify the cable in the fuel indicator panel, as follows:

1. Remove fuel quantity indicator 3 quart on the 4 VU panel [Ref: Airplane Maintenance Manual (AMM) 28-42-81-RAI 10000].

2. Disconnect cable 2842-0007 from plug 3 Qta pin R.

3. Insulate the cable from circuitry by means of heat shrinkable sleeve.

4. Attach cable to harness by suitable tie wrap.

5. Reinstall 3 Qta plug and 3 quart indicator (Ref: AMM 28-42-81-RAI 10000).

6. Perform a test of the fuel quantity indicator by pushing the test switch. Ensure that all digits indicate "eight," and that the "low level" lights illuminate.

B. Accomplishment of the modification of the cable in the fuel indicator panel and functional test in accordance with Aerospatiale Service Bulletin ATR42-28-0011, dated April 6, 1988, is considered an acceptable means of compliance with this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

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

This amendment become effective June 4, 1988.

It was effective earlier to all recipients of telegraphic AD T88-07-52, issued March 31, 1988.

Issued in Seattle, Washington, on May 5, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10819 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-5; Amdt. 39-5920]

Airworthiness Directives; Enstrom Model F28 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Enstrom Model F28 series helicopters which supersedes an existing AD. The new AD requires repetitive inspection and repair or replacement, as necessary, of the horizontal stabilizer spar and attachment on these helicopters. The AD is needed to prevent progressive growth of spar tube fatigue cracks which could result in failure of the horizontal stabilizer and subsequent loss of control of the helicopter.

DATE: *Effective date:* May 31, 1988. *Compliance:* As indicated in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Joe McGarvey, Airframe Branch, ACE-120C, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, IL 60018, telephone: (312) 694-7136.

ADDRESSES: The applicable service bulletin, Enstrom Service Directive Bulletin 0076, may be obtained from Mr. Robert Jenny, The Enstrom Helicopter Corporation, P.O. Box 277, Menominee, Michigan 49858, or may be examined in the Rules Docket, Office of Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

SUPPLEMENTARY INFORMATION: AD 72-04-04, Amendment 39-1395 (37 FR 3986; February 25, 1972) as amended by Amendment 39-2884 (42 FR 23504; May 9, 1977) currently requires an inspection of the horizontal stabilizer attachment to the center (cross or carry thru) spar tube, Part Number (P/N) 28-11222, and replacement with an airworthy part if fatigue cracks are found on Enstrom Model F28 series helicopters. Repetitive inspections are required at 100-hour intervals for spar tubes having a wall thickness measuring 0.035 inch, whereas those measuring 0.049 inch are exempt from repetitive inspections.

The left and right horizontal stabilizers are installed on the helicopter by sliding them over the tubular center spar, P/N 28-11222, which is transversely oriented in the tailcone and extends approximately 8 inches outboard on each side. Using pilot holes in the stabilizer end fittings, such stabilizer and the mating center spar end are match-drilled and bolted together. The orientation of the match-drilled holes must also provide the necessary stabilizer incidence angle established for each model; therefore, this method of attachment may be prone to machining errors, surface defects, or corrosion in service. The most recent spar tube that failed reportedly had a 0.049-inch wall thickness and a surface defect at the fatigue crack origin. The failure which occurred on a Model F-28A helicoper began as a small fatigue crack in the spar attachment bolt hole that propagated under repeated loading cycles until the spar abruptly failed causing loss of control of the helicopter.

Therefore, the FAA is superseding AD-72-04-04 with a new AD which requires initial and repetitive inspections of the horizontal stabilizer for cracks and replacement, as necessary, on Enstom Model F28 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

The Enstrom Helicopter Corporation: Applies to Enstrom Model F28 series helicopters, certificated in any category, equipped with horizontal stabilizer center spar, P/N 28-11222 (Airworthiness Docket 88-ASW-5).

Compliance is required as indicated, unless already accomplished.

To detect cracks in the horizontal stabilizer attachments thereby preventing possible failure which could result in loss of control of the helicopter, accomplish the following:

(a) Prior to the first flight of each day after the effective date of this AD, conduct the following—

(1) Check both the left and right stabilizer security by applying a light up and down load at the tip of the stabilizer (i.e., approximately 3 lbs.);

(2) Check for deflection and/or looseness; and

(3) If a stabilizer deflects or is loose, comply with paragraph (b)(1) through (b)(10) of this AD, before next flight.

Note.—The checks may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

(b) Within the next 10 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, accomplish the following:

(1) Remove the left and right stabilizer assemblies P/N 28-20100, from the center spar, P/N 28-11222. Remove the inspection panel on the left side of the tailcone. Remove the bolts securing the spar to the tailcone and remove the spar from the tailcone.

Note.—Mark spar position left, right, top, etc., prior to removel so that on reinstallation the spar will be repositioned correctly.

(2) Visually inspect the attachment fittings for burrs, fretting, or cracks.

Note.—Particular attention should be directed to the spar attachment area around all drilled holes.

(3) Replace cracked fittings before next flight. Repair cracked sheet metal per standard practice, or replace with airworthy parts before next flight.

(4) Measure the center spar wall thickness one time. Replace any center spar having a wall thickness less than 0.044 inch with an airworthy spar and comply with paragraph (b)(8) or this AD prior to the next flight.

(5) If the center spar thickness is 0.044 inch or greater, inspect the spar for cracks using a magnetic particle or dye penetrant inspection method and a 10-power or higher magnifying glass.

Note.—Particular attention should be directed to the spar area around all drilled holes and if a crack is found, replace the spar with an airworthy part before next flight.

(6) Inspect the stabilizer spar trailing edge attachment clips, P/N 28-20106, for cracks using a dye penetrant inspection or a visual inspection using a 10-power or higher magnifying glass. If a crack is found, replace the clip with an airworthy part before next flight.

(7) Inspect the center spar (particularly in areas of dissimilar metal contact) for corrosion. A spar with corrosion depth greater than 0.005 inch must be replaced before next flight. Surface corrosion may be removed with 320 grit emery paper. Protect bare areas using a light coat of epoxy primer (DeSoto 593X300 or equivalent).

(8) Install the center spar in its proper relative position to the tail cone. Whenever a new spar is installed, it must be match-drilled to the tailcone and stabilizers for proper incidence. Remove, deburr all holes, and protect all bare surfaces with epoxy primer prior to final assembly.

(9) Install the horizontal stabilizer using airworthy parts.

Note.—A light coat of lubricant (LPS 500 or equivalent) on the outside of the spar and the inside of the fittings will aid in assembly.

(10) Record the rotorcraft's weight and balance change as appropriate.

Note.—Changing from a 0.035-inch to a 0.049-inch nominal wall thickness center spar causes a weight increase of 0.37 lb. at longitudinal station 270.0.

(c) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 E. Devon Ave., Des Plaines, Il. 60018.

Note.—Enstrom Service Bulletin No. 0076, dated December 15, 1987, pertains to this AD.

This amendment supersedes AD 72-04-04, Amendment 39-1395, as amended by Amendment 39-2884.

This amendment becomes effective May 31, 1988.

Issued in Fort Worth, Texas, on May 2, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-10820 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-19; Amdt. 39-5924]

Airworthiness Directives; Schweizer Aircraft Corporation Models SGS 2-33, SGS 2-33A, and SGU 2-22C, CK, E, EK, Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends airworthiness directive (AD), 76-13-11, which requires the inspection, repair, or replacement as necessary of the forward and aft longerons on Schweizer sailplane models SGS 2-33, SGS 2-33A, S/N's 1 thru 200, and SGU 2-22C, CK, E, EK, S/N's 98 thru 258. The amendment is needed so that the AD will include Schweizer sailplane model SGS 2-33A, S/N's 210 thru 424. The AD is needed to prevent failure of the forward and aft fuselage tubular longerons due to internal corrosion which could result in the loss of the sailplane.

DATES: Effective: May 25, 1988. Compliance: As required in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902.

A copy of the Service Bulletin is contained in the Rules Docket, Docket Number 88-ANE-19, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Birkenholz, Airframe Branch, ANE-172, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-2659 (41 FR 27029; July 1, 1976), AD 76-13-11, which currently requires inspection, repair, and replacement of forward and aft lower longerons on Schweizer sailplane models SGS 2-33, SGS 2-33A, S/N's 1 thru 200, and SGU 2-22C, CK, E, EK, S/N's 98 thru 258. After issuing Amendment 39-2659, the FAA determined that corrosion in the forward and aft lower longerons has occurred on Schweizer sailplane model SGS 2-33A, S/N's 318, 373, and 374. After the investigation, it was found that on Schweizer sailplane models SGS 2-33A, S/N's 201 thru 424, the longerons were not treated with oil at the factory. In view of this, and the three service problems previously mentioned, the FAA has determined that it is necessary to include in the AD Schweizer sailplane models SGS 2-33A, S/N's 201 thru 424. In addition, this amendment makes some minor clarifying/editorial changes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this

amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalsim Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By amending § 39.13, Amendment 39–2659 (41 FR 27029; July 1, 1976), Airworthiness Directive (AD) 76–13–11, as follows:

(a) By revising the affected models statement to read as follows: "Applies to SGS 2–33, SGS 2–33A, S/N's 1 thru 424, and SGU 2–22C, CK, E, EK, S/N's 98 thru 258."

(b) By replacing the word "rusting" with "corrosion" in the introductory sentence and the word "entrapped" with "trapped".

(c) By revising paragraph (f) to read as follows: "Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, New England Region, Federal Aviation Adminstration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581."

(d) By revising paragraph (g) to read as follows: "Upon submission of substantiating data, by an owner or operator through an FAA Airworthiness Inspector, the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD."

(e) By revising the parenthetical statement following paragraph (g) to read as follows: "(Schweizer Service Bulletin No. 102–33–1.1, covers this subject and is considered an approved equivalent inspection)."

This amendment becomes effective on May 25, 1988.

This amendment amends Amendment 39–2659 (41 FR 27029; July 1, 1976), AD 76–13–11.

Issued in Burlington, Massachusetts, on May 4, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88–10821 Filed 5–13–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–1]

Establishment of Transition Area; Litchville, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Litchville, ND, transition area to accommodate air taxi operators requesting a direct route to Alexandria, MN from Jamestown, ND and the Minneapolis-St. Paul, MN area. The intended effect of this action is to ensure segregation of Instrument Flight Rule (IFR) aircraft from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 22, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Litchville, ND, transition area (53 FR 9323).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal of the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Litchville, ND, transition area to accommodate air taxi operators requesting a direct route to Alexandria, MN from Jamestown, ND and the Minneapolis-St. Paul, MN area. This transition area airspace is expected to eliminate an additional workload on controllers since the climb or descent will now be made in controlled airspace; provide better radar vectoring service for users going to and from Jamestown Municipal Airport; and, save the aviation users time and fuel.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Litchville, ND [New]

That airspace extending upward from 1200' AGL beginning at lat. 46° 30' 00"N., long. 98° 29' 30"W., to lat. 46° 30' 00"N., long. 97° 38' 00"W., to lat. 46° 32' 30"N., long. 97° 37' 00"W., to lat. 46° 40' 00"N., long. 97° 42' 00"W., to lat. 46° 48' 00"N., long. 97° 54' 00"W., to lat. 46° 49' 30"N., long. 98° 15' 00"W., to lat. 46° 46' 00"N., long. 98° 10' 00"W., to lat. 46° 37' 20"N., long. 98° 22' 00"W., to lat. 46° 41' 00"N., long. 98° 27' 00"W., to lat. 46° 39' 00"N., long. 98° 31' 00"W., to the point of beginning.

Issued in Des Plaines, Illinois, on May 5, 1988.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 88-10822 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25671; File No. S7-626]

Securities Transactions Exempt from Transaction Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising an amendment to its rule governing transaction fees, to continue for one year to exempt transactions in over-the-counter National Market System securities from the imposition of section 31 transaction fees.

The Commission still is considering whether it should seek legislation imposing transaction fees on the OTC market, and, thus, is extending for one year the effectiveness of the rule.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTACT: William M. Harter, Jr., Esq., 202/272-2414, Room 5205, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

Section 31 of the Securities Exchange Act of 1934 ("Act")[1] requires that every national securities exchange pay to the Commission a fee based on sales of securities transacted on that exchange.[2] In addition, Section 31 requires payment of similar fees from broker-dealers for over-the-counter ("OTC") transactions in securities "registered on a national securities exchange," including those admitted to unlisted trading privileges. The Section also gives the Commission authority to grant exemptions from the fee requirement. In 1986, the Commission amended Rule 31-1 by adopting subsection f, which exempts from Section 31 fees transactions in OTC securities that are also designated as National Market System ("NMS") securities.[3] Rule 31-1(f) was to be effective "for a period not to exceed two years to allow the Commission time to reach a conclusion regarding the applicability of section 31 fees to NMS Securities," *i.e.*, until May 6, 1988.[4] The Commission amended the rule again in June, 1987 when NMS designation effectively was extended to include listed securities reported pursuant to a transaction reporting plan, to limit the exemption to just NASDAQ/NMS securities.[5]

Rule 31-1 provides for a number of exemptions from Section 31 of the Act and subsection f thereof provides that such exemptions include:

Transactions in NASDAQ securities as defined in 240.11Aa3-1 (Rule 11Aa3-1 under the Act) except for those NASDAQ securities for which transaction reports are collected, processed, and made available pursuant to the plan originally submitted to the Commission pursuant to Rule 17a-15 (subsequently amended and redesignated as Rule 11Aa3-1) under the Act, which plan was declared effective as of May 17, 1974. The terms and provisions of this paragraph shall remain effective until May 6, 1988.

The Commission still is considering whether it should seek legislation imposing transaction fees on the OTC market, and, thus, is extending for one year the effectiveness of the rule.

II. Discussion

In 1985, two Commission initiatives gave rise to potential conflicts in the application of section 31. The Commission indicated that it was prepared to grant to the exchanges unlisted trading privileges in a certain number of OTC securities, subject to certain conditions,[6] and permitted

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[1] 15 U.S.C. 78a *et seq.*, as amended.

[2] The current full text of Section 31, as amended in 1975, reads as follows:

Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregated dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: Provided, however, that no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this action, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

[3] *See* Securities Exchange Act Release No. 23229 (May 21, 1986), 51 FR 18578 ("Adopting Release").

[4] Adopting Release, 51 FR at 18579.

[5] Securities Exchange Act Release No. 24635 (June 23, 1987), 52 FR 24149 (adoption of amendments to Rules 11Aa2-1, 11Aa3-1, and 31-1 under the Act, resulting in the designation as NMS securities of all New York ("NYSE") and American ("Amex") Stock Exchange listed securities, regional exchange securities substantially meeting the Amex listing standards, and OTC securities that already had been designated as NMS securities, and changing the wording of Rule 31-1 to provide that an exemption from the payment of fees applied to just those NMS securities whose transactions were reported under the NASDAQ transaction reporting plan).

[6] *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38235. The principal precondition to the grant of unlisted trading privileges in OTC stocks is the creation of a facility for the consolidated reporting of transactions and quotations in these stocks. On April 29, 1987, the Commission approved a joint Midwest Stock Exchange ("MSE") and NASD transaction and quotation reporting plan for securities traded on the MSE pursuant to unlisted trading privileges. Securities Exchange Act Release No. 24406 (April 29, 1987), 52 FR 17495. The NASD, the Amex and regional exchanges continue to negotiate the terms of a consolidated reporting plan.

certain regionally-listed stocks to be traded both on an exchange and designated as NMS Securities.[7] Section 12(f)(6) of the Act [8] deems OTC securities traded on an exchange pursuant to unlisted trading privileges as "registered" on an exchange and, thus, subject to Section 31 fees. In addition, the over-the-counter trades in the securities that are also listed, and thus are registered securities, would be subject to section 31.

Hence, the Commission amended Rule 31–1 to exempt transactions in NASDAQ/NMS securities from section 31. The Commission believed that section 31 should not apply automatically to securities traded principally OTC simply because the Commission had granted unlisted trading privileges to NASDAQ/NMS Securities or provided for the concurrent exchange listing and NMS designation of a limited number of securities. In addition, confusion may have resulted if only those NASDAQ/NMS Securities traded on exchanges on an unlisted trading privileges basis were subject to section 31 fees. The Commission determined that the application of section 31 should not depend on decisions by exchanges on whether to request unlisted trading privileges, resulting in automatically subjecting even the OTC trading in such securities to payment of the fees, despite a possibly minimal amount of exchange trading. Similarly, the few regionally listed securities that also became eligible for NMS designation traded most actively in the OTC market. Absent an express statutory directive, the Commission believed that it would be inappropriate for exchanges and market makers to pay section 31 fees on transactions in those securities. For these reasons, the Commission amended Rule 31–1 and determined that granting the exemption would permit more orderly introduction of section 31 fees to the market in general for NASDAQ/NMS Securities.

The exemption is consistent with the public interest, equal regulation of markets and broker-dealers, and the development of a national market system. Rule 31–1(f) only affects transactions in those NASDAQ/NMS securities that are subject to either unlisted trading privileges or a concurrent exchange listing.

[7] *See* Securities Exchange Act Release No. 22413 (September 16, 1985), 50 FR 38515.

[8] Section 12(f)(6), in pertinent part, provides that: "Any security for which unlisted trading privileges are continued or extended pursuant to [subsection f] shall be deemed to be registered on a national securities exchange * * *."

III. Effect on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Act [9] requires the Commission, in adopting rules under the Act, to consider anti-competitive effects of such rules, if any, and to balance any anti-competitive effects of such rules, if any, and to balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. As noted above, the exemption in Rule 31–1(f) applies to both exchange and OTC transactions in the NASDAQ/NMS securities that are reported through the NASDAQ transaction reporting plan. The Commission believes that it is consistent with the purposes of sections 12(f)(6) and 31 of the Act for transactions in other exchange-traded securities to be subject to section 31 fees while transactions in NASDAQ/NMS securities are not, because NASDAQ/NMS securities, which trade chiefly in the OTC market, have much different trading characteristics. In particular, the Commission cannot predict that ultimately there will be substantial exchange trading in the subject NASDAQ/NMS securities.[10] The Commission has examined Rule 31–1(f) and concludes that its extension has at most a minimal competitive impact and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, including in particular the purposes of sections 12(f)(6) and 31 of the Act.

The Regulatory Flexibility Act [11] is not applicable in the revision of Rule 31–1(f) to extend its effectiveness. The Regulatory Flexibility Act's flexibility analysis requirements are limited to rulemaking for which the Commission would be required by the Administrative Procedure Act ("APA") to publish general notice of proposed rulemaking.[12]

[9] 15 U.S.C. 78w(a)(2).

[10] The Commission is aware that on the Midwest Stock Exchange, the volume of trading pursuant to unlisted trading privileges of OTC securities has been only about 1% of the total NASDAQ total.

[11] 5 U.S.C. 601–612.

[12] 5 U.S.C. 603(a).

The Commission did prepare a Final Regulatory Flexibility Analysis ("FRFA") regarding subsection f of Rule 31–1 at the time of its original adoption. That FRFA noted that Rule 31–1(f) would exempt from section 31 of the Act exchanges and broker-dealers engaging in transactions in NASDAQ/NMS securities subject to unlisted trading privileges or to a concurrent exchange listing. The FRFA noted that the principal effect of the exemption would be to relieve exchanges and broker-dealers from payment of fees to which they otherwise would be subject. The FRFA stated that, in order to determine the amount of the fee owed under section 31 for transactions in NASDAQ/NMS securities, market participants would need to separately calculate dollar volume in NMS securities and dollar volume in non-NMS securities.

A copy of the prior FRFA may be obtained by contacting William M. Harter, Jr. 202/272–2414, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

APA rulemaking procedures are not applicable to the Commission's revision of Rule 31–1(f).[13] Although the APA states that an agency must provide general notice of proposed rulemaking and an opportunity for comment, these requirements do not apply if such agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." [14] In addition, although the APA generally imposes a 30-day delayed effective date requirement, this requirement does not apply if a rule grants an exemption or relieves a restriction.[15]

The Commission finds for good cause that it is both unnecessary and impracticable to provide notice and opportunity for public comment. Notice and prior comment are unnecessary since extending the effectiveness of Rule 31–1(f) continues the status quo, and Rule 31–1(f) was subject to public comment at the time it was originally proposed.[16] Further, subsection (f) simply grants an exemption from section 31; extending its effectiveness imposes no regulatory or financial burden or obligation on anyone. Notice and prior comment are impracticable because the exemption is due to expire on May 6, 1988. Assessing fees for a short period between then and a subsequent adoption date would be unwarrantably confusing and burdensome for the persons affected.

Finally, the 30-day effective date requirement is not applicable in these circumstances. Because Rule 31–1(f) grants an exemption to broker-dealers from the payment of transaction fees on NASDAQ/NMS securities, the Commission is not required to publish the revision of Rule 31–1(f) 30 days before its effective date.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

[13] 5 U.S.C. 553.

[14] 5 U.S.C. 553(b)(B).

[15] The APA provides, in pertinent part:

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction[.]

5 U.S.C. 553.

[16] *See* Adopting Release, 51 FR at 18578.

IV. Statutory Basis and Text of Proposed Amendments

The Commission revises an amendment under Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—[AMENDED]

1. The authority citation for Part 240 continues to read in part as follows:

Authority: Section 23, 48 Stat. 901, as amended; 15 U.S.C. 78w.

* * * Section 240.31-1 is also authorized under section 31, 48 Stat. 904, as amended (15 U.S.C. 78ee).

§ 240.31-1 [Amended]

2. Section 240.31-1 is amended by revising the date in the last sentence of paragraph (f) to read: "May 6, 1989."

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: May 6, 1988.

[FR Doc. 88-10882 Filed 5-13-88; 8:45 am]

BILLING CODE 8010-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 209, 210, and 211

Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations concerning the reporting requirements for railroad employers, the creditability of service, and the creditability of compensation. These amendments are necessary to comply with legislative changes in the Railroad Retirement Act.

EFFECTIVE DATE: May 16, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Ann T. Alden, Chief of Methods and Procedures, Bureau of Compensation and Certification, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-3369 (FTS 387-3369).

SUPPLEMENTARY INFORMATION: Benefits under the Railroad Retirement Act are computed, in part, based on the individual's creditable railroad service and compensation and the Board is authorized by the Act to require railroad employers to furnish compensation and service records for their employees. The Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76) altered the manner in which railroad compensation and service months are reported to the Board and credited to an employee's account.

On January 23, 1987, the Board published Parts 209, 210 and 211 as a proposed rule and invited comments for 30 days ending February 22, 1987 (52 FR 2553-2557). The Board received three comments from the Association of American Railroads concerning the reporting requirements of the Board with respect to employers under the Railroad Retirement Act. Those recommendations, even if adopted, would not require any change in these regulations. Accordingly, the Board has decided to publish the regulations as a final rule and will continue to consider adoption of the comments of the Association of American Railroads.

Incorrect citations were also noted in section 10 of the proposed regulations with respect to its revisions of § 211.2(b)(11). These corrections were made.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with these amendments have been approved by the Office of Management and Budget.

List of Subjects

20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

20 CFR Part 210

Railroad employees, Railroad retirement.

20 CFR Part 211

Railroad employees, Railroad retirement.

PART 209—RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

1. The authority citation for Part 209 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Part 209 is amended by adding § 209.13, to read as follows:

§ 209.13 Sick pay reports.

(a) Employers, insurance carriers or other parties paying sick pay subject to tax under the Railroad Retirement Tax Act (26 U.S.C. 3201 *et seq.*) are required to furnish the Board an annual report of creditable sick pay on or before the last day of February of the calendar year following the year in which the payment was made.

(b) Sick pay reports are to be filed in accordance with instructions issued by the Director of Compensation and Certification and are to be mailed directly to the Director. The reports may be made on magnetic tape, punch cards or the form described in § 200.2 of this chapter for employer's adjustment reports. The reports must be accompanied by a quarterly summary report of compensation adjustments as described in § 200.2 of this chapter. Adjustments to sick pay compensation should be included in the next annual sick pay report.

(Approved by the Office of Management and Budget under control number 3220-0008)

PART 210—CREDITABLE RAILROAD SERVICE

3. The authority citation for Part 210 is revised to read as follows:

Authority: 45 U.S.C. 231f.

4. Section 210.2 is revised to read as follows:

§ 210.2 Definition of service.

Service means a period of time for which an employee receives payment from a railroad employer for the performance of work; or a period of time for which an employee receives compensation which is paid for time lost as an employee; or a period of time credited to an employee for creditable military service as defined in Part 212 of this chapter. Service shall also include deemed months of service as provided under § 210.3(b) of this chapter and any month in which an employee is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

5. Section 210.3 is revised to read as follows:

§ 210.3 Month of service.

(a) *Reported.* A reported month of service is any calendar month or any part of a calendar month for which an employee receives compensation for services performed for an employer; or receives pay for time lost as an employee; or is credited with compensation for a period of creditable military service; or is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

(b) *Deemed.* A deemed month of service is any additional month of service credited to an employee subject to paragraphs (b)(1) and (2) of this section.

(1) An employee who is credited with less than twelve reported months of service for a calendar year after 1984 may be "deemed" to have performed

service for compensation in additional months, not to exceed twelve, providing:

(i) The employee's compensation for the calendar year in question exceeds an amont calculated by multiplying the number of reported months credited for that year by an amount equal to one-twelfth of the current annual maximum for non-tier I components as defined in § 211.15 of this chapter; and

(ii) The employee maintains an employment relation to one or more employers or serves as an employee representative in the month or months to be deemed. For purposes of this section, employment relation has the same meaning as defined in Part 204 of this chapter, disregarding the restrictions involving the establishment of such a relationship as of August 29, 1935. Employee representative has the same meaning as defined in Part 205 of this chapter.

(2) Employees satisfying the conditions in both paragraphs (b)(1)(i) and (b)(1)(ii) of this section shall have their months of service for a calendar year calculated using the following formula:

$$\text{Months of service} = \frac{\text{Employee's creditable non-tier I compensation}}{\text{Maximum annual creditable non-tier I compensation} \div 12}$$

The quotient obtained using this formula equals the employee's total months of service, reported and deemed, for the calendar year. Any fraction or remainder in the quotient is credited as an additional month of service.

(3) *Examples.* The provisions of paragraphs (b)(1) and (2) of this section may be illustrated by the following examples.

Example (1): Employee B worked in the railroad industry in 1985 and was credited with nine reported months of service (January through September) and non-tier I compensation of $20,000. The 1985 annual maximum for non-tier I compensation is $29,700. B maintained an employment relation in the three months he was not employed in 1985. The following computations are necessary to determine if B has sufficient non-tier I compensation to be credited with deemed months of service.

(1) Enter the annual maximum for non-tier I compensation for the calendar year $29,700
(2) Divide line (1) by 12
$29,700 ÷ 12 ..... $2,475
(3) Enter the employee's reported months of service for the calendar year 9
(4) Multiply line (2) by line (3)
$2,475 × 9 ..... $22,275
(5) Enter the employee's non-tier I compensation for the calendar year $20,000
(6) Subtract line (4) from line (5). Enter the result (but not less than zero). This is the employee's excess non-tier I compensation for the calendar year.
$20,000 − $22,275 0

a. If line (6) is zero, the employee does not have sufficient non-tier I compensation to be credited with deemed months of service.

b. If line (6) is greater than zero, the employee has sufficient non-tier I compensation to be credited with deemed months of service.

Since the amount on line (6) is zero, employee B does not have enough non-tier I compensation to be credited with deemed months of service. B is credited with only nine reported months of service for the year.

Example (2): Assume the same facts as in example (1), except that employee B was credited with non-tier I compensation of $25,000 for 1985. The following computations are necessary to determine if B has sufficient non-tier I compensation to be credited with deemed months of service.

(1) Enter the annual maximum for non-tier I compensation for the calendar year $29,700
(2) Divide line (1) by 12
$29,700 ÷ 12 ..... $2,475
(3) Enter the employee's reported months of service for the calendar year 9
(4) Multiply line (2) by line (3)
$2,475 × 9 ..... $22,275
(5) Enter the employee's non-tier I compensation for the calendar year $25,000
(6) Subtract line (4) from line (5). Enter the result (but not less than zero). This is the employee's excess non-tier I compensation for the calendar year.
$25,000 − $22,275 ..... $2,725

a. If line (6) is zero, the employee does not have sufficient non-tier I compensation to be credited with deemed months of service.

b. If line (6) is greater than zero, the employee has sufficient non-tier I compensation to be credited with deemed months of service.

Since the amount on line (6) is greater than zero, employee B has enought non-tier I compensation to be credited with deemed months of service. B now satisfies all the requirements for deeming, therefore his months of service for the calendar year are calculated using the formula in § 210.3(b)(2).

$$\text{Months of service} = \frac{\text{Employee's creditable non-tier I compensation}}{\text{Maximum annual creditable non-tier I compensation} \div 12}$$

$$(1)\ \text{Months of service} = \frac{\$25{,}000}{\$29{,}700 \div 12} \quad \text{or} \quad \frac{\$25{,}000}{\$2{,}475}$$

$$(2)\ \text{Months of service} = \frac{\$25{,}000}{\$2{,}475} \quad \text{or} \quad \$25{,}000 \div \$2{,}475$$

(3) Months of service = 25,000 ÷ 2,475 or 10.10

(4) Round the result in line (3) to the next higher whole number. This is the employee's total months of service for the calendar year.
10.10 becomes 11

Employee B is credited with 11 months of service for 1985: nine reported months (January through September) and two deemed months (October and November).

6. Section 210.4, paragraph (a) is revised to read as follows:

§ 210.4 Year of service.

(a) A year of service is twelve months of reported or deemed service, consecutive or not consecutive. A

fraction of a year of service is taken at its actual value.

* * * * *

7. Section 210.5, paragraph (f) is revised to read as follows:

§ 210.5 Creditability of service.

* * * * *

(f) *Service as employee representative.* Service performed as an employee representative is creditable in the same manner and to the same extent as service performed for an employer.

* * * * *

8. Section 210.6 is revised to read as follows:

§ 210.6 Service credited for creditable military service.

Any calendar month in which an employee performed creditable military service, as defined in Part 212 of this chapter, shall be counted as a month of service and shall be included in the employee's years of service, as provided for in § 210.5, provided that the employee has not previously been credited with reported or deemed service for an employer for the same month(s).

PART 211—CREDITABLE RAILROAD COMPENSATION

9. The authority citation for Part 211 is revised to read as follows:

Authority: 45 U.S.C. 231f.

10. Section 211.2 is amended by revising paragraph (b)(9), by adding paragraphs (b)(11) and (b)(12), by removing paragraph (c)(2) and redesignating paragraphs (c)(3) through (c)(7) as (c)(2) through (c)(6), and by revising newly redesignated paragraph (c)(5) to read as follows:

§ 211.2 Definition of compensation.

* * * * *

(b) * * *

(9) Retroactive wage increases as provided for in § 211.11 of this part;

(10) * * *

(11) Payments paid to an employee or employee representative which are subject to tax under section 3201(a) or 3211(a) of the Internal Revenue Code of 1954 are creditable as compensation under the Railroad Retirement Act for purposes of computation of benefits under sections 3(a)(1), 3(f)(3), 4(a)(1) and 4(f)(1).

(12) Voluntary payments of any tax by an employer, without deducting such tax from the employee's salary.

(c) * * *

(5) Except as provided in § 211.2(b)(11), the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for employees generally (or for employees generally and their dependents), or for a class or classes of employees (or for a class or classes of employees and their dependents), on account of sickness or accident disability, or medical, or hospitalization expenses in connection with sickness or accident disability; and

* * * * *

11. Section 211.4 is revised to read as follows:

§ 211.4 Vacation pay.

(a) *Employee deceased or retired.* When an employee dies or ceases work for the purpose of retiring, the vacation pay due the employee shall be reported as compensation for the last day of service or as compensation for a period immediately after the last day of service and during the employee's life, depending on whether the vacation pay is intended to make the employee's termination date effective on or after the last day of service. Vacation pay shall not be reproted for a period after the date of death or date of termination.

(b) *Employee terminated.* When an employee resigns his or her position or is discharged by the employer, any vacation pay due the employee shall be reported as compensation for the period prior to the effective date of the resignation or discharge. Vacation pay shall not be reported for a period after the date of termination.

(c) *Employee takes vacation.* When an employee takes a vacation, the vacation pay shall be reported as compensation for the period during which the vacation is taken regardless of when the payment is made.

(d) *Employee does not take vacation.* When an employee receives pay for vacation but does not take the vacation, the vacation pay shall be reported as compensation for the period covered by the employer's payroll which includes the vacation pay, except for payments made in December of the vacation year or thereafter. Vacation payments made in the month of December of the vacation year or thereafter shall be reported as compensation for December of the vacation year.

12. Section 211.5 is revised to read as follows:

§ 211.5 Employee representative compensation.

All payments made by a railway labor organization to an individual who is an employee representative as a result of the position or office he occupies with such organization are creditable as compensation, including payments made for services not connected with the representation of employees, except that payments in excess of the annual maximum amount will not be credited.

13. Section 211.6 is revised to read as follows:

§ 211.6 Compensation based on waiver or refund of organization dues.

A waiver or refund or organization dues which was based solely on consideration for membership in the organization is considered creditable compensation if there is proof that the waiver or refund was intended to be, and was accepted as, a dismissal of an obligation of the organization to compensate the employee for services rendered.

14. Section 211.7 is revised to read as follows:

§ 211.7 Compensation credited for creditable military service.

In determining the creditable compensation of an employee, the following amounts shall be credited for each month of military service, provided the employee's combined monthly railroad and military compensation does not exceed the maximum creditable amount:

(a) $160 for each calendar month before 1968;

(b) $260 for each calendar month after 1967 and before 1975;

(c) For years after 1974, the actual military earnings reported as wages under the Social Security Act.

15. Section 211.9 is revised to read as follows:

§ 211.9 Dismissal allowance.

Dismissal allowances paid to an employee under a protective labor agreement that covers the amounts paid for specific periods of time are creditable as compensation under the Railroad Retirement Act, provided the employee has not severed his or her employee-employer relationship. Subject to the proviso in the preceding sentence, dismissal allowances are to be reported as compensation in the month(s) for which the employee is paid the allowance.

16. Section 211.11 is revised to read as follows:

§ 211.11 Retroactive wage increase.

Employers may report retroactive wage increases as creditable compensation for the month in which the compensation is paid or for the period in which earned. If retroactive wage increases are reported as

creditable to the month in which they are paid, the employee may, within the 4-year-period defined in § 211.14(b), request that the retroactive wage increases be allocated to the month(s) in which earned. The employer will submit the necessary adjustment giving the employee the proper credits.

17. Section 211.12 is revised to read as follows:

§ 211.12 Compensation credited for Title VII benefits.

Payments made to an employee under Title VII of the Regional Rail Reorganization Act of 1973 are creditable as compensation only for the month in which the employee first filed an application for benefits under that Act. The compensation to be credited cannot exceed the monthly creditable amounts defined in § 211.13(a) of this part for compensation earned prior to 1985 or the annual creditable amount defined in § 211.13(b) of this part for compensation earned after 1984.

18. Section 211.13 is revised to read as follows:

§ 211.13 Maximum creditable compensation.

The amount of compensation that may be creditable under the Railroad Retirement Act with respect to an employee's service is subject to maximum earnings limitations. The maximum is determined using the annual taxable wage base as defined in section 3121 of the Internal Revenue Code of 1954. The maximum annual taxable wage base is defined in section 3121 of the Internal Revenue Code of 1954 as the amount of contribution and benefit base determined under section 230 of the Social Security Act. Section 230(c) of the Social Security Act provides, with respect to the computation of annuities under the Railroad Retirement Act, for two separate annual maximum amounts for years beginning with 1979. For purposes of computing the amount of an annuity under the Railroad Retirement Act, except the Tier I annuity component provided by section 3(a), 4(a), or 4(f) of the Railroad Retirement Act or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act, the annual maximum wage base is determined without regard to the increases in the annual amounts specified in clause (2) of subsection (c) of section 230. Those increases are, however, applicable in computing the Tier I component of an annuity or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act.

(a) *Compensation earned before January 1, 1985.* (1) Compensation earned before January 1, 1985, is subject to monthly limits. The monthly maximum creditable for any month is one-twelfth of the maximum annual taxable wage base defined in section 3121 of the Internal Revenue Code of 1954 that could be applicable to the period which includes the month.

(2) The table below lists the maximum monthly creditable amounts beginning with 1937. The maximum monthly creditable amount for purposes of computing the Tier I annuity component and the social security guaranty amount is, for the years beginning with 1979, shown in parentheses.

Jan. 1937 through June 1954	$300
July 1954 through May 1959	350
June 1959 through Oct. 1963	400
Nov. 1963 through Dec. 1965	450
Jan. 1966 through Dec. 1967	550
Jan. 1968 through Dec. 1971	650
Jan. 1972 through Dec. 1972	750
Jan. 1973 through Dec. 1973	900
Jan. 1974 through Dec. 1974	1,100
Jan. 1975 through Dec. 1975	1,175
Jan. 1976 through Dec. 1976	1,275
Jan. 1977 through Dec. 1977	1,375
Jan. 1978 through Dec. 1978	1,475
Jan. 1979 through Dec. 1979	1,575 (1,908.33)
Jan. 1980 through Dec. 1980	1,700 (2,158.33)
Jan. 1981 through Dec. 1981	1,850 (2,475.00)
Jan. 1982 through Dec. 1982	2,025 (2,700.00)
Jan. 1983 through Dec. 1983	2,225 (2,975.00)
Jan. 1984 through Dec. 1984	2,350 (3,150.00)

(b) *Compensation earned after December 31, 1984.* (1) Compensation earned January 1, 1985, and later is subject to annual limits. The annual maximum creditable for any year is the maximum annual taxable wage base defined in section 3231(e)(2)(b) of the Internal Revenue Code of 1954 that could be applicable to the year in question.

(2) The table below lists the maximum annual creditable amounts beginning with 1985. The maximum annual creditable amount for purposes of computing the Tier I annual component and the social security guaranty amount is shown in parentheses.

Jan. 1985 through Dec. 1985	$29,700 ($39,600)
Jan. 1986 through Dec. 1986	31,500 (42,000)

19. Section 211.14, paragraph (a) is revised to read as follows:

§ 211.14 Verification of compensation claimed.

* * * * *

(a) If the compensation claimed is in excess of the maximum creditable amounts defined in § 211.13 of this Part, the Director of the Bureau of Compensation and Certification shall inform the employee that the compensation claimed is not creditable.

* * * * *

Dated: May 9, 1988.

By Authority of the Board.
For the Board.

Beatrice Ezerski,
Secretary of the Board.

[FR Doc. 88-10892 Filed 5-13-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Medicated Feeds; Center for Veterinary Medicine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority in the Center for Veterinary Medicine (CVM) concerning approval of applications for animal feeds bearing or containing new animal drugs to designate that the Director and Deputy Director, Division of Animal Feeds, the Chief, Petition Review and Medicated Feeds Branch, and the Medicated Feeds Specialist, Petition Review and Medicated Feeds Branch, all have redelegated authority to approve medicated feed applications.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority to redelegate to the Medicated Feeds Specialist, Petition Review and Medicated Feeds Branch, Division of Animal Feeds, Office of Surveillance and Compliance, CVM, the Chief, Petition Review and Medicated Feeds Branch, Division of Animal Feeds, Office of Surveillance and Compliance, CVM, and the Director and Deputy Director, Division of Animal Feeds, Office of Surveillance and Compliance, CVM, authority to approve medicated feed applications. The amended redelegation in 21 CFR 5.83(d) adds the Deputy Director, Division of Animal Feeds, provides for redesignation of Medicated Feeds Branch as the Petitions Review and Medicated Feeds Branch,

and adds the Medicated Feeds Specialist.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 2421, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. Section 5.83 is amended by revising paragraphs (d) (1) and (2) and by adding a new paragraph (d)(3) to read as follows:

§ 5.83 Approval of new animal drug applications and their supplements.

* * * * *

(d) * * *

(1) The Director and Deputy Director, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

(2) The Chief, Petition Review and Medicated Feeds Branch, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

(3) The Medicated Feeds Specialist, Petition Review and Medicated Feeds Branch, Division of Animal Feeds, Office of Surveillance and Compliance, CVM.

Dated: May 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–10906 Filed 5–13–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Approval of the Abandoned Mine Land Reclamation Plan of the Navajo Nation Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

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

ACTION: Final rule.

SUMMARY: In 1982, the Navajo Nation (the Tribe) submitted its proposed Abandoned Mine Land Reclamation Plan entitled "Navajo Nation Reclamation Plan" (the Plan) to OSMRE under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published notice of its receipt and requested public comments. The comment period closed on November 28, 1983, and no further action was taken at that time due to the lack of authorizing legislation under section 710 of SMCRA.

On July 11, 1987, legislation was enacted that authorized the Crow, Hopi, and Navajo Tribes to adopt abandoned mine land reclamation programs without prior approval of Tribal surface mining regulatory programs. OSMRE reopened the comment period for consideration of adequacy of the Navajo Tribe's Plan. After consideration of the comments received and revisions the Tribe made to the Plan, the Assistant Secretary for Land and Minerals Management of the Department of the Interior has determined that the Navajo Nation Reclamation Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Navajo Plan.

This final rule is being made effective May 16, 1988, in order to expedite the granting of abandoned mine land reclamation funds to the Navajo Nation so that it can implement its AMLR Program and undertake Tribal reclamation projects to protect the public health and safety.

EFFECTIVE DATE: May 16, 1988.

ADDRESSES: Copies of the full text of the Navajo Plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102

Navajo Division of Resources, The Navajo Tribe, Division of Resources Building, Window Rock, AZ 86515

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director of the Albuquerque Field Office, at (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed AMLR Plan
III. Assistant Secretary's Findings
IV. Public Comment
V. Assistant Secretary's Decision
VI. Procedural Matters

I. Background

Title IV of SMCRA establishes an Abandoned Mine Land Reclamation (AMLR) program for the purpose of reclaiming land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed on coal production. Lands and waters eligible for reclamation under Title IV include those that were mined or were affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing responsibility for reclamation under State, Federal, or Tribal laws.

Title IV provides for State or Tribal submittal to OSMRE of an AMLR program. The Secretary adopted regulations in 30 CFR Part 870 through 888 that implement Title IV of SMCRA. Under those regulations the Secretary is required to review reclamation plans and solicit and consider comments of State and Federal agencies and the public. Based on such comments and review, the Secretary will determine if a State or Tribe has the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary may approve a State or Tribal program and grant the State or Tribe exclusive authority to administer its approved program.

Ordinarily, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR program to OSMRE as required by section 405 of SMCRA. However, on July 11, 1987, President Reagan signed legislation that authorized the Navajo, Hopi, and Crow Tribes to obtain Abandoned Mine Land Reclamation programs without prior approval of regulatory programs.

States and Indian Tribes are also allowed to request authority to conduct emergency response reclamation activities. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982, 47 FR

42729 and provide the applicable criteria by which to judge the adequacy of the AMLR Plan provisions. Emergency reclamation activities are set forth in Section 410 of SMCRA. The Navajo Nation's AMLR Plan has requested emergency response authority.

II. Proposed AMLR Plan

The Navajo Tribe submitted a Plan to OSMRE in June 1982. OSMRE conducted a preliminary review at that time, and the Navajo Tribe resubmitted a revised Plan in September 1983. OSMRE requested public comments on the revised draft Plan in the October 28, 1983, **Federal Register**, 48 FR 49870–49872. After receipt of comments and the close of the comment period on November 28, 1983, OSMRE took no further action on the Plan pending authorizing legislation under section 710 of SMCRA.

On July 11, 1987, the President signed a supplemental appropriations Bill, Pub. L. 100–71, which authorized the Navajo, Hopi, and Crow Tribes to obtain AMLR programs without prior approval of surface mining regulatory programs as ordinarily required by section 405 of SMCRA. In response to that legislation, OSMRE notified the Navajo Tribe that it would reopen its review of the Tribe's Plan. OSMRE reviewed the Plan in September 1987 and provided the Tribe with suggestions for revising it to meet the requirements of SMCRA. The Tribe made a number of revisions to the Plan, and OSMRE reopened the public comment period in the December 4, 1987, **Federal Register**, 52 FR 46097–46098. Public comments were received, and the comment period closed on January 4, 1988, without any requests for a hearing or meeting having been received by OSMRE by that date. The Navajo Tribe revised its Plan in accordance with OSMRE's suggestions.

All of the events described above are documented in the Title IV Administrative Record of the Navajo Tribe. That Administrative Record is available for public review at the Albuquerque, New Mexico, address of OSMRE listed above.

The proposed AMLR Plan would provide authority for the Navajo Nation to conduct a reclamation program on Navajo (Indian) lands as that term is defined in section 701(9) of SMCRA (see reference to "Indian lands" in 30 CFR 872.11(b)(3)). Indian lands occur within and outside traditional Reservation boundaries. Although there may be certain jurisdictional limitations to the Tribe's authority to undertake certain reclamation actions outside the Reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its reclamation program without violating the jurisdictional rights of other parties.

III. Assistant Secretary's Findings

The Assistant Secretary finds that the Navajo Tribe submitted a Plan for the reclamation of abandoned mine lands pursuant to the provisions of Pub. L. 100–71 and SMCRA. Based on a review of that submission, the Assistant Secretary also finds that:

1. Adequate provisions were made for public comment in the development of the Plan;

2. Views of other Federal agencies having an interest in the Plan were solicited and considered;

3. The Tribe has the legal authority, policies, and administrative structure necessary to carry out the proposal Plan;

4. The proposed Plan meets all the requirements of Subchapter R of 30 CFR Chapter VII regulations and of SMCRA;

5. The proposed Plan meets all the requirements of all applicable Tribal and Federal laws and regulations;

6. The Navajo AMLR Plan has requested authority to assume emergency response authority as set forth in Section 410 of SMCRA. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982, 47 FR 42729 and provide the applicable criteria by which to judge the adequacy of the proposed Plan. Among the criteria are:

• A legal opinion from the chief legal officer that the designated agency has the authority under Tribal law to conduct the emergency program on Indian lands in accordance with section 410 of SMCRA.

• A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program including:

—The purpose of the emergency reclamation program;
—The coordination of emergency reclamation work;
—Policies and procedures regarding land acquisition;
—Policies and procedures regarding emergency reclamation on private and public land;
—Policies and procedures regarding emergency project rights-of-entry.

• A description of the administrative and managerial structure to be used in conducting the emergency reclamation program including:

—The organization of the designated agency's emergency program;
—A description of the adequacy of staff numbers and technical skills to be committed to the emergency program;
—Administrative procedures for: (a) Investigating and reporting emergency complaints; (b) determining eligibility; (c) obtaining necessary consents or steps for nonconsensual entry; (d) project supervision; and (e) final project inspection;
—The purchasing and procurement systems to be used by the agency which will quickly respond to emergency situations;
—The accounting system to be used by the Tribe;
—The technical capability to design and supervise the emergency work.

• A general description of emergency reclamation activities to be conducted, including known or suspected geographical areas within the State, a map with locations, and a general description of problems occurring.

• A narrative description which supports the Tribe's position that the procedures, personnel, and other proposed aspects of its program give evidence of its abilities to promptly and effectively mitigate the full range of emergency conditions anticipated on Navajo "Indian" lands.

The Navajo Nation's proposed AMLR Plan, including amendments thereto, addresses all Plan requirements specified in 30 CFR 884.13. However, the Tribe's AMLR Plan does not separately and succinctly address the specific criteria specified in the September 29, 1982, **Federal Register** notice concerning assumption of emergency response authority. See 47 FR 42729. Due to this lack of information, the Assistant Secretary is deferring any action on the Navajo Nation's proposal to assume the emergency response authority until additional material can be submitted.

IV. Public Comment

The following comments on the Navajo Nation's Reclamation Plan were received by OSMRE and considered by the Assistant Secretary in making the determination that the Navajo Plan will be approved:

1. One commenter stated that the Notice of Reopening the public comment period does not reflect any limitations upon the Navajo Tribe's implementation of the proposed Plan on off-Reservation areas.

OSMRE responds that the Navajo Plan covers abandoned mine land reclamation on all Navajo Indian lands (see references to "Indian lands" in 30 CFR 872.11(b)(3), 888.11, and page 5 of the Plan). The term "Indian lands" is defined in section 701(9) in SMCRA as

meaning "all lands, including mineral interests, within the exterior boundaries of any Federal Indian Reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian Tribe." Accordingly, Indian AMLR programs are not limited to Reservation boundaries but extend to all Indian lands. The scope of the term "Indian lands" has been expressly discussed in the preamble to OSMRE's AMLR regulations. See 43 FR 49932, 49933, and 49939 (October 25, 1978), and 47 FR 28574, 28580, and 28592 (June 30, 1982).

2. Another commenter stated that OSMRE should specifically limit the applicability of the Tribe's Plan with respect to off-Reservation lands.

OSMRE responds that, as defined in the regulations, an Indian reclamation program encompasses reclamation that occurs on "Indian lands" as that term is defined in section 701(9) of SMCRA (see reference to "Indian lands" in 30 CFR 872.11(b)(3)). Indian lands occur within and outside traditional Reservation boundaries. Accordingly, OSMRE finds that there is no legal basis for further limiting the applicability of the Navajo Tribe's AMLR program.

3. One commenter stated that the Tribal Code and Plan authorizing the Tribe to acquire land by condemnation raises serious questions as to legal authority, asserting that SMCRA was not intended to expand Tribal power over fee landowners. The commenter continued by stating that OSMRE should reject the Code (section 407) and implementing Plan provisions as being beyond Tribal legal authority as applied to off-Reservation land. Moreover, the commenter stated that serious questions as to the legal authority of the Tribe to acquire lands by condemnation arise when fee lands within Reservation boundaries are involved. The commenter added that the Code appears to incorporate a general condemnation provision that exceeds the limited condemnation authority contemplated by section 407 of SMCRA. The commenter concluded that OSMRE should, therefore, reject any assertion by the Tribe of general condemnation authority under the guise of an AMLR Plan.

OSMRE recognzies that there are certain legal limitations to the Navajo Tribe's use of its condemnation authority. Approval of the Tribe's Plan does not create new jurisdictional rights nor should it be perceived as extending existing rights. Condemnation is only one option in abandoned mine land reclamation. If a Tribe lacks the jurisdictional authority to condemn property, then this option obviously would not be available; and it would have to devise other approaches to reclamation. However, Tribal reclamation programs do not attempt to regulate activities; rather, they are concerned with reclaiming lands that have been adversely affected by past mining practices. Reclamation, in this sense, should be viewed as a cooperative effort between landowners and the AMLR agency. The Tribe does not necessarily need the condemnation authority to carry out its approved Plan. If all landowners consented to the reclamation, there would be no need to condemn. If a problem arose concerning jurisdiction, the Tribe has other options, such as contracting with the Federal Government or a State or local agency, to perform the reclamation.

The commenter's concern about an unwarranted extension of jurisdictional rights is unfounded. An AMLR program has a variety of procedures that limit the ability of a State or Tribe to take precipitous action. For example, each State or Tribe undertakes an extensive public education, comment, and review process that includes discussions with all affected landowners prior to the submittal of a reclamation grant request to OSMRE (see 30 CFR 884.13(c)(7) and pages 23 and 24 of the Tribe's Plan). In addition, OSMRE thoroughly reviews all proposed reclamation projects included in State and Tribal grant requests for compliance with the provisions of SMCRA and an approved Plan. Moreover, OSMRE must specifically approve any requests that involve land acquisition (see section 407(c) of SMCRA). All these procedures allow extensive public review of proposed actions and provide parties who may be opposed to any actions ample time to raise their concerns with the reclamation agency, then OSMRE, and if necessary, ultimately the courts. Accordingly, OSMRE believes that the rights of fee landholders inside and outside the boundaries of the Navajo Reservation are not threatened by the approval of the Tribal Plan and that ample procedures exist by which controversial issues will be adequately aired in public, and reviewed by OSMRE, before reclamation is begun. Therefore, OSMRE believes it is not necessary to change the Navajo Plan concerning this issue.

Concerning the Navajo Code provisions, OSMRE reviewed the Tribal condemnation provisions and found them to be consistent with the provisions of section 407(c) of SMCRA. No changes in the Tribal Plan are, therefore, required.

4. Another commenter stated that section 201(d) of the Code provides that the Tribal department administering the reclamation program "shall be and hereby is clothed with the sovereign immunity from suit enjoyed by the Navajo Nation." The commenter stated that, with limited exceptions, judicial review of Tribal action under the Code is not provided and that effective judicial review, comparable to the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* (1982), is not available to persons aggrieved by Tribal action.

OSMRE believes that any person who might be aggrieved by Tribal action has the right to seek appropriate protective measures in a court of competent jurisdiction. The AMLR program, however, has a variety of procedures designed to internally resolve problems prior to seeking legal remedies. For example, the Tribal Plan requires extensive public review and scrutiny of proposed projects, including personal contact with local officials and all potentially affected landowners (Navajo AMLR Plan, pages 23–24). In addition, OSMRE reviews each grant request to ensure that the requirements of SMCRA and the implementing regulations are achieved. Finally, the Navajo Tribe is prevented from taking expeditious nonconsensual action (see Navajo AMLR Plan, pages 8–16). Accordingly, OSMRE believes that the Navajo Plan is consistent with the requirements of SMCRA and the Secretary's implementing regulations. OSMRE also believes that the Tribe has provided ample opportunity for public comment and review and that any landowners potentially aggrieved by Navajo reclamation have ample time to raise the jurisdictional issue in a court of competent jurisdiction prior to the actual commencement of reclamation.

5. One commenter asserted that the Tribe's AMLR program is not properly limited to reclamation of lands affected by coal mining. As such, the commenter believed that the Tribe's program exceeds the authority provided in SMCRA.

OSMRE responds that section 409 of SMCRA and 30 CFR Part 875 of the Secretary's regulations provide authority for State and Tribal reclamation programs to use AMLR funds to reclaim lands adversely affected by past noncoal mining activities. Accordingly, no change is required in the Plan (see 47 FR 28574, 28582, June 30, 1982).

6. Another commenter stated that the Notice of Reopening provides no information as to the scope of the proposed Tribal program to put

interested persons on notice that Plan approval could affect off-Reservation lands. The commenter also stated that any proposal to approve the Tribe's assertion of authority outside the Reservation raises sensitive and complicated jurisdictional issues and should be the subject of separate proceedings in which the position of the Tribe and OSMRE are stated specifically to allow interested persons full notice and an opportunity to be heard.

OSMRE notes that approval of the Tribe's Plan would provide authority for the Tribe to conduct reclamation activities on Indian or Tribal lands as that term is defined in section 701(9) of SMCRA. Since 1978, OSMRE's regulations have consistently provided that Indian AMLR programs cover "Indian lands," not Indian Reservations (see 43 FR 49932, October 25, 1978, preamble discussion to Part 872—comment No. 4 and Part 888—comment No. 1; see also 47 FR 28574, June 30, 1982, preamble discussion to § 872.11(b)(3) and Part 888). Accordingly, OSMRE believes that there has been adequate public notice, that the use of the term "Indian lands or Tribal lands" in the Navajo AMLR Plan is correct, and that no further modification of the Plan is necessary.

7. Another commenter believes that the Tribe's program appears to assert authority over non-Indian mineral interests underlying Tribal or possibly allotted surface ownership. The commenter stated that these split-estate matters should be addressed by OSMRE specifically and that fee lands, including all split-estates, should be excluded from the Tribe's program.

OSMRE stated above that the Tribe's Plan covers reclamation activities on "Indian lands." The definition of Indian lands in section 701(9) of SMCRA covers split-estates. The Tribe's ability or authority to conduct reclamation activities, however, does not create or extend its jurisdictional authority over non-Indian mineral interests or over other off-Reservation lands. The ability to contract and conduct reclamation efforts is not meant to imply new regulatory control over off-Reservation lands.

8. One commenter stated that the Settlement Agreement entered in August 1985 between the U.S. Department of the Interior, the State of New Mexico, and others, in *New Mexico v. U.S. Department of the Interior*, U.S.D.C. No. 84-3572 (D.D.C. 1985), provides that allotted lands outside the boundaries of an Indian Reservation are not considered by the Secretary of the Interior to be "Indian lands" as defined in section 701(9) of SMCRA. The commenter concluded that approval of the Tribe's Plan in its present form would contravene the Settlement Agreement, insofar as the Plan asserts Tribal jurisdiction over all lands, including allotments in the "checkerboard area" to the east and south of the Reservation.

OSMRE responds that in September 1984, the Secretary promulgated regulations establishing a Federal program for the regulation of surface coal mining and reclamation operations on Indian lands. The State of New Mexico challenged a provision in those regulations which provides for the Secretary's exclusive regulatory jurisdiction over surface mining operations on Indian lands. The Navajo Tribe intervened in the New Mexico action, requesting that the Secretary's regulations be upheld. The Tribe also filed a counterclaim against New Mexico seeking a declaratory judgment that certain lands in the State are Indian lands under SMCRA and that New Mexico has no regulatory jurisdiction over surface mining on them. The Secretary and New Mexico ultimately entered into a Settlement Agreement in which New Mexico agreed that the Secretary is the exclusive regulatory authority on Indian lands within the State. The Navajo's counterclaim, however, remained before the District Court. In November 1985, the U.S. District Court for the District of Columbia dismissed the Navajo's counterclaim. In February 1986, the Tribe appealed the decision of the District Court. On June 5, 1987, the U.S. Court of Appeals for the D.C. Circuit affirmed the District Court's dismissal of New Mexico's complaint but returned the Navajo's counterclaim to the District Court with instructions to transfer the case to the district court in New Mexico, which would have authority to decide the jurisdictional issues raised by the Tribe. See *New Mexico ex. rel. Energy and Minerals Department v. U.S. Department of the Interior*, No. 85-6165 (D.C. Cir. June 5, 1987).

By approving the Tribe's AMLR program, the Secretary provides the Navajo Tribe with the exclusive responsibility for reclamation on "Indian lands" consistent with the Settlement Agreement. OSMRE, however, realizes that there is on-going litigation to determine what encompasses the full scope of the term "Indian lands." OSMRE does not believe that such litigation should stop or curtail the Navajo Tribe's AMLR program. OSMRE's approval of the Navajo program covers Navajo "Indian lands" as that term is defined in section 701(9) of SMCRA. If the scope of this term is further defined by future litigation, OSMRE will make the necessary changes in the Navajo AMLR program.

9. Two commenters stated that the Tribal AMLR program contemplates the imposition of Tribal reclamation fees, separate and apart from the Federal reclamation fees described in 30 U.S.C. 1232(a), which are not authorized by SMCRA. The commenters concluded that any effort by the Tribe to impose its own reclamation fees exceeds the authority the Secretary is authorized to grant the Tribe under SMCRA.

OSMRE responds that section 402 of the Navajo Tribal Code deals specifically with the transfer of monies from the Abandoned Mine Land Fund administered by the Department of the Interior. Accordingly, the Navajo Plan does not impose a Tribal reclamation fee separate and apart from the Federal reclamation fee described in 30 U.S.C. 1232(a) nor is it authorized to do so under SMCRA. OSMRE consulted the Navajo Tribe, and the Tribe agrees that the Plan does not authorize an AMLR fee. Accordingly, no change to the Plan is necessary.

10. Another commenter stated that the opinion of the Navajo Tribe Attorney General that appears in the Plan does not conform to the requirements of 30 CFR 884.13(b) and fails to demonstrate the Tribe's authority to conduct its program outside the boundaries of the Reservation. The commenter also stated that the opinion fails to demonstrate that the Tribe has the broad condemnation authority the Code asserts over non-Indian lands. In addition, the commenter noted that the opinion refers to the Navajo Coal Mining Commission as the Tribal agency that will administer the program, whereas the Code provides that a new department, called the Abandoned Mine Lands Reclamation Department, was created to administer the Tribal program. Accordingly, the commenter asserts that the legal opinion is not in conformance with OSMRE's regulations. The commenter stated that the Tribal Chairman's designation and certain administrative and management structures are outdated and should be revised.

OSMRE notes that, since 1982 when the Navajo Plan was first submitted to OSMRE, the Navajo Nation has undergone a number of changes. The Tribe submitted additional material during the comment period to update the Plan that OSMRE reviewed that is the subject of this approval. OSMRE believes the legal opinion meets the requirements of 30 CFR 884.13(b) insofar

as it provides that the Tribe has the authority necessary to conduct its reclamation program in conformance with Title IV of SMCRA and the Secretary's implementing regulations. OSMRE recognizes that the Navajo Tribe may lack authority to use certain reclamation options on off-Reservation properties. However, the possible lack of authority to use certain reclamation options does not, and should not, invalidate the Tribe's ability to contract and carry out reclamation activities on such lands. With the consent of the landowners and mineral owners involved, the Tribe certainly has the authority to design, fund, and oversee all reclamation activities on any "Tribal lands." Accordingly, OSMRE believes that the legal opinion is sufficient and that the Tribe does have the authority and ability to conduct reclamation activities on Indian lands.

11. One commenter stated that the Tribe's proposed program appears to create overlapping jurisdictional problems with the State of New Mexico. The commenter stated that New Mexico administers a federally approved AMLR program and undertakes reclamation projects within the geographical area over which the Tribes seeks authority. The commenter believes that this conflict should be addressed specifically in a proper OSMRE notice or proposal so that the State and other interested persons can comment.

OSMRE finds that the State of New Mexico's approved AMLR program does not include "Indian lands." Accordingly, there is no overlap of responsibility between the two programs. Moreover, the coordination provisions of both the Navajo and New Mexico AMLR Plans require coordination of reclamation activities.

12. One commenter objected to provisions on page 30 of the Plan concerning certain Navajo procurement practices. The Navajo Tribe has agreed to delete paragraph No. III C. 2 on page 30 and Appendix 7 and to abide by all applicable Federal and Tribal laws, regulations, and requirements concerning the use of grant funds.

V. Assistant Secretary's Decision

The Assistant Secretary for Land and Minerals Management, based on the above findings and review and consideration of public comments, is approving under the provisions of 30 CFR 884.14 the Navajo Nation's AMLR Plan as submitted in September 1983, and revised in February 1988. A new Part 756 is being added to 30 CFR Chapter VII, Subchapter E—Indian Lands Program—to implement this decision. This approval, however, does not encompass the emergency response authority set forth in section 410 of SMCRA. Action on the emergency response program is being deferred until further documentation, consistent with the findings above, is submitted.

VI. Procedural Matters

1. Executive Order 12291 and the Regulatory Flexibility Act

OSMRE has examined this final rulemaking under Executive Order 12291 and has determined that on November 23, 1987, the Office of Management and Budget granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order No. 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, the action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Department of the Interior determined that the rule will not have significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

2. Compliance with the National Environmental Policy Act

Furthermore, OSMRE determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

3. Paperwork Reduction

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 756

Indian lands, Abandoned Mine Land Reclamation Program.

Dated: May 9, 1988.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Acordingly, Part 756 is added to 30 CFR Subchapter E—Indian Lands Programs to read as follows:

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

Sec.

756.1 Scope.
756.13 Approval of the Navajo Nation's Abandoned Mine Land Plan.

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

§ 756.1 Scope.

This part implements the provisions in Public Law 100–71 which authorize the Crow, Hopi, and Navajo Tribes to obtain the Secretary's approval of Abandoned Mine Land Reclamation programs without prior approval of surface mining regulatory programs as ordinarily required by section 405 of SMCRA.

§ 756.13 Approval of the Navajo Nation's Abandoned Mine Land Plan.

The Navajo Nation's Abandoned Mine Land Plan as submitted in June, 1982, resubmitted in September, 1983, and amended in February, 1988, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102

Navajo Division of Resources, The Navajo Tribe, Division of Resources Building, Window Rock, AZ 86515

[FR Doc. 88–10719 Filed 5–13–88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R, Amdt. No. 9]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Eligibility of Adult Adoptees for Medical Benefits

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This amendment clarifies the intent of title 10, U.S.C. 1072(2), concerning eligibility of adopted children. This amendment is necessary to ensure that reasonable limits are placed on CHAMPUS eligibility. This clarification will result in uniform eligibility determinations corresponding to the intend of Congress. This amendment is combined with previously submitted amendment 9 appearing in the **Federal Register** on April 22, 1988 (53 FR 13258). Both documents are the body of Change 9 to DoD 6010.8–R.

EFFECTIVE DATE: May 16, 1988.

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

FOR FURTHER INFORMATION CONTACT: A. Chris Armijo, Office of Program

Development, OCHAMPUS, telephone (303) 361-3630.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

Section 199.3 discusses eligibility for CHAMPUS benefits and states that a dependent child may receive medical benefits beyond age 21 when that child has a pre-existing condition which renders him or her incapable of self-support. The incapacity must be continuous. If the incapacity significantly improves or ceases at any time after age 21, even if such incapacity subsequently recurs, CHAMPUS eligibility cannot be reinstated.

Recently, some confusion has arisen on cases involving adoption of an adult dependent (over the age of 21) by a military sponsor, where an incapacity existed prior to the age of 21.

Accordingly on March 2, 1984, in FR Doc. 84-5367 (49 FR 7837), we published a notice of proposed rulemaking for public comment. All comments received were favorable to the proposed amendment. One commenter suggested that the proposed rule might be misleading because it would affect only incapacitated adoptees and not full-time student adoptees. The amendment, as published, defines "adopted child" in general and, therefore, applies to all adoptees including full-time student adoptees. We accepted the suggestion of another commenter to clarify the language of the heading under Section 199.3, (b)(2)(iv)(B). The heading now reads, "*Child of retiree, or of deceased member, or of deceased retiree.*"

Governing directives have generally been perceived as a continuation of benefits to dependents entitled prior to age 21. To be consistent with the intent of the law and to ensure uniformity, a provision is being added which clarifies that a dependent adopted after the age of 21 is not eligible for CHAMPUS. The effect of this change to the regulation is prospective beginning with the effective date of publication in the **Federal Register**. This revision will preclude, for CHAMPUS eligibility, individuals adopted after their 21st birthday.

This rule was written primarily to clarify the intent of Congress, and will affect only a small category of individuals. We, therefore, certify that this amendment will not have a significant impact on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR Part 199, is amended as follows:

PART 199—[AMENDED]

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

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

2. Section 199.3, paragraph (b)(2)(iv)(A)(*2*), the heading of (b)(2)(iv)(B), and paragraph (b)(2)(iv)(B)(*2*) are revised to read as follows:

§ 199.3 Eligibility

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) *Child of active duty member.*

(*1*) * * *

(*2*) An adopted child whose adoption has been legally completed. For eligibility under this provision, adoption must take place on or before the child's twenty-first birthday.

* * * * *

(B) *Child of retiree, or of deceased member, or of deceased retiree.*

(*1*) * * *

(*2*) An adopted child whose adoption has been legally completed. For eligibility under this provision, adoption must take place on or before the child's twenty-first birthday.

* * * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1988.

[FR Doc. 88-10869 Filed 5-13-88; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3588/R952; FRL-3380-6]

Poly-D-Glucosamine (Chitosan); Exemption From The Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biochemical growth regulator poly-*D*-glucosamine (hereafter referred to as chitosan) when used as a seed treatment in or on barley, oats, peas, and beans. This exemption was requested by Natural Ag, Division of Bentech Laboratories, Inc.

EFFECTIVE DATE: Effective on May 3, 1988.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Richard F. Mountfort, Product Manager (PM-23), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 3, 1988 (53 FR 3074), which announced that Natural Ag, Division of Bentech Laboratories, Inc., 635 Water Avenue NW., Albany, OR, had submitted a pesticide petition (PP) 8F3588 to EPA, proposing that an exemption from the requirement of a tolerance be established for residues of the biochemical plant growth regulator chitosan when used as a seed treatment in or on barley, oats, peas, and beans.

Chitosan is a naturally occurring substance produced from chitin extracts of crustacean shells (e.g., crab, shrimp, and lobster). The product is intended for use in treatment of seed prior to planting. Plant root growth is stimulated and stem strength enhanced, helping to prevent lodging (when the plants falls over because weak stems are unable to support it) in oats and barley. Plants which lodge are difficult to harvest; therefore, yields may be decreased. In peas and beans, chitosan's mode of activity involves augmenting the function of plant genes by enhancing the immunity system.

The chemical is taken up by plant cells where it enters the nucleus and stimulates messenger RNA and enzyme production. In the case of barley and oats, such enzymes are thought to be responsible for stimulating the plant to produce more lignin in the stems, resulting in stronger stems and decreased lodging. In peas and beans, the plants are stimulated to produce substances which inhibit the growth of pathogenic fungi.

The Agency considered the following factors in support of this request for exemption from requirement of a tolerance: Chitosan (1) is not toxic, as

demonstrated in acute toxicity studies in mice, rats, and rabbits; (2) is naturally occurring in the environment in large concentrations; (3) has been exempted from the requirement for a tolerance in or on wheat (40 CFR 180.1072) when used as a seed treatment at an application rate of 4 oz./100 lbs. seed; (4) has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act. Certain chitin-based products are permitted to be used in foods as hypocholesterolemic agents, as dietary fiber in low-calorie diets, and as agents to increase the specific loaf volume of bread.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this exemption request. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

Chitosan is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: May 3, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

2. Section 180.1072 is revised to read as follows:

§ 180.1072 Poly-D-glucosamine (chitosan); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical plant growth regulator poly-*D*-glucosamine when used as a seed treatment in or on barley, beans, oats, peas, and wheat.

[FR Doc. 88-10877 Filed 5-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 88-137]

Order Revising Procedural Rule Defining Who May Sign Common Carrier Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revises § 1.743(b) of its Rules to allow an attorney to sign a common carrier application for an applicant who is absent from the United States. This revision brings the signature rule for common carrier applications into conformity with the signature rules for broadcast and private radio applications.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau; Telephone: 202-632-6450.

ORDER

Adopted: April 7, 1988; Released: April 27, 1988.

By the Commission.

1. The common carrier, broadcast, and private radio services are each governed by specific Commission Rules which explain who may sign applications seeking FCC authorization in those services. The relevant rule sections are § 1.743 for common carrier, § 73.3513 for broadcast, and § 1.913 for private radio. The language of the above rule sections (henceforth, the signature rules) is nearly identical except for the language of subsection (b) of each rule. Subsections (b) are similar in that they allow an attorney to sign an application, or amendment thereto, for an applicant if the applicant is physically disabled. The subsections differ in that an attorney for a broadcast or private radio applicant may sign an application for his client if the applicant is absent from the United States, whereas the attorney for a common carrier applicant may sign for the applicant only if the applicant does not reside in the contiguous 48 States of the United States or the District of Columbia. *Compare* § 73.3513(b) (broadcast) and § 1.913(b) (private radio) with § 1.743(b) (common carrier).

2. We do not perceive any reason for the foregoing inconsistency in our Rules. Moreover, this inconsistency in the signature rules has apparently confused some common carrier applicants, who have allowed their attorneys to sign their applications, or amendments thereto, for them when they were absent from the United States. Such an action is clearly authorized in the broadcast and private radio services, but is not allowed in the common carrier services. The confusion generated by the current inconsistency in the signature rules has resulted in litigation and has generally delayed the provision of service to the public. In view of these considerations, we have decided to revise § 1.743(b) of the Rules to provide that attorneys may sign applications, amendments thereto and related statements of fact for common carrier applicants when those applicants are absent from the United States. This revision will bring § 1.743(b) of the Rules, which governs the signing of common carrier applications, into conformity with §§ 73.3513(b) and 1.913(b) of the Rules, which govern the signing of broadcast and private radio applications, respectively. We believe these rules are consistent with section 308(b) of the Communications Act of 1934, as amended. In addition, this revision will avoid the delays encountered over signature problems under the current version of § 1.743(b) and thus further the Commission's goal of providing service to the public in the most efficient, expeditious manner possible.

3. Authority for this revision of our Rules and Regulations is contained in sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and (j) and 303(r). Because this revision relates to a matter of procedure, the provisions of 5 U.S.C. 553 are not applicable.

4. Accordingly, it is ordered, that on the date that this Order is published in the **Federal Register**, § 1.743(b) of the Commission's Rules and Regulations is revised as set forth below.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Rule Change

Part 1 of 47 CFR is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

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

2. Section 1.743 is amended by revising paragraph (b) to read as follows:

§ 1.743 Who may sign applications.

* * * * *

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

* * * * *

[FR Doc. 88-10837 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-519; RM-6072]

Radio Broadcasting Services; Boulder City, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rock 'N Roll, Inc., substitutes Channel 288C2 for Channel 288A at Boulder City, Nevada, and modifies its license for Station KRRI to specify the higher powered channel. Channel 288C2 can be allocated to Boulder City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 35-58-42 and West Longitude 114-50-18. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-519, adopted April 6, 1988, and released May 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Nevada is amended by amending the entry for Boulder City, Nevada, by removing Channel 288A and adding Channel 288C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10839 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-500; RM-6050]

Radio Broadcasting Services; Copenhagen, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kevin O'Kane, allocates Channel 294A to Copenhagen, New York, as the community's first local FM service. Channel 294A can be allocated to Copenhagen in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4 miles) south to avoid a short-spacing to unused and unapplied for Channel 293A at Brockville, Ontario, Canada. The coordinates for this allotment are North Latitude 43-50-05 and West Longitude 75-40-20. Canadian concurrence has been received since Copenhagen is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective June 20, 1988. The window period for filing applications will open on June 21, 1988, and close on July 21, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-500, adopted April 7, 1988, and released May 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York is amended by adding the following entry: "Copenhagen, Channel 293A."

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10840 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 70345-8026]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

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

ACTION: Final Rule.

SUMMARY: NOAA issues this final rule to implement a portion of Amendment 1 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP). Measures implemented by this rule: (1) Change the dates of the two-day non-trap recreational season and the beginning of the regular season; (2) remove a daily boat limit of 24 spiny lobsters during the two-day non-trap recreational season; (3) provide for a ten-day extension of the period for trap removal after the season closes, under certain circumstances; and (4) revise the requirements for holding undersized spiny lobsters for use as attractants. The intended effects of the rule are to prevent overfishing of the spiny lobster stocks, to rebuild and maintain the stocks at a maximum sustainable yield level through protection of undersized lobsters, and to provide for more consistent State and Federal management measures.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP and its regulations at 50 CFR Part 640 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This rule implements five conditionally approved measures contained in Amendment 1 to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). A notice of availability of the amendment and request for comments was published on February 25, 1987 (52 FR 5564). A proposed rule to implement Amendment 1 was published on March 18, 1987 (52 FR 8485). A notice of availability of a minority report on the amendment by some members of both Councils was published on April 3, 1987 (52 FR 10780; corrected at 52 FR 13257, April 22, 1987). A final rule to implement a part of Amendment 1 was published on June 15, 1987 (52 FR 22656; corrected at 52 FR 23450, June 22, 1987).

The FMP manages the spiny lobster fishery throughout the exclusive economic zone (EEZ) off the South Atlantic coastal States from the Virginia/North Carolina border south and through the Gulf of Mexico. The management unit for the FMP consists of the spiny lobster, *Panulirus argus*, and the slipper (Spanish) lobster, *Scyllarides nodifer*.

The preamble to the proposed rule contained information on the fishery, discussed problems in the fishery, discussed the proposed regulatory changes, and analyzed the benefits of the proposed changes. That information is not repeated here.

The preamble to the final rule responded to written comments on the proposed rule and Amendment 1, approved Amendment 1, and discussed procedures for implementing delayed measures. That information is not repeated here.

Implementation of Delayed Measures

Five measures, whose conditions for implementation have been met either by changes in Florida's laws or by resolution of the Coast Guard's vessel safety concerns, are as follows:

1. Change the two-day non-trap recreational fishery from the first full weekend preceding July 21 to the first full weekend preceding August 1.

2. During the two-day non-trap recreational season, remove the daily limit of 24 lobsters per boat, leaving a daily bag and possession limit of six spiny lobsters per person.

3. Change the opening of the regular season from July 26 to August 6.

4. Provide for a ten-day extension of the period for trap removal after the season closes, under certain circumstances.

5. Require the use of live wells on vessels when undersized spiny lobsters are held for use as attractants in traps.

On June 2, 1987, Florida approved new spiny lobster regulations that, among other things, (1) changed the dates of their two-day sport season and the opening date of the regular season, beginning in 1988; (2) provided for extension of the period for removal of traps from the water at the end of the season, up to a maximum of ten days; and (3) established a daily bag and possession limit of six spiny lobsters per person during the two-day sport season. Thus, the conditions for implementing corresponding measures from Amendment 1 to the FMP have been met.

The safety aspects of the use of live wells have been examined in consultation with the Naval Architecture Branch, Office of the Commandant, U.S. Coast Guard. It is recognized that the installation and use of a live well, as with any structural modification, may affect vessel stability. However, the significance of the effect will depend on a vessel's inherent stability, the amount and location of the added weight, and the "free surface effect" of enclosed liquids. The following excerpt from the Coast Guard's Navigation and Vessel Inspection Circular No. 5-86, "Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels", discusses the effects of modifications on a fishing vessel's stability:

1. Nearly all of the fishing vessel casualties investigated by the Coast Guard involve vessels in which one or more modifications have been made. Typically, the changes have not been documented nor has the stability of the vessel been reevaluated in order to provide updated stability information to the operator. In most cases, the modifications consist of adding deck equipment, such as winches, A-frames, or other fishing gear, adding or modifying deckhouses, or changing out engines. Where modifications have been made, they have generally increased the displacement of the vessel, resulting in a decrease in reserve buoyancy. In many cases, these changes have also substantially increased the VCG [vertical center of gravity] of the vessel. Both of these actions adversely affect the stability of the vessel.

2. So that operators and naval architects alike will recognize the extent of stability analysis needed following modification, the Coast Guard offers the following recommendations:

a. If the cumulative total of weights added plus weights removed in less than one percent of the original lightship weight,[1] no inclining experiment or deadweight survey is required. A weight summation may be used to adjust the stability information to the operator.

b. If the cumulative total of weights added plus weights removed is between one and ten percent of the original lightship weight, then a corrected lightship weight, VCG and LCG [longitudinal center of gravity] should be calculated based on the weight summation and then verified by a deadweight survey. If the results of the deadweight survey show a change in the lightship displacement of more than ten percent or a change in the LCG of more

[1] "Lightship weight" means the displacement of the vessel with fixed ballast and with machinery liquids at operating levels but without any cargo, stores, consumable liquids, or fuel, water ballast, or persons and their effects.

than one percent of the LBP [length between perpendiculars], then an inclining experiment should be conducted.

c. If the cumulative total of weights added plus weights removed is greater than ten percent of the original lightship weight, a new inclining experiment is recommended.

d. As an example, assume a fishing vessel whose lightship displacement is 100 tons. During a conversion, 8 tons are added and 12 tons are removed. Because the total of weights added and removed, 20 tons, is greater than ten percent of the lightship weight, a new inclining and stability analysis should be completed.

3. Operators should be aware that weight summation calculations are only as good as the weight, VCG, and LCG estimates. The Coast Guard's experience has been that many of these estimates are not accurate enough because some items are overlooked or weights, VCG, and LCG values are incorrect. Thus, the operator should keep a record of the weights added and removed. The record should include the estimated weight, the distance from a known longitudinal reference point such as a bulkhead or the end of a deck house and the distance above a known vertical reference point, such as the main deck. When the record book shows that the sum of the weights added and removed exceeds one per cent of the original lightship weight, a new stability analysis should be conducted.

4. The Coast Guard also recommends that surveyors take photographs at each survey so that changes to the vessel can be readily detected and the need for a new stability analysis thoroughly evaluated. Likewise, the Coast Guard recommends that designers maintain plans and calculations which indicate the vessel's configuration and the equipment on board at the time of the most recent inclining experiment and stability analysis.

5. Vessels also have a tendency to "grow" in displacement over a period of a few years. This may be due to new equipment brought aboard the vessel, additional stores and spare parts not accounted for, or piecemeal modification. Although few of these changes have a major effect by themselves, they do have a cumulative effect. As a check, operators should record the actual draft or freeboard readings for a particular loading condition (i.e. departure condition) at least every six months to ensure that the vessel has not added unaccounted weights. If these readings changed more than two inches from the original readings, then the operator should ask for a new stability evaluation. Painted lines, such as waterlines or boot toppings, should not be used since these may change when the vessel is repainted.

The effect of free surface on stability depends principally on the level of liquid in the well and its length/breadth ratio. That is, a well that is either empty or a closed well that is completely full will have less adverse effect on stability than a well that is partially full; and the transverse orientation of a rectangular live well is more critical to stability than its longitudinal orientation. For a full discussion of these and other vessel stability considerations, as well as other vessel safety considerations, owners and operators may obtain a copy of "Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels", NVIC No. 5–86, from U.S. Coast Guard Marine Safety Center, 2100 Second St. SW., Washington, DC 20593, at a cost of $11.00.

There is no basis for concluding that the installation and use of a live well, by itself, will endanger a vessel in the spiny lobster fishery. Stability-related vessel accidents are not indicated as being a present problem in this fishery. Fishermen are not pressured to operate in marginal weather conditions under present management measures. Further, the fishery is restricted to daylight hours, is generally close to shore, and is conducted on a day-to-day schedule. A vessel owner or operator, however, should seek the advice of a naval architect on any significant changes in vessel configuration or loading.

Three measures from Amendment 1 to the FMP remain unimplemented, namely, (1) the requirement for a permit to harvest commercial quantities of spiny lobsters, (2) the requirement for a permit to wring tails from spiny lobsters taken in the commerical fishery, and (3) the establishment of a recreational bag limit during the regular season. The latter two measures hinge on the commercial permit, which is necessary to distinguish between commercial and recreational harvesters. Florida's management regime does not provide a meaningful way of distinguishing between these groups.

Changes from the Proposed Rule

In §§ 640.2 and 640.22(b), the term "live well" is substituted for "live box" more clearly to describe the container required for undersized spiny lobsters held for use as attractants in traps. The definition of "live well" is revised to include the requirement that it be shaded, a requirement previously contained at § 640.22(b). Further, the definition provides for continuous circulation of seawater, more clearly to express the requirement of Amendment 1 that a live well be part of an "open system", i.e., open to the sea. Finally, the definition is modified to explain that seawater circulated at a rate that replaces the water at least every 8 minutes meets the requirement for aeration. The underlying principle for aeration of water in a live well is to prevent deoxygenation of the water and the resulting increased mortality of spiny lobsters held therein. However, seawater that is circulated in an open system at a sufficiently high rate does not need independent aeration—the process of such circulation aerates. Aeration through the prescribed rate of circulation obviates the necessity of alternative methods of aeration, such as spraying the seawater through air or bubbling air through the seawater, both of which are more cumbersome and expensive and less efficient. The concept of aeration through circulation at the rate of 8 minutes for complete seawater replacement was developed by the Florida Marine Fisheries Commission through a process which included public hearings. Individual fishermen and representatives of fishermen's organizations who were present at those hearings supported the concept. Sping lobster fishermen will benefit from this change since it clarifies that the State standard satisfies this Federal requirement.

In §§ 640.7 and 640.21(c), specific prohibitions are added which clarify the intent of the existing regulations to hold a vessel operator responsible for the cumulative recreational catch limit applicable to the vessel and to prevent transfer at sea of spiny lobsters caught under the recreational catch limit. These prohibitions enhance substantive provisions of the regulations and will facilitate effective enforcement.

In §§ 640.7 and 640.20(a)(3), a prohibition and a requirement are added relating to the extension of the trap removal period at the end of the regular season. In addition, in § 640.20(a)(3), the procedures for obtaining an extension of the trap removal period are simplified by using the procedures established by Florida for its waters. These changes will enhance enforcement and provide fishermen with uniform standards and procedures to follow whether their traps are in the EEZ or State waters.

Classification

The Regional Director determined that Amendment 1 is necessary for the conservation and management of the spiny and slipper lobster fishery of the Gulf of Mexico and the South Atlantic

and that it is consistent with the Magnuson Act and other applicable law.

The Councils prepared an environmental assessment for the amendment and the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant impact on the environment as a result of the amendment's management measures, which are, in part, implemented by this rule.

The Administrator of NOAA determined that this rule is not a "major rule", requiring a regulatory impact analysis under Executive Order 12291. The amendment's management measures are designed to increase current landings, enhance productivity of the stock, and prevent overfishing of the spiny and slipper lobster stock. The major benefits from the amendment are greater than the associated Federal costs to manage the fishery on a continuing basis. The Councils prepared a supplemental regulatory impact review which concluded that the management measures contained in this rule will increase the likelihood of achieving the projected benefits described in the FMP through more effective enforcement and a reduction in mortality of undersized lobsters. No regulatory-induced price increases or Federal enforcement costs should occur.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it will not significantly reduce harvest levels, alter current fishing practices, or impose significant new costs on the industry. As a result, a regulatory flexibility analysis was not prepared.

The proposed rule contained a collection of information requirement subject to the Paperwork Reduction Act; however, § 640.4, which contained that collection of information requirement, is not being implemented now. Approval from the Office of Management and Budget will be obtained before § 640.4 is implemented.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, Mississippi, and South Carolina agreed with this determination. Alabama and North Carolina did not respond; therefore, consistency is automatically implied. Georgia and Texas do not have approved coastal zone management programs.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 10, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR Part 640 is amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 640 continues to read as follows:

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

2. In § 640.2, the definition for *Live box* is removed and the definition for *Live well* is added in its place to read as follows:

§ 640.2 Definitions.

* * * * *

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

* * * * *

3. In § 640.7, the word "or" at the end of paragraph (a)(20) is removed; the period at the end of paragraph (a)(21) is removed and a semicolon is added in its place; and new paragraphs (a)(22), (a)(23), and (a)(24), are added to read as follows:

§ 640.7 General prohibitions.

(a) * * *

(22) Operate a vessel that fishes for spiny lobster in the EEZ with spiny lobster aboard in excess of the cumulative recreational catch limit, as specified in § 640.21(c)(3);

(23) Transfer at sea in the EEZ spiny lobster caught under the recreational catch limit specified in § 640.21(c) from a fishing vessel to any other vessel or to so transfer at sea any such spiny lobster taken from the EEZ; or

(24) Fail to have on board or present for inspection an extension authorization, as required under § 640.20(a)(3).

* * * * *

4. Section 640.20 is revised to read as follows:

§ 640.20 Seasons.

(a) *Fishing season.* (1) The commercial and recreational fishing season for spiny lobster begins on August 6, one hour before official sunrise, and ends on March 31, one hour after official sunset.

(2) Prior to the season, spiny lobster traps may be placed in the water one hour before official sunrise on August 1 (soak period).

(3) After the season, traps must be removed from the water by one hour after official sunset on April 5 (removal period) unless an extension to the removal period is granted by Florida in accordance with Chapter 46-24, Spiny Lobster (Crawfish) and Slipper Lobster, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code. The extension authorization must be carried abroad the boat retrieving the traps and must be presented for inspection upon request of an authorized officer.

(4) Except as provided in paragraphs (a)(2) and (a)(3) of this section, no trap may be transported on the waters of the EEZ during the period from one hour after official sunset on March 31 to one hour before sunrise on August 6.

(5) A spiny lobsete trap, buoy, or rope in the management area at times not authorized in this paragraph will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such a trap remains subject to appropriate civil penalties.

(b) *Special non-trap recreational fishery.* There is a special non-trap recreational fishing season on the first full weekend preceding August 1 from 0001 hours, Saturday, until 2400 hours, Sunday.

(c) *Possession.* Spiny lobsters or any parts thereof may be possessed in the EEZ only during the seasons specified in paragraphs (a)(1) and (b) of this section, unless accompanied by a proper bill of landing or other proof indicating lawful harvest outside the EEZ. Holding a spiny lobster in a trap while in the water during the soak period or during the removal period, or an extension thereto, will not be deemed possession provided such spiny lobster is returned immediately to the water unharmed whenever a trap is removed from the water during these periods.

5. In § 640.21, paragraph (c) is revised to read as follows:

§ 640.21 Harvest limitations.

* * * * *

(c) *Recreational catch.* (1) During the special non-trap recreational season described in § 640.20(b), the daily catch and possession of spiny lobsters in or

from the EEZ is limited to six per person.

(2) A person who fishes for spiny lobster in the EEZ may not combine the recreational catch and possession limit of paragraph (c)(1) of this section with any bag or possession limit applicable to State waters.

(3) The operator of a vessel that fishes for spiny lobster in the EEZ during the special non-trap recreational season is responsible for the cumulative recreational catch, based on the number of persons aboard, applicable to that vessel.

(4) A person who fishes for or possesses spiny lobsters under the recreational catch and possession limit specified in paragraph (c)(1) of this section may not transfer spiny lobsters at sea from a fishing vessel to any other vessel.

6. In § 640.22, paragraph (b) is revised to read as follows:

§ 640.22 Size limitations.

* * * * *

(b) *Attractants.* A live lobster under the minimum size may be retained for use as an attractant in a trap provided it is held in a live well abroad the vessel. No more than 100 undersized lobsters may be carried on board for use as attractants. The live well must provide a minimum of 3/4 gallons of seawater per spiny lobster.

[FR Doc. 88-10912 Filed 5-11-88; 4:00 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 94
Monday, May 16, 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

Farmers Home Administration

7 CFR Part 1946

Agricultural Loan Mediation Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule adds a new regulation to implement subtitles A and B of Title V of the Agricultural Credit Act of 1987 (Pub. L. 100–233), enacted on January 6, 1988. This new legislation requires certification of a State's agricultural loan mediation program in order for Farmers Home Administration (FmHA) and other agencies of the Department of Agriculture to participate in mediations conducted pursuant to a State's agricultural loan mediation program, and to enable a State to receive a Federal matching grant(s) to be used for the operation and administration of the program. The intended effect of this action is to establish procedures for certification and for administering the matching grant program, and sets out FmHA's duty to participate in such programs.

DATES: Comments will be received on or before June 15, 1988.

ADDRESSES: Comments should be sent in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, South Building, Room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection on weekdays between the hours of 8:15 a.m. and 4:45 p.m. at the above address. The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments on information requirement issues to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wilbert Campbell, Jr., Director, Emergency Designation Staff, Farmers Home Administration, USDA, South Agriculture Building, Room 4929, Washington, DC 20250, telephone (202) 382–1650.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor," since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed action is not expected to substantially affect budget outlays, to affect more than one agency, or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provided better service to agricultural producers and their creditors.

This program/activity will be listed in the Catalog of Federal Domestic Assistance under No. 10.435, Agricultural Loan Mediation Program. This program is being proposed for exclusion from the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities.").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G., "Environmental Program." It is the determination of FmHA that this proposed 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.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the Administrator of the Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities.

Public Law 100–233 establishes a procedure under which a State, upon its application, can be certified by the Secretary of Agriculture as a "qualifying" State if the State's agricultural loan mediation program meets certain requirements set out in the statute. The Secretary of Agriculture has delegated the responsibility for State certification and administration of the matching grant program to the Administrator of the Farmers Home Administration (FmHA).

The law sets forth the requirements that a State's agricultural loan mediation program must meet in order to be certified as a qualifying State. Those requirements, which are set out in these proposed regulations, are that the State's agricultural loan mediation program must:

(1) Provide mediation services to producers, and their creditors, which, if decisions are reached, result in mediated, mutually agreeable decisions between parties under an agricultural loan mediation program;

(2) Be authorized or administered by an agency of the State government or by the Governor of the State;

(3) Provide for the training of mediators;

(4) Provide that the mediation sessions shall be confidential; and

(5) Ensure that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program.

This proposal establishes simple procedures for States to use in applying for certification and for FmHA to follow in deciding whether or not a State should be certified. The proposed substantive standards simply repeat the statutory language and are taken directly from section 501(c) of the Agricultural Credit Act of 1987. While experience with this program may suggest the need for the amplification of these criteria, FmHA tentatively believes that they are sufficiently

precise to establish the necessary framework for a workable relationship with States having such programs.

In the administration of the matching grant program to qualifying States, FmHA will use the required uniform standards prescribed in 7 CFR Part 3015, "Uniform Federal Assistance Regulations", and in the new 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", published at 53 FR 8087 *et. seq.* on March 11, 1988 as a final rule to be effective October 1, 1988. FmHA believes that these generally applicable rules are sufficiently well known to the States to permit informed comment on these proposed rules, and thus is not setting out the entirety of those regulations in this preamble.

While the duty to mediate imposed by the Agricultural Credit Act of 1987 on FmHA is immediate upon certification of a State, and will be satisfied by the issuance of a temporary letter certification within 15 days of the receipt of the required information from a State, this rule proposes to make the grant year for all qualifying States run concurrently with the Federal fiscal year, which commences on October first. Thus each State will be able to receive a fair share of the available funds in the event that there is not sufficient appropriated money to give each State all of the funding authorized by the formula in the Agricultural Credit Act. It now appears that FmHA will be able to deal with this issue prospectively, in the light of the comments received in response to this Notice, since no funds have as yet been appropriated for this matching grant program.

List of Subjects in 7 CFR Part 1946

Federal-state relations, Grant programs—agriculture, mediation.

Accordingly, FmHA proposes to add a new Part 1946 and Subpart A, to Chapter XVIII, Title 7, of the Code of Federal Regulations as follows:

PART 1946—MEDIATION

Subpart A—Agricultural Loan Mediation Program

Sec.

1946.1 General.
1946.2 Definitions.
1946.3 Process for certification.
1946.4 Matching grants.
1946.5 Monitoring compliance and penalty for non-compliance.
1946.6 Nondiscrimination.
1946.7 Environmental requirements.
1946.8 Delegation of authority.
1946.9—1946.49 [Reserved]
1946.50 OMB control number.

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

§ 1946.1 General.

(a) This subpart provides procedures for administration of the agricultural loan mediation program whereby a State may be certified by the Farmers Home Administration (FmHA) as a qualifying State for purposes of FmHA and other USDA agencies' participation in the program. Such certification is also necessary for a State to receive Federal matching grant funds to be used for the operation and administration of the State's agricultural loan mediation program.

(b) FmHA will participate in mediations conducted pursuant to a State's agricultural loan mediation program under the same terms and conditions applicable to agricultural creditors generally, and will cooperate in good faith in such mediations by attempting to comply with requests for information and analysis, and in presenting and exploring debt restructuring proposals wherever feasible, when that State is and remains a qualifying State as defined in § 1946.2 (b) of this subpart.

§ 1946.2 Definitions.

(a) *Agricultural Loan Mediation Program.* A State authorized or administered program which meets the requirements for certification outlined in § 1946.3 (a)(2)(i) through (v) of this subpart.

(b) *Qualifying State.* A State which has been certified by FmHA as having an agricultural loan mediation program which meets the requirements outlined in § 1946.3 (a)(2)(i) through (v) of this subpart, provided the State's certification has not expired or been withdrawn under the provisions of § 1946.5 (c) of this subpart.

§ 1946.3 Process for certification.

(a) No later than August 1, of each year, the Governor of a State or Head of a State agency designated by the Governor of a State must submit a written request to the FmHA if the State wishes to be certified as a qualifying State for the purposes of FmHA participation in the State's program and for the State to receive a matching grant to be used for the operation and administration of the program within the State during the fiscal year commencing October 1 of that same year. The request must include:

(1) A description of the State's agricultural loan mediation program.

(2) Documentary information to support the request and a certification by the Governor or Head of a State agency designated by the Governor that the State's agricultural loan mediation program:

(i) Provides for mediation services to be provided to producers, and their creditors, that, if decisions are reached, result in mediated, mutually agreeable decisions between the parties under the program;

(ii) Is authorized or administered by an agency of the State government or by the Governor of the State;

(iii) Provides for the training of mediators;

(iv) Provides that the mediation sessions shall be confidential, and

(v) ensures that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program.

(b) If the State is a qualifying State at the time the written request is made, the written request must describe only changes to the program since the previous year's request together with such documentary support as may be necessary concerning such changes, as well as a certification that the remaining elements of the program remain as described in the previous application.

(c) The request for certification should be mailed to: Administrator, Farmers Home Administration, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Room 5014, Washington, DC 20250.

(d) If a matching grant is requested in accordance with § 1946.4 of this subpart, the request for certification also must include the information required by § 1946.4 (e)(2) of this subpart.

(e) Within 15 days from receipt of the request for certification, the Administrator will notify the State Governor or Head of a State agency designated by the Governor whether or not the State is certified as a qualifying State as defined in § 1946.2(b) of this subpart, or, if additional information or clarification is needed to make the determination, the Administrator will advise the State Governor or head of a State agency of the additional information or clarification needed. Upon receipt of the additional information or clarification requested, the Administrator will respond within 15 days from the date of receipt.

§ 1946.4 Matching grants

(a) *Administration of grants.* FmHA will administer the program in accordance with the requirements of 7 CFR Parts 3015 and 3016. Any State requesting a grant must comply with the provisions of those regulations.

(b) *Source of funds.* All grants awarded to qualifying States will be

made from appropriated funds specifically allotted for this program. A statement of the amounts appropriated, obligated, and remaining available for the program at any particular time will be given to any person upon request to FmHA.

(c) *Amount of grant.* A grant will not exceed 50 percent of the total fiscal year funds that a qualifying State requires to operate and administer its Agricultural Loan Mediation Program which has been certified by the Administrator as meeting the requirements of § 1946.3 (a) (2) (i) through (v) of this subpart. In no case will the total amount of a grant exceed $500,000 annually.

(d) *Distribution criteria.* Gant funds will be distributed on a first-come, first-served basis to qualifying States. If, however, when funds for a fiscal year become available, there are not sufficient funds to give all qualifying States 50 percent of their justified estimated expenses for the fiscal year, the percentage allocation will be reduced so as to give all States the same percentage of their expenses. If after the percentage calculation any State's allocation still exceeds $500,000, that State's share will be further reduced to $500,000 and the remaining States' shares will be increased by the same percentage.

(e) *Eligibility criteria for amount of grant requested.* To be eligible to receive the amount of grant requested, a State must:

(1) Have an Agricultural Loan Mediation Program that has been certified by the Administrator in accordance with § 1946.3 of this subpart, which certification has not been withdrawn in accordance with § 1946.5 (c) of this subpart.

(2) Provide evidence to justify the estimated costs of operating and administering the State's Agricultural Loan Mediation Program.

(f) *Grant purposes.* (1) Grants made under this subpart will be used solely for the operation and administration of the State's Agricultural Loan Mediation Program. There is no other authorized use of grant funds. Eligible costs are limited to those allowable under 7 CFR 3016.22 that are reasonable and necessary to carry out the mission of the State's Agricultural Loan Mediation Program in providing mediation services for agricultural produces and their creditors within the State, such as:

(i) Salaries of professional, technical, and clerical staffs;

(ii) Payment of necessary, reasonable office expenses such as office rental, office utilities, and office equipment rental;

(iii) Purchase of office supplies;

(iv) Payment of administrative costs, such as workers' compensation, liability insurance, employer's share of social security, and travel that is necessary to provide mediation serivces;

(v) Training for mediators;

(vi) Security systems necessary to assure confidentiality of mediation sessons.

(2) Grant funds may not be used for:

(i) The purchase of capital assets, real estate, or vehicles or repair and maintenance of privately-owned property;

(ii) Political activities;

(iii) Routine adminstrative activities not allowable under OMB Cost Principles.

(g) *Application processing.* (1) FmHA will have 60 days from the date of certifying a State as a qualifying State to review the State's application and supporting information for a grant, mail the obligation document to the responsible State Government official for signature, to obligate funds, and notify the State of approval. In any case where additional information/clarification is needed for processing a grant application, the 60-day time limit will begin on the date the additional information/clarification is received. FmHA will normally notify the Governor or Head of a State agency within 15 days of receipt of the application for a grant if information/clarification is needed.

(2) A State requesting a matching grant will submit to the Administrator:

(i) Standard Form 424, "Federal Assistance." The application form can be obtained from any FmHA office.

(ii) The information prescribed in paragraph (e) (2) of this section.

(h) *Grant approval.* (1) The Administrator will notify the Governor or Head of the State agency designated by the Governor of grant approval by mailing, on the obligation date, a copy of the completed Form FmHA 1940–1, "Request for Obligation of Funds". The Form FmHA 1940–1 will indicate that the grant is subject to the requirements of 7 CFR Parts 3015 and 3016, FmHA Instruction 1946–A, and will cite any special grantee conditions.

(i) *Fund disbursement or grant termination or major changes.* (1) Qualifying State approved to receive matching grants under this subpart will receive payment in accordance with 7 CFR Parts 3015 and 3016.

(2) In the case of a grant reduction, termination or withdrawal of certification, in accordance with § 1946.5 (c) of this subpart, or major changes in the scope of the State's Agricultrual Loan Mediation Program, the Administrator, or designee, wil execute Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," to stop further disbursement of funds under the Grant Agreement.

(j) *Financial management systems and reporting requirements.* (1) States receiving grants must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR Parts 3015 and 3016.

(2) Qualifying States receiving matching grants must provide to the FmHA State Office by September 30 an annual report on:

(i) The effectiveness of the State's Agricultural Loan Mediation Program.

(ii) Recommendations for improving the delivery of mediation services to producers; and

(iii) the savings to the State as a result of having an Agricultural Loan Mediation Program.

FmHA State Offices will include any comments or recommendations regarding the State's Agricultural Loan Mediation Program and mail the information to the Administrator no later than November 1.

§ 1946.5 Monitoring compliance and penalty for non-compliance.

(a) *FmHA Monitoring.* The FmHA National Office Farmer Programs Emergency Designation Staff will monitor compliance of the State's Agricultural Loan Mediation Program through the reports received in accordance with § 1946.4 (j) of this subpart, through information received from FmHA field offices and the public, and through on-site visits to observe the operation and administration of the program.

(b) *Audit.* The qualifying State is subject to the audit requirements of Parts 3015 and 3016 of this chapter. An audit report will be submitted to the FmHA Administrator annually or biennially as applicable in accordance with OMB Circular A–128 by each qualifying State receiving a grant.

(c) *Penalty for non-compliance.* If the administrator determines that a State's Agricultural Loan Mediation Program does not meet or no longer meets the requirements set out in § 1946.3(a)(2) (i) through (v) of this subpart for certification or, that grant funds are not being used only for the operation and administration of the State's Agricultural Loan Medication Program, the FmHA Administrator is authorized to withdraw the certification of the program and terminate additional grant assistance and/or to impose any penalties or sanctions established in 7

CFR Parts 3015 and 3016. In the event that the penalty for non-compliance is enforced, the FmHA and other USDA agencies will cease to participate in mediations conducted by the State Agricultural Loan Mediation Program. If the penalty for noncomplilance is enforced, the reason(s) will be included in a letter to the Governor or Head of the State agency along with appeal rights under Subpart B of Part 1900 of this chapter.

§ 1946.6 Nondiscrimination.

The provisions of 7 CFR Part 1901, Subpart C, "Civil Rights Compliance Requirements," 7 CFR Part 15, "Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture-Effectuation of Title VI of the Civil Rights Act of 1964," 7 CFR Part 15b "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," and 45 CFR Part 90, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," apply to activities financed by grants made under this subpart.

§ 1946.7 Environment requirements.

Environmental requirements are not applicable to this subpart.

§ 1946.8 Delegation of authority.

The Administrator hereby delegates the authority for processing applications and administering grants under this subpart to the Staff Director, Emergency Designation Staff.

§ 1946.9—1946.46 [Reserved]

§ 1946.50 OMB Control number.

The collection of information requirements in this regulation have been governed by the Office of Management and Budget and assigned OMB control number —.

Dated: May 3, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-10923 Filed 5-13-88; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Parts 1948, 1951, 1955

Intermediary Relending Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to create a regulation for an Intermediary Relending Program (IRP). This action is needed to implement the provisions of section 407 of the Health and Human Services Act of 1986 which amended section 1323 of the Food Security Act of 1985. The intended effect of this action is to provide regulations for making loans to nonprofit, public, Indian and cooperative entities who will in turn provide financial assistance to rural businesses and community development projects for employment opportunities as well as provide a diversification of the economy in rural areas and to service the IRP loans made by FmHA and the Rural Development Loan Fund (RDLF) loans that were transferred from the U.S. Department of Health and Human Services to the U.S. Department of Agriculture.

The Farmers Home Administration (FmHA) proposes to amend various other existing regulations to add references to these new regulations for making IRP loans and servicing the IRP and RDLF loans.

DATE: Written comments must be received on or before June 15, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Director, Business and Industry Division, Farmers Home Administration, USDA, Room 6321, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 475-4100.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be non-major since the annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be 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.

Intergovernmental Review

The activities covered by this proposed rule are subject to the requirements for intergovernmental consultation as stated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities." The proposed programs 1948 Subpart C and 1951 Subpart R are not listed in the Catalog of Federal Domestic Assistance at this time since they are new proposals.

Environmental Impact Statement

The proposed action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this proposed 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.

Discussion of Proposed Rule

Since there are numerous effects resulting from this action, only those regulations affecting the public will be discussed in this section. Internal activities and administrative functions of the Agency will not be discussed.

Part 1948, Subpart C

Section 1948.101 Introduction.

This section describes the purpose of the program which provides loans from the Farmers Home Administration (FmHA) to nonprofit organizations, public, Indian and cooperative entities (intermediaries) which will in turn reloan the loan funds to local businesses (ultimate recipients) for business facilities and community development projects in rural areas. It also identifies the Director, Business and Industry Division, as the focal point and the contact person for processing activities.

Section 1948.103 Eligibility requirements.

This section prescribes the eligibility criteria for intermediaries under the provisions of this program. It also requires that at least 51 percent of the outstanding interest in any intermediary

or ultimate recipient be owned by citizens of the United States and requires that credit is not otherwise available at reasonable rates and terms.

Section 1948.109 Loan purposes.

FmHA loan funds must be used for the establishment or expansion of a business and must create new employment opportunities. This section also provides guidelines on specific eligible uses of FmHA-related loan funds. The intermediary is to certify that the FmHA-related funds under its control are to be used only for eligible purposes as defined by the guidelines in this section.

Section 1948.110 Ineligible assistance purposes.

Specific ineligible assistance purposes are defined in this section including intermediaries' administrative costs, agricultural production, recreation, tourist homes, hotels, motels, charitable and educational institutions. FmHA loan funds will not be used to finance more than 75 percent of the total project cost of any ultimate recipient.

Section 1948.111 Terms of loans.

This section provides for the structure of loan repayment terms between FmHA and the intermediary. It limits the maximum repayment term to 30 years.

Section 1948.112 Interest rates.

This section identifies the interest rates that can be charged by FmHA to the intermediary and between the intermediary and ultimate recipients.

Section 1948.113 Security.

This section describes the type of security required for the loan and indicates that the securitly for the loan must be adequate. FmHA may require additional security during the term of a loan.

Section 1948.114 Conflict of interest.

This section restricts intermediaries from participation in the program if there is an appearance of a conflict of interest between the intermediary and the ultimate recipient.

Section 1948.116 Fees and charges.

This section provides guidelines for fees to be charged by FmHA and intermediary in regard to their financial assistance under the administration and execution of this program.

Section 1948.117 Other regulatory requirements.

This section provides regulatory requirements dealing with the following:

(a) Intergovernmental consultation which allows for State and local offices to review proposals to be funded with FmHA funds.

(b) Environmental reviews which are subject to FmHA Instruction 1940–G.

(C) Equal opportunity and nondiscrimination in accordance with Title V of Pub. L. 93–495 and refers to FmHA Instruction 1901, Subpart E, as the applicable regulation for this program.

Section 1948.118 Loan agreements.

The loan agreement executed by the intermediary and FmHA contains provisions for the loan. These include: Amount, rates, terms, and repayment of the loan, late charges, disbursement procedures, defaults, FmHA reporting requirements. Forms and lending policy of the intermediary are also discussed.

Section 1948.122–1948.124 Applications, filing, processing and evaluation.

Specific information and FmHA forms to be used in the application are identified in this section of the regulations.

Loan applications will be filed with the FmHA National Office, Director, Business and Industry Division, Washington, DC. Intermediaries must file a complete application in one package. Applications will be considered in the order received. However, priority consideration may be given intermediaries who provide more assistance to low-income persons and farm families or involve more funds from other sources. Complete applications will be processed within a 60-day timeframe.

The FmHA Administrator or designee will evaluate the application and make a determination whether the proposed loan complies with all applicable statutes and regulations. If FmHA is able to provide the loan, it will provide the intermediary a letter of conditions listing all requirements for such loan. If FmHA determines it is unable to provide the loan, the proposed intermediary will be informed in writing.

Section 1948.128 Request to make loans to ultimate recipients.

No commitment of loan funds to an ultimate recipient may be made by the intermediary until an affirmative decision is rendered by FmHA to make a loan to an ultimate recipient. Information to be included in a request for FmHA approval is discussed.

Section 1948.130 Non-Federal funds.

When FmHA-derived loan funds (Federal funds) have been utilized by the intermediary to the ultimate recipient and new ultimate recipients are subsequently financed from the revolving loan fund (non-Federal funds) of the intermediary, these regulations will not be imposed upon the ultimate recipient.

Section 1948.143 Appeals.

This section provides guidelines on the appeal rights of intermediaries due to an adverse decision by FmHA.

Section 1948.148 Exception authority.

The Administrator may in individual cases and under certain circumstances grant exceptions to requirements of this subpart.

Section 1948.149 Exhibits.

This section provides for three exhibits to the regulations. These include names and numbers for forms in a loan docket, a suggested Loan Agreement, and a suggested Promissory Note.

Part 1951, Subpart F

The Intermediary Relending Program (IRP) is added to the list of programs that are excepted from FmHA's graduation review requirements. Part 1951, Subpart R.

Section 1951.851 Introduction.

This section describes the purpose of the regulation, which is to service the IRP loans and those Rural Development Loan Fund (RDLF) loans that were previously approved and serviced by the Secretary of the U.S. Department of Health and Human Services under 45 CFR Part 1076. It also identifies the Director, Business and Industry Division, as the focal point and the contact for loan servicing activities within the U.S. Department of Agriculture.

Section 1951.854 Ineligible assistance purposes.

This section provides a listing and discussion of ineligible purposes for which FmHA loan funds may not be used by the intermediary. These include:

(a) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(b) For relending in a city with a population of twenth-five thousand or more as determined by the latest decennial census.

(c) For any line of credit.

This section also provides ineligible purposes for loans to ultimate recipients:

(a) Agricultural production.

(b) For financing community antenna television services or facilities.

(c) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(d) For any illegal activity.

(e) For any hotels, motels, tourist homes, or convention centers.

(f) For any tourist, recreation, or amusement centers.

Section 1951.859 Terms of loans.

This section provides that no loans shall be extended for a period exceeding 30 years and the terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

Section 1951.860 Interest on loans, allowable costs.

This section identifies the interest rates that can be charged by FmHA to the intermediary and between the intermediary and ultimate recipients, and sets forth the use of interest on loans, premiums earned on guarantees and investment or interest income.

Section 1951.866 Security.

This section describes the type of security required.

Section 1951.867 Conflict of interest.

This section restricts intermediaries from participation in the program when FmHA determines there is an appearance of a conflict of interest between the intermediary and the ultimate recipient.

Section 1951.872 Other regulatory requirements.

The section provides regulatory requirements dealing with the following:

(a) Intergovernmental consultation which allows for State and local offices to review proposals to be funded with FmHA funds.

(b) Environmental reviews which are subject to FmHA Instruction 1940–G.

(c) Equal opportunity and nondiscrimination in accordance with Title V of Pub. L. 93–495 and refers to FmHA Instruction 1901, Subpart E, as the applicable regulation for this program.

Section 1951.877 Loan agreements.

The loan agreement executed by the intermediary and FmHA contains provisions and servicing activities for the loan. These include: Amount, rates, terms and repayment of the loan, late charges, disbursement procedures, defaults, FmHA reporting requirements. Forms and lending policy of the intermediary are also discussed.

Section 1951.882 Non-Federal funds.

This section provides that FmHA will exempt the intermediary from the requirements of the regulation on Federal funds when the intermediary has provided assistance to the ultimate recipients in an amount equal to the financial assistance the borrower has received from FmHA.

Section 1951.896 Appeals.

This section provides guidelines on the appeal rights of intermediaries and ultimate recipients due to an adverse appealable decision by FmHA.

Section 1951.897 Exception authority.

The Administrator may in individual cases and under certain circumstances grant exceptions to requirements of this subpart.

Part 1955, Subpart A

The application of FmHA's regulation on liquidation of loans to the Rural Development Loan Fund program is clarified.

Part 1955, Subpart B

The application of FmHA's regulation on management of inventory property to the Rural Development Loan Fund program is clarified.

Part 1955, Subpart C

The application of FmHA's regulation on disposal of inventory property to the Rural Development Loan Fund is clarified.

List of Subjects

7 CFR Part 1948

Credit, Business and industry, Economic development.

7 CFR Part 1951

Loan programs, Agriculture, Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of Government acquired property, Surplus Government property.

Accordingly, Title 7, Chapter XVIII, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1948—RURAL DEVELOPMENT

1. The authority citation for Part 1948 is added to read as follows:

Authority: 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Part 1948 is amended by adding Subpart C to read as follows:

Subpart C—Intermediary Relending Program (IRP)

Sec.
1948.101 Introduction.
1948.102 Definitions and abbreviations.
1948.103 Eligibility requirements.
1948.104–1948.108 [Reserved]
1948.109 Loan purposes.
1948.110 Ineligible loan purposes.
1948.111 Terms of loans to intermediaries.
1948.112 Interest rates.
1948.113 Security.
1948.114 Conflict of interest.
1948.115 Post award requirements.
1948.116 Fees and charges.
1948.117 Other regulatory requirements.
1948.118 Loan agreements between FmHA and the intermediary.
1948.119–1948.121 [Reserved]
1948.122 Application.
1948.123 Filing and processing applications for loans.
1948.124 FmHA evaluation of application.
1948.125 Loan approval and obligating funds.
1948.126 Loan closing.
1948.127 [Reserved]
1948.128 Requests to make loans to ultimate recipients.
1948.129 [Reserved]
1948.130 Non-Federal funds.
1948.131–1948.137 [Reserved]
1948.138 Office of Inspector General and Office of General Counsel referrals.
1948.139–1948.142 [Reserved]
1948.143 Appeals.
1948.144–1948.147 [Reserved]
1948.148 Exception authority.
1948.149 Exhibits.
1948.150 OMB Control Number.

Exhibit I to Subpart C—Intermediary Relending Program—Promissory Note.

Exhibit II to Subpart C—Intermediary Relending Program—Loan Agreement.

Exhibit III to Subpart C—Forms and Documents Found in Loan Docket.

Subpart C—Intermediary Relending Program (IRP)

§ 1948.101 Introduction.

(a) This subpart contains regulations for loans made by the Farmers Home Administration (FmHA) to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with Subpart R of Part 1951 of this chapter.

(b) The purpose of the program is to finance business facilities and community development projects in rural areas. This purpose is achieved through loans made by FmHA to intermediaries that establish programs for the purpose of providing loans, guarantees, and other technical and financial assistance to ultimate

recipients for business facilities and community development in a rural area. It is anticipated that businesses assisted through this program will, to the maxiumum extent practicable, use farm labor and products as well as provide services to the farm community.

(c) The loan program is administered by the FmHA National Office. The Director, Business and Industry Division, is the point of contact for processing activities unless otherwise delegated by the Administrator.

§ 1948.102 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart.

(1) *Applicant.* The intermediary applying to FmHA for loan funds for relending to ultimate recipients for business facilities and community development in a rural area.

(2) *Debtor.* The intermediary which obtained a loan from FmHA for the purpose of relending funds to eligible ultimate recipients and where an intermediary defaults on this loan and FmHA has to take over the servicing of its loans. Where the ultimate recipient defaults on its contractual arrangement entered into with the intermediary, the ultimate recipient shall be defined as the "debtor."

(3) *Intermediary* (Borrower). The entity receiving FmHA loan funds for relending to ultimate recipients pursuant to FmHA requirements found in § 1948.103.

(4) *Letter of Conditions.* FmHA's letter of proposed terms and conditions to the intermediary which when accepted by the intermediary provides the binding conditions under which FmHA will make a loan to the intermediary.

(5) *Loan Agreement.* The signed agreement between FmHA and the intermediary setting forth the terms and conditions of the loan.

(6) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(7) *Market value.* The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(8) *Principals of intermediary.* Includes members, officers, directors, entities, and other entities directly involved in the operation and management of an intermediary organization.

(9) *Ultimate recipient.* The entity or individual receiving financial assistance from the intermediary.

(10) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(11) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA performed by the intermediary for the benefit of the ultimate recipient.

(13) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(14) *Intermediary Relending Program (IRP).* A program operated by an intermediary whereby the intermediary uses loan funds received from FmHA, along with any other available funds, to make loans to ultimate recipients. Relending programs will normally establish revolving funds so that income from loans made to ultimate recipients, in excess of necessary operating expenses and debt payments, will be used to make additional loans to ultimate recipients.

(b) *Abbreviations.* The following abbreviations are applicable to this subpart:

(1) *B&I*—Business and Industry

(2) *FmHA*—Farmers Home Administration

(3) *IRP*—Intermediary Relending Program

(4) *OGC*—Office of the General Counsel

(5) *OIG*—Office of Inspector General

(6) *RDLF*—Rural Development Loan Fund

(7) *USDA*—United States Department of Agriculture

§ 1948.103 Eligibility requirements.

(a) The intermediaries which may receive FmHA loan funds for relending to ultimate recipients are:

(1) Community-based organization. A private nonprofit organization that serves a local community and that has a governing body of which at least 51 percent of the members are residents of that community.

(2) Community development corporation. Any nonprofit organization responsible to residents of the area it serves and any organization more than 51 percent of which is owned by such an organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subpart.

(3) Public agency. Any State or local government, or any branch or agency of such government having the authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(4) Indian groups. An Indian tribe on a Federal or State reservation or other federally recognized tribal group.

(5) Cooperative. An incorporated or unincorporated association, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conducts, for the mutual benefit of its members, such operations as producing, purchasing, marketing, processing or other activities aimed at improving the income of its members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Demonstrate to FmHA's satisfaction that it has equity in an amount equal to not less than ten percent (10%) of the financial assistance provided to the intermediary by FmHA in the form of loan assistance.

(2) Have written approval by the Governor(s) of the State(s) in which the intermediary intends to operate to administer a revolving loan program as provided for in this subpart.

(3) Be fully bonded against losses occurring from theft, fraud, nonperformance, etc.

(4) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(5) Have a proven record of successfully assisting rural business and industry. Such record will normally consist of:

(i) Recent experience in loanmaking and servicing for loans that are similar in nature to this program;

(ii) A delinquency rate acceptable to FmHA on the loans in the intermediary's portfolio;

(iii) A background and expertise of the intermediary's staff that will be making and servicing the portfolio acceptable to FmHA; and

(iv) Capitalization of the intermediary (for making such loans) acceptable to FmHA.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the applicant.

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State or local programs. The intermediary and each ultimate recipient must certify in writing and FmHA shall determine and document that the ultimate recipient is unable to finance the proposed project from their own resources or through commercial credit or other Federal, State or local programs at reasonable rates and terms.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(4) The total amount of FmHA loan funds requested by the intermediary plus the outstanding balance of existing FmHA loan(s) will not exceed $3,000,000 per intermediary.

(d) At least 51 percent of the outstanding interest in any intermediary and ultimate recipient must have membership or be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 1948.104 through 1948.108 [Reserved]

§ 1948.109 Loan purposes.

(a) *Intermediaries.* FmHA loan funds will be used by the intermediary to provide loans and other technical and financial assistance to ultimate recipients in accordance with paragraph (b) of this section. Prior to receiving FmHA's concurrence to make a loan to an ultimate recipient, the intermediary must certify to FmHA that any assistance to the ultimate recipient, involving FmHA-related funds, complies with the criteria in this section and § 1948.110 of this subpart.

(b) *Ultimate recipients.* (1) Financial assistance from the intermediary to the ultimate recipient must be for the establishment of new businesses and/or the expansion of existing businesses, creation of employment opportunities and/or saving existing jobs. Additionally, the ultimate recipients must:

(i) Meet the objective and purpose of the program as described in § 1948.101(b) of this subpart,

(ii) To the maximum extent possible use labor of low-income persons, farm families, and displaced farm families needing additional income to supplement their farming operations, and

(iii) To the maximum extent possible be innovative in providing services and/or products for the public.

(2) Financial assistance involving FmHA loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services incidental to business development.

(iv) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified as outlined in § 1948.116(b) of this subpart.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stocks of fish.

§ 1948.110 Ineligible loan purposes.

(a) *Intermediaries.* FmHA loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses for providing technical service to ultimate recipients.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of FmHA loan funds requested by the ultimate recipient plus the outstanding balance of any existing FmHA loan(s) will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided by FmHA.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from intermediaries involving FmHA funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, motels, tourist homes, or convention centers.

(8) For any tourist, recreation, or amusement centers.

§ 1948.111 Terms of loans to intermediaries.

(a) No loans to intermediaries shall be extended for a period exceeding 30 years. Principal payments on these loans will be made at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by FmHA, but not more than 3 years.

(b) The terms of loan repayment to intermediaries will be those stipulated in the loan agreement and/or promissory note, as agreed to and executed by FmHA and intermediaries.

§ 1948.112 Interest rates.

(a) Loans made by FmHA pursuant to this subpart shall bear interest at a fixed rate of one percent (1%) per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients shall be negotiated by those parties. Intermediaries are encouraged to make loans at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

(c) Interest income, service fees, and other authorized financing charges received by intermediaries operating relending programs may be used to pay for: the costs of administering the IRP, the provision of technical assistance to borrowers, the absorption of bad debts associated with IRP loans, and repayment of debt. Proposed budgets to cover the administrative costs of intermediaries must be submitted annually to FmHA. All proceeds in excess of those needed to cover authorized expenses, as described above, must revolve back into the IRP and be available for relending to eligible ultimate recipients.

§ 1948.113 Security.

(a) *Loans to intermediaries.* Unless otherwise approved by FmHA, security for the FmHA loan will be separate and apart from security for other loans for which the intermediary is either maker or payee. All loans to intermediaries will be adequately secured. Security for such loans may include but is not limited to:

(1) Any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of FmHA; and

(2) Any realty, personalty, or intangibles capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of FmHA.

(b) *Loans from intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA concurrence is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the FmHA loan.

(c) *Additional security.* The FmHA may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security.

(d) *Appraisals for security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries.* Real property serving as security will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

§ 1948.114 Conflict of interest.

The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient, or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. FmHA shall determine whether such ownership, influence or financial interest is sufficient to create a potential conflict of interest. In the event FmHA determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§ 1948.115 Post award requirements.

(a) Intermediaries receiving loans under this program shall be governed by these regulations, the Loan Agreement, the approved work plan, security interests, and any other conditions which the FmHA may impose in awarding a loan. Prior to making a loan commitment to an ultimate recipient, the intermediary must receive FmHA's concurrence in the proposed use of loan funds outlined in § 1948.128 of this subpart.

(b) Unless otherwise specifically agreed to in writing by the FmHA, disbursed loan proceeds and any interest thereon not immediately needed by the intermediary for an ultimate recipient should be deposited in an interest bearing account or time deposit in a bank or other financial institution which will be covered by a form of federal deposit insurance. Any interest or income earned as a result of such deposits shall be used by the intermediary only for purposes authorized by FmHA.

§ 1948.116 Fees and charges.

(a) *Late payment charges.* Unpaid principal or interest on the loan to the intermediary will be handled as specified in the Loan Agreements attached as Exhibit II to these regulations. Late payment charges on a loan to an ultimate recipient may be made when loan payment has not been received within the customary timeframe allowed as agreed upon by the ultimate recipient and intermediary The term "payment received" means that the payment in cash or check, money order, or similar medium has been received by the intermediary at its designated place of payment.

(b) *Documentation of fees.* All fees and charges must be specifically documented and justified on Form FmHA 1948–1, "Appliction for Loan (Intermediary Relending Program)," or on an addendum to the application at the time the loan request is submitted to FmHA for processing. Allowable fees will be those reasonably and customarily charged intermediaries in similar circumstances in the ordinary course of business and are subject to FmHA review and concurrence.

(c) *Eligible packagers and payment of fees.* Packaging fees include services rendered by others in connection with preparation of the application and seeing the transaction through to final decision. These services may or may not

be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount. Packaging fees, investment banker fees, and any other fees and charges not specifically provided for in this section are permitted subject to FmHA review and written approval.

§ 1948.117 Other regulatory requirements.

(a) *Intergovernmental consultation.* The Intermediary Relending Program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The initial approval of a loan will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the FmHA loan funds for the ultimate recipient. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA office.

(b) *Environmental requirements.*

(1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's application for a loan, the intermediary must provide a completed Form FmHA 1940–20, "Request for Environmental Information," for each Class I or Class II project specifically identified in its plan submitted with its loan application. FmHA will review the application, supporting materials, and any required Forms FmHA 1940–20, and initiate a Class II environmental assessment for the application. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of loan funds for a specific project, no public notification requirements for a Class II assessment will apply to the application. The affected public has not been sufficiently identified at this stage of the FmHA review. Should an application be approved, each project to be assessed would undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this chapter prior to FmHA's consent to use loan funds for an ultimate recipient. FmHA will prepare an Environmental Impact Statement for any application for a loan determined to have a significant effect on the quality of the human environment. Both the intermediary and the ultimate recipient will cooperate and furnish such information and assistance as FmHA needs to make any of its environmental determinations.

(3) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA 1940–20, if it is classified as a Class I or Class II action. FmHA will complete the environmental review required by Subpart G of Part 1940 of this chapter. The results of this review will be used by FmHA in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.* (1) In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex, or marital status with respect to any aspect of a credit transaction anytime FmHA loan funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000–2000d–4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ 1948.118 Loan agreements between FmHA and the intermediary.

A loan agreement must be executed by the intermediary and FmHA at loan closing for each loan. The loan agreement will be prepared by FmHA and reviewed by OGC prior to the loan closing. FmHA Instruction 1948–C, Exhibit II (available from the FmHA National Office or any FmHA State Office), may be used as a guide. The loan agreement, as a minimum, must contain the following provisions:

(a) The loan agreement will set out:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges. The intermediary shall pay a late charge of 4 percent of the payment due of principal and/or interest if payment for either of these is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by FmHA does not constitute a waiver of default.

(5) Disbursement procedure. Disbursement of loan funds by FmHA to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. The intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work program. Advances will be requested by the intermediary in writing. The intermediary may use Form FmHA 440–11, "Estimate of Funds Needed for 30-Day Period Commencing _____," to show the amount of funds needed during the 30-day period. The date of such drawdown shall constitute the date the funds are advanced under the loan agreement for purposes of computing interest payments.

(6) Provisions regarding default. On the occurrence of any event of default, FmHA may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan

agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an "event of default" in the sole discretion of the FmHA:

(i) Failure of the intermediary to carry out or comply with the specific activities in its loan application as approved by FmHA, or loan terms and conditions, or any terms or conditions of the loan agreement, or any applicable Federal or State laws, or with such USDA or FmHA regulations as may become generally applicable at any time.

(ii) Failure of the intermediary to pay any installment of principal or interest on its promissory note to FmHA when due.

(iii) The occurrence of:

(A) The intermediary's becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors;

(B) proceedings for the appointment of a receiver, trustee or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it.

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or FmHA in connection with the financial asistance awarded hereunder which is false, incomplete or incorrect in any material respect.

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of FmHA's award of assistance hereunder, which condition was an inducement to FmHA's original award.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the FmHA.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the intermediary and subsequently to FmHA. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime FmHA loan funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with Subpart B of Part 1806 of this chapter (FmHA Instruction 426–2).

(b) The intermediary will agree:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of FmHA.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA's written concurrence in the proposed use of loan funds.

(3) To maintain a separate ledger and segregated account for IRP funds.

(4) To FmHA reporting requirements on the intermediary by providing:

(i) An annual audit; dates of audit report period need not necessarily coincide with other reports on the IRP. Audits shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. FmHA does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(ii) Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period). FmHA at its option may change this requirement to semiannual reports. These reports shall contain information only on the IRP loan funds, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP loan, from FmHA, a separate report shall be made for each of these IRP loans. The reports will include:

(A) Form FmHA 1951–4, "Report of IRP/RDLF Lending Activity" (available in the FmHA National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(B) Project Progress Review Narrative.

(iii) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

(iv) Proposed budget for the following year.

(v) Other reports as FmHA may require from time to time.

(5) Before the first relending of FmHA funds to the ultimate recipient, to obtain written FmHA approval of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments.

(ii) Intermediary's policy with regard to the amount and form of security to be required.

(6) To obtain approval of FmHA before making any major changes in forms or policy.

(7) To secure the indebtedness by pledging its portfolio of investments derived from the proceeds of the loan award, and pledging its real and personal property, and other rights and interests as FmHA may require.

(8) To provide additional security and execute any additional lien instruments as FmHA may require at any time during the term of the loan if, after review and monitoring, an assessment indicates the need for such security.

§§ 1948.119 through 1948.121 [Reserved]

§ 1948.122 Application.

An application will consist of:

(a) Form FmHA 1948–1, "Application For Loan (Intermediary Relending Program)."

(b) Work Plan. The intermediary must provide a written work plan and other evidence FmHA requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(1) Document the intermediary's ability to administer an Intermediary Relending Program in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to

administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for FmHA's review and the terms of the contract and its duration must be sufficient to adequately service the FmHA loan through to its ultimate conclusion. If FmHA determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved.

(2) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of an Intermediary Relending Program. This should include a statement of the source(s) of non-FmHA funds for administration of the intermediary's operations and financial assistance for projects.

(3) Include a proposal for adequately securing the FmHA loan. The proposal should specifically address those items of security outlined in § 1948.113 of this Subpart.

(4) Include a detailed statement of the proposed use of FmHA loan funds. This should include an outline of what will constitute project eligibility for financial assistance the intermediary will make available to ultimate recipients.

(5) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify FmHA funding of its loan request.

(6) Include a list of proposed fees and other charges it will assess the ultimate recipients it funds.

(7) Demonstrate to FmHA's satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations.

(8) Provide evidence to FmHA's satisfaction that the intermediary has a proven record of obtaining private and/or philanthropic funds for the operation of similar programs to the one contained in this subsection.

(9) Include the intermediary's plan for relending the loan funds. The plan must be of sufficient detail to provide FmHA with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The eligibility criteria, the application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan.

(c) Form FmHA 1940–20, "Request for Environmental Information," for all projects identified in the intermediary's plan that are Class I or Class II actions under Subpart C of Part 1940 of this chapter.

(d) Comments from the State single point of contact, if the State has elected to review the program under Executive Order 12372, "Intergovermental Review of Federal Programs."

(e) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(f) A pro forma balance sheet at startup and for at least 3 additional projected years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumption showing the basis for the projections.

(g) A written agreement will be signed by the intermediary to assure that there is no misunderstanding concerning FmHA audit requirements.

(h) Form FmHA 400–1, "Equal Opportunity Agreement."

(i) Form FmHA 400–4, "Assurance Agreement."

(j) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(k) Written approval of the Governor of the State(s) in which the applicant intends to operate, to administer a revolving loan fund.

(l) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs.

(m) Latest audit report, if available.

§ 1948.123 Filing and processing applications for loans.

(a) *Intermediaries' contact.* Intermediaries desiring FmHA assistance in this subpart may file applications with the FmHA National Office, Director, Business and Industry (B&I) Division, Washington, DC 20250. The Director, Business and Industry Division, may be contacted to discuss assembly, preparation, and processing of applications.

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by FmHA will be considered in the order received.

(c) *Loan priorities.* Priority consideration will be given to intermediaries whose written plan, as required by § 1948.122, demonstrates that the intermediary:

(1) Will provide financial assistance to ultimate recipients that provide the greatest benefit to low-income persons, farm families, and displaced farm families.

(2) Will involve the most financial assistance from other sources in providing assistance to the ultimate recipients as provided by this program.

(d) *Timeframe for processing applications for loans.* All loan applications must be approved or disapproved, and the intermediary notified in writing, not later than 60 days after receipt of a completed application.

(1) If an application is not complete, the intermediary will be notified, in writing, not later than 20 calendar days after receipt of the application by FmHA, of the reason(s) the application is incomplete.

(2) When an application is disapproved, the written notification to the intermediary will state the reason(s) for disapproval.

(3) When an application is disapproved and subsequent action, as the result of an appeal, reverses or revises the initial decision, FmHA will notify the intermediary of such action within 15 calendar days after the reversal/revision decision is made.

§ 1948.124 FmHA evaluation of application.

(a) FmHA will prepare Form FmHA 2033–34, "Management System Card—Business and Industry," in accordance with FmHA Instruction 2033–F.

(b) Applications will be organized in a loan file in accordance with FmHA Instruction 2033–A. The intermediary's Internal Revenue Service (IRS) tax number preceded by State and County code numbers will constitute the case number to be used on all FmHA forms.

(c) The FmHA Administrator or designee will evaluate the application and make a determination whether: The intermediary is eligible; the proposed loan is for an eligible purpose; there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity; there is a need for an environmental impact statement or environmental mitigation; there are any unresolved intergovernmental consultation issues; and the proposed loan complies with all applicable statutes and regulations. If FmHA determines it is unable to provide the

loan, the intermediary will be informed in writing. Such notification will include the reasons for denial of the loan. If FmHA is able to provide the loan, it will provide the intermediary a letter of conditions listing all requirements for such loan.

(1) Requirements listed in letters of conditions will ordinarily include: maximum amount of loan which may be considered, terms of loan, description of the use of loan funds, verification requirements, disbursement of funds, security requirements, and audit reports required.

(2) The letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, sources of funds, project scope, or any other significant changes in the project or intermediary must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $_____.

The intermediary must certify at loan closing that there has been no adverse change(s) in its financial condition nor any other adverse change in the intermediary since FmHA's issuance of the letter of conditions.

The loan will be considered approved on the date a signed copy of Form FmHA 1940–1, "Request for Obligation of Funds," is mailed to you.

Please complete and return the attached Form FmHA 442–46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

If the conditions set forth in this letter are not met within _____ days from the date hereof, the processing of the application is automatically terminated.

(3) The Administrator or designee is the only person authorized to execute the letter of conditions.

(d) Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the Form FmHA 442–46 to the FmHA Administrator. If certain conditions cannot be met, the borrower may propose alternate conditions to FmHA. The Administrator or designee must concur with any changes made to the initially issued or proposed letter of conditions.

(e) If at any time prior to loan approval it is decided that favorable action will not be taken on an application, FmHA will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with Subpart B of Part 1900 of this Chapter.

§ 1948.125 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of Form FmHA 1940–1 is mailed to the intermediary. The Administrator or designee may request an obligation of funds when available and according to the following:

(a) Form FmHA 1940–1, authorizing funds to be reserved, may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan, and to enter into required agreements and has signed Form FmHA 1940–1.

(b) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA 1940–1.

(c) The Administrator or designee will request an obligation of loan funds via the FmHA National Office terminal system after signing Form FmHA 1940–1 and mailing a copy directly to Farmers Home Administration, Finance Office, FC 360B, 1520 Market Street, St. Louis, Misouri, 63103. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form FmHA 1940–1.

(d) The obligation date and date the intermediary is notified of loan approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(e) Immediately after verifying that funds have been reserved, the Administrator or designee will notify, by telephone, the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015–C (available in any FmHA State Office).

(f) The Administrator or designee will record the date of intermediary notification and the interest rate in effect at that time on the original of Form FmHA 1940–1 and include it as a permanent part of the official FmHA file.

(g) If a transfer of obligation of funds is necessary, complete Form FmHA 450–10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and process via the FmHA National Office terminal system. An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purpose(s) for which FmHA funds will be used, remain substantially unchanged.

§ 1948.126 Loan closing.

(a) After the letter of conditions has been issued and proposed closing documents have been prepared, FmHA will forward the loan docket to the Regional OGC in the region in which the borrower is located for review. For the purpose of this paragraph, the District of Columbia is considered to be in Maryland. After an administrative review, FmHA will include with the docket a letter with recommendations and indicating any special items, documents, or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled to OGC review and indexed and tabbed. The OGC will review the docket and furnish advice to FmHA on noted deficiencies. Upon receipt of the OGC's advice, FmHA will correct or cause to be corrected any noted deficiencies. Loans will be closed by FmHA with the assistance of the OGC Regional Attorney who will issue closing instructions detailing the requirements and any actions necessary to proceed with the loan closing.

(b) In all cases, the Administrator or designee will conduct a review before the loan is closed to assure that all requirements of the application, letter of conditions, and Loan Agreement have been met including required certifications, and will provide such verification in the loan file, including arrangements for annual audit reports. The intermediary's certifications will include the following.

(1) No major changes have been made in the intermediary's work plan except those approved in the interim by FmHA.

(2) All requirements of the letter of conditions have been met.

(3) Equity requirements have been met. A reconciliation of the intermediary's assets and net worth from the latest financial statement to the date of loan closing will be provided with this certification.

(4) There has been no adverse change in the intermediary's financial condition nor any adverse change in the

intermediary since the issuance of the letter of conditions. If there have been adverse changes, they must be explained by the intermediary. They may be waived, at the sole discretion of FmHA. Financial data must not be more than 60 days old at loan closing.

(c) FmHA personnel shall not sign any documents other than those specifically provided for in this Subpart.

(d) The National Office will review any requests for changes to the letter of conditions. The National Office will approve only minor changes which do not materially affect the project, its capacity, employment, original projections or credit factors. Changes in legal entities or where tax considerations are the reason for change will not be approved.

(e) At loan closing the intermediary will provide sufficient evidence to enable FmHA to ascertain that no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

§ 1948.127 [Reserved]

§ 1948.128 Requests to make loans to ultimate recipients.

(a) When an intermediary proposes to use funds obtained from FmHA to make a loan to an ultimate recipient, and prior to final approval of such loan, the intermediary will submit to FmHA a copy of the ultimate recipient's application and provide certification that the ultimate recipient is eligible; the proposed loan is for an eligible purpose; and the proposed loan complies with all applicable statutes and regulations. No commitment of loan funds to the ultimate recipient may be made by the intermediary until an affirmative decision on proceeding with funding to the ultimate recipient is rendered by FmHA.

(b) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the project a properly completed Form FmHA 1940–20 executed by the ultimate recipient. FmHA will review the Form FmHA 1940–20, and complete the environmental review in accordance with § 1948.117 of this subpart. The results of this review will be used by FmHA in making its decision on the request.

(c) The intermediary will provide, for FmHA review, all comments obtained in accordance with paragraph (a) of § 1948.117 of this subpart, "Intergovernmental review."

(d) If FmHA determines it is unable to concur with the loan request, the intermediary will be informed in writing the reasons for denial.

§ 1948.129 [Reserved]

§ 1948.130 Non-Federal funds.

Once all the FmHA-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and loan agreement, new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§§ 1948.131 through 1948.137 [Reserved]

§ 1948.138 Office of Inspector General and Office of General Counsel referrals.

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA Instruction 2012–B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the FmHA designee and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§§ 1948.139 through 1948.142 [Reserved]

§ 1948.143 Appeals.

Any appealable adverse decision made by FmHA which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this chapter.

§§ 1948.144 through 1948.147 [Reserved]

§ 1948.148 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this Subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: Demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§ 1948.149 Exhibits.

The following documents may be used in connection with this program; they are incorporated into this subpart and made a part hereof. They are not published in the **Federal Register** but may be obtained in any FmHA State Office or in the National Office.

(a) Exhibit I, "Note (Intermediary Relending Program)."

(b) Exhibit II, "Loan Agreement (Intermediary Relending Program)."

(c) Exhibit III, "Loan Docket."

§ 1948.150 OMB Control Number.

The collection of information requirements in the regulation have been approved by the Office of Management and Budget and assigned OMB Control Number_____.

Exhibit I to Subpart C—Intermediary Relending Program—Promissory Note

At: Washington, DC.
Amount: _____ Dated:
Term: _____

1. *For Value received,* the Undersigned promises to pay to the order of the U.S. Department of Agriculture (USDA)/Farmers Home Administration (FmHA), an Agency of the Federal Government through its principal office at 12th & Independence Avenue, Southwest, Washington, District of Columbia, or through such other place as the FmHA may designate in writing the principal sum of _____ dollars ($_____), plus interest on the unpaid principal balance at the rate of one percent (1%) per annum. The said principal and interest shall be paid in the following installments on or before the following dates:

$ _____ on _____, 19____,
$ _____ on _____, 19____,
$ _____ on _____, 19____,
$ _____ on _____, 19____, and
$ _____ thereafter on the _____ of each _____ until the principal and interest are fully paid except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable _____ (_____) years from the date of this note, and except that prepayments may be made at anytime. The consideration

herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to the Undersigned as requested by the Undersigned and approved by FmHA and interest shall accure on the amount of each advance from its actual date.

Every payment made on any indebtedness evidenced by this note shall be applied first to interest computed to the effective date of the payment and then to principal.

Borrower shall pay a late charge of 4% of the payment due of principal or interest if payment for any of these is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed, and any unpaid late charge shall be added to principal and bear interest at the same rate as noted above for said principal and will be due at the end of the loan terms. Payment of any installment of principal or interest owing on this note may be made prior to the maturity date thereof without penalty.

2. The term, "Indebtedness," shall mean the indebtedness evidenced by this Note, including principal, interest, and late payment charges including any interest thereon, whether now due, or thereafter to become due.

3. If payment of the indebtedness evidenced by this Note, or any part thereof, shall not be made when due and at maturity, by acceleration or otherwise, the Undersigned hereby authorize and empower any attorney of any court of record in the United States to appear for the Undersigned in court, or before any clerk thereof, and confess judgment against the Undersigned in favor of the Holder of this Note for the amount then due with interest and costs.

4. FmHA may, at its option, declare all or any part of the Indebtedness immediately due and payable upon the happening of any of the following events:

(1) Failure to pay any part of the Indebtedness due;

(2) Default under, noncompliance with, or nonperformance of any term or condition of that certain Loan Agreement, of even date herewith, by and between the undersigned and FmHA;

(3) Criminal violations, civil fraud, misrepresentations, or regulatory violations on the part of the Undersigned.

FmHA's failure to exercise its right to accelerate the due date of its payments shall not constitute a waiver thereof.

5. The Indebtedness shall immediately become due and payable, without notice or demand, upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the Undersigned or for any of its property, or upon the making by the Undersigned of an assignment for the benefit of its creditors.

6. The Undersigned shall pay all expenses, whether incurred in or out of court, whether incurred before or after this Note shall become due at its maturity date or otherwise, which FmHA may deem necessary or proper in connection with obtaining satisfaction of the Indebtedness, including but not limited to reasonable attorneys fees. FmHA is authorized to pay at any time and from time to time any and all of such expenses, add the amount of such payment to the indebtedness, and charge interest thereon at the applicable rate of interest specified herein with respect to the principal amount to this Note.

7. The rights of FmHA or its assigns hereunder shall not be impaired by FmHA's sale, hypothecation, or rehypothecation of any note of the Undersigned, or by any indulgence including but not limited to any renewal, extension or modification which FmHA may grant with respect to the Indebtedness or any part thereof, or any indulgence granted in respect of any endorser, guarantor, or surety, except of course to the extent of such indulgence. The purchaser, assignee, transferee, or pledgee of this Note, any guarantee, and any other document (or any of them), sold assigned, transferred, pledged or repledged, shall forthwith become vested with and entitled to exercise all the powers and rights given by this Note and by the aforesaid Loan Agreement and all applications of the Undersigned to FmHA as if said purchaser, assignee, transferee, or pledgee were orginally named as Payee in this Note and in said Loan Agreement and in said application or applications, and subject to any claims and defenses of the debtor under such note, guarantee, loan agreement and any other document.

8. Any amount advanced or expended by FmHA for the collection hereof or protect any security hereto, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced by this Note, at the option of FmHA shall become a part and bear interest at the same rate as the principal of the debt evidenced by this Note and be immediately due and payable by the Undersigned to FmHA without demand.

9. This Note is given to evidence a loan made by FmHA in connection with the implementation of the Intermediary Relending Program. This instrument is to be construed according to pertinent Rules and Regulations of USDA and FmHA and is to be enforced in accordance with applicable Federal Law.

10. In the event that any provision or clause in this Note is not enforceable in a court of law, all other provisions and clauses shall continue to remain in effect.

Attest:

(Seal)

_____

Date

By: _____

Title: _____

Date: _____

Exhibit II to Subpart C—Intermediary Relending Program—Loan Agreement

This agreement dated as of _____ is between the U.S. Department of Agriculture/Farmers Home Administration (hereinafter called FmHA), a Federal agency, and _____ (hereinafter called "Borrower"). In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. *Loan Terms.*

FmHA agrees to loan the principal sum of _____ (hereinafter referred to as "Loan"), to be disbursed as hereinafter provided, bearing interest at the fixed rate of 1 percent per annum from the date funds are advanced as more specifically set forth in paragraph 2 below. The term of the loan is for ____ years from _____.

This loan is evidenced by a promissory note of even date herewith (Exhibit I) made payable to the U.S. Department of Agriculture/Farmers Home Administration. Borrower agrees to use the loan and its proceeds solely for activities as set in its Intermediary Relending Program (IRP) application ("approved program") submitted to FmHA (including any supplements or modifications thereof agreed to by both parties) and in accordance with the Loan Terms and Conditions, the terms and conditions of this Loan Agreement and the Rules and Regulations (as they may be amended) governing the IRP (7 CFR 1948.101).

2. *Repayment.*

Repayment of this loan shall be made as follows:

2.1 Interest only will be paid annually on the unpaid balance for the first _____ year(s). (Strike this section if not applicable)

2.2 Principal and interest will be paid in _____ equal _____ amortized installments beginning on _____, ____ with any remaining balance due and payable _____ years from the date of the note.

2.3 Borrower shall pay a late charge of 4% of the payment due of principal or interest if payment for any of these installments is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and bear interest at the same rate as noted above for said principal. Acceptance of a late charge by FmHA does not constitute a waiver of default.

3. *Organization.*

Borrower shall not change its articles of incorporation, or charter, or by-laws without the written consent of FmHA.

4. *Disbursement Procedure.*

4.1 Disbursement shall take place after this Loan Agreement and the promissory note (Exhibit I) are executed, and any other conditions precedent to disbursement of funds under this award are fully satisfied. The borrower may not make a loan commitment to a project without first receiving FmHA's written concurrence in the proposed use of loan funds.

4.2 Borrower may draw down under this award only such funds as are necessary to cover a 30-day period in implementing its approved work program. Advances will be requested by the borrower in writing. The date of such drawdown shall constitute the date the funds are advanced under this Loan Agreement for purposes of computing interest payments.

4.3 Borrower shall maintain a separate ledger and segregated account for IRP funds as required in 7 CFR Part 1948.

5. *Reporting Requirements.*

Borrower shall provide FmHA with the following reports as required by law or as deemed appropriate by FmHA, plus any other report as FmHA shall from time to time require:

5.1 Annual audit; dates of audit report period need not necessarily coincide with other reports on the IRP program. Audits must cover all of the Borrower's activities and shall be due 90 days following the audit period.

5.2 Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period) as follows:

A. Form FmHA 1951-4, "Report of IRP/RDLF Lending Activity." This report will include information on the borrower's lending activity, income and expenses, and financial condition, and a summary of names and characteristics of the ultimate recipients the borrower has financed.

B. IRP Project Progress Review Narrative.

These reports shall contain information only on the IRP loan funds, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the Borrower has more than one IRP loan, from FmHA, a separate report shall be made for each of these IRP loans.

5.3 An annual report on the extent to which increased employment, income, and ownership opportunities are provided to low-income person, farm families, and displaced farm families for each loan made by the Borrowers.

6. *Relending.*

6.1 Before the first relending of FmHA funds, Borrower must obtain written FmHA approval of:

A. All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

B. Borrower's binding policy with regard to the amount and form of security to be required.

6.2 Borrower must obtain FmHA written approval before making any major changes in forms or policy including its work plan.

7. *Default.*

On the occurrence of any event of default, FmHA may declare all or any portion of the debt and interest created hereby to be immediately due and payable and may proceed to enforce its rights under this Loan Agreement or any other instruments securing or relating to this Loan and in accordance with the Law and regulations applicable hereto.

Any of the following may be regarded as an "event of default" in the sole discretioin of the Administrator, FmHA:

(A) Failure, inability or unwillingness of Borrower to carry out or comply with the specific activities in its loan application as approved by FmHA, or Loan Terms and Conditions, or any terms or conditions of this Loan Agreement, or any applicable Federal or State laws, or with such USDA or FmHA regulations as may become generally applicable at any time.

(B) Failure of Borrower to pay any installment of principal or interest on its promissory note to FmHA when due as specified in paragraph 2 above.

(C) The occurrence of: (1) Borrower's becoming insolvent, or ceasing, being unable, or admitting in writing its inability, to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors; (2) proceedings for the appointment of a receiver, trustee or liquidator of Borrower, or of a substantial part of its assets, being authorized or instituted by or against it.

(D) Submission or making of any report, statement, warranty, or representation by Borrower or agent on its behalf to USDA or FmHA in connection with the financial assistance awarded hereunder which is false, incomplete or incorrect in any material respect.

(E) Failure of Borrower to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of FmHA's award of assistance hereunder, which condition was an inducement to FmHA's original award.

8. *Collateral.*

8.1 The Borrower shall pledge as collateral its portfolio of investments derived from the proceeds of this loan award, and pledge real and personal property, and other rights and interests FmHA may require. Borrower shall execute any instruments, deliver any documents and take any action necessary or convenient to perfect a security interest in such collateral.

8.2 Borrower shall provide additional security and execute any additional lien instruments as FmHA may require at any time during the term of the loan if, after review and monitoring, an assessment indicates the need for such security.

9. *Other Parties.*

This Loan Agreement is not for the benefit of third parties. FmHA shall not be under any obligation to any such parties, whether directly or indirectly interested in the Loan Agreement, to pay any charges or expenses incident to compliance by Borrower with any of the duties or obligations imposed hereby.

10. *Successors and Assigns.*

The Loan Agreement shall be binding upon Borrower and its successors and assigns and upon FmHA and its successors and assigns, and shall survive the closing of the Loan and disbursement of proceeds.

11. *Insurance Requirements.*

11.1 The borrower will require each ultimate recipient to provide hazard insurance with a standard mortgage clause naming the Borrower as beneficiary in an amount that is at least the lesser of the drpreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The Borrower's interest in the insurance will be assigned to the FmHA.

11.2 Ordinarily, the borrower will require ultimate recipients to provide life insurance, which may be decreasing term insurance, for the principals and key employees of ultimate recipients and such life insurance will be assigned or pledged to the Borrower and subsequently to FmHA.

11.3 The borrower will require each ultimate recipient to provide workmen's compensation insurance in accordance with State law.

11.4 The Borrower is responsible for determining if a Borrower-financed project is located in a special flood or mudslide hazard area anytime FmHA loan funds are involved. If the Borrower-financed project is in a flood or mudslide area, then flood mudslide insurance must be provided.

12. *Applicable Laws.*

Interpretation of this Loan Agreement shall be governed and enforced in accordance with applicable Federal Law.

IN WITNESS WHEREOF, FmHA and Borrower have executed this Agreement as of the date first above-mentioned.

Borrower

By: _____
Title: _____
Date: _____
Address: _____
_____
_____
_____
Telephone: _____

FmHA

By: _____
Title: _____
Date: _____
Address: _____
_____
_____
_____
Telephone: _____

Exhibit III Subpart C—Forms and Documents Found in Loan Docket

The following table is a guide to forms and documents used in completing an application and loan docket. The filing position within the 8-position folder is shown on the right. Some of these items may not be applicable for a particular loan. However, a complete loan docket may need to include items in addition to the following:

DESCRIPTION OF RECORD OR FORM # AND TITLE

		Filing position
FmHA 400-1	Equal Opportunity Agreement.	6
FmHA 400-4	Assurance Agreement	3
FmHA 400-6	Compliance Statement	6
FmHA 440-57	Acknowledgement of Obligated Funds/ Check Request.	2
FmHA 1940-1	Request for Obligation of Funds.	2
Exhibit H, Subpart G of Part 1940.	Environmental Assessment for Class II Action.	3
FmHA 1940-20	Request for Environmental Information.	3
FmHA 1948-60	Application for Loan	3
	Letter of Conditions	2

DESCRIPTION OF RECORD OR FORM # AND TITLE—Continued

		Filing position
	Recommendation memorandum.	1
	Loan Agreement	2
	Loan Closing Report	2
	Annual Audit Report	1
	Intermediary Financial Statements.	1
	Report—Exhibit B, FmHA Instruction 2015-C.	1
	Borrower's Certification of Indebtedness.	1
	Promissory Notes	2
	Running Case Record	3
	Cost Estimates and Forecast for Contingency Funds.	3
	Pro-forma Balance Sheet.	3
	Projections of Gross Revenues and Net Earnings.	3
	Cash Flow Statements, 3 Years with Assumptions.	3
	Comments from State Single Point of Contact (Intergovernmental Consultation).	3
	Financial Statements for Last 3 years (or from inception of operation of intermediary if less than 3 years).	3
	Complete Debt Schedule.	3
	Interim Financial Statements.	3
	Records of any Pending or Final Regulatory Litigation.	3
	Correspondence (excluding closing instruments).	4
	By-laws, Resolutions, or Regulations and Amendments.	5
	Articles of Incorporation, By-laws, and Regulations or Charter.	5
	Security Agreements and Financing Statements.	5
	Mortgages and Notes	5
	Advice of Office of the General Counsel from Review of Docket.	5

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989; 7 U.S.C. 1932 note; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

4. Section 1951.251 is revised to read as follows:

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a borrower's needs for continued Farmers Home Administration (FmHA) supervision, further credit and graduation. All borrowers' loan account(s) will be reviewed for graduation in accordance with this subpart, except Guaranteed, Watershed, Resource Conservation and Development, Rural Development Loan Fund loans and Intermediary Relending Program loans.

5. Part 1951 is amended by adding Subpart R to read as follows:

Subpart R—Rural Development Loan Servicing

Sec.
1951.851 Introduction.
1951.852 Definitions and abbreviations.
1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.
1951.854 Ineligible assistance purposes.
1951.855–1951.858 [Reserved]
1951.859 Terms of loans.
1951.860 Interest on loans; allowable costs.
1951.861–1951.865 [Reserved]
1951.866 Security.
1951.867 Conflict of interest.
1951.868–1951.870 [Reserved]
1951.871 Post award requirements.
1951.872 Other regulatory requirements.
1951.873–1951.876 [Reserved]
1951.877 Loan agreements.
1951.878–1951.880 [Reserved]
1951.881 Loan servicing.
1951.882 Field visits.
1951.883 Reporting requirements.
1951.884 Non-Federal funds.
1951.885 Loan classifications.
1951.886–1951.888 [Reserved]
1951.889 Transfer and assumption.
1951.890 Office of Inspector General and Office of General Counsel referrals.
1951.891 Liquidation; default.
1951.892–1951.893 [Reserved]
1951.894 Debt settlement.
1951.895 [Reserved]
1951.896 Appeals.
1951.897 Exception authority.
1951.898–1951.899 [Reserved]
1951.900 OMB Control Number.

Subpart R—Rural Development Loan Servicing

§ 1951.851 Introduction.

(a) This subpart contains regulations for servicing or liquidating loans made by the Farmers Home Administration (FmHA) under the Intermediary Relending Program (IRP) to eligible IRP intermediaries and applies to ultimate recipients and other involved parties. The provisions of this subpart supersede conflicting provisions of any other subpart.

(b) This subpart also contains regulations for servicing the existing Rural Development Loan Fund (RDLF) loans previously approved and administered by the U.S. Department of Health and Human Services (HHS) under 45 CFR Part 1076. This action is needed to implement the provisions of section 1323 of the Food Security Act of 1985, Pub. L. 99–198, which provides for the transfer of the loan servicing authority for those loans from the HHS to the U.S. Department of Agriculture (USDA).

(c) The portion of this regulation pertaining to loanmaking applies to RDLF intermediaries cited in § 1951.851(b) which have RDLF funds from HHS and have not fully utilized relending of those funds to ultimate recipients at the date of these regulations. The loanmaking of all other IRP loans serviced by this regulation is in accordance with Part 1948, Subpart C of this chapter.

(d) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations.

(e) The loan program is administered by the FmHA National Office. The Director, Business and Industry Division, is the point of contact for servicing activities unless otherwise delegated by the Administrator.

§ 1951.852 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart.

(1) *Intermediary* (Borrower). The entity receiving FmHA loan funds for relending to ultimate recipients. FmHA becomes an intermediary in the event it takes over loan servicing and/or liquidation.

(2) *Loan Agreement.* The signed agreement between FmHA and the intermediary setting forth the terms and conditions of the loan.

(3) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(4) *Market value.* The most probable price which property should bring, as of

a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(5) *Principals of intermediary.* Includes members, officers, directors, and other entities directly involved in the operation and management of an intermediary organization.

(6) *Ultimate recipient.* The entity receiving financial assistance from the intermediary. This may be interchangeable with the term "subrecipient" in some documents previously issued by HHS.

(7) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty-five thousand or more.

(8) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA performed by the intermediary for the benefit of the ultimate recipient.

(10) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) *Abbreviations.* The following abbreviations are applicable:

(1) *B&I*—Business and Industry
(2) *CSA*—Community Services Administration
(3) *EIS*—Environmental Impact Statement
(4) *FmHA*—Farmers Home Administration
(5) *HHS*—U.S. Department of Health and Human Services
(6) *IRP*—Intermediary Relending Program
(7) *OCS*—Office of Community Services
(8) *OIG*—Office of Inspector General
(9) *OGC*—Office of the General Counsel
(10) *RDLF*—Rural Development Loan Fund
(11) *USDA*—United States Department of Agriculture

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

(a) *RDLF Intermediaries.* Rural Development Loan funds will be used by the RDLF intermediary to provide loans and other technical and financial assistance to ultimate recipients in accordance with paragraph (b) of this section. Interest income, service fees, and other authorized financing charges received by RDLF intermediaries operating relending programs may be used to pay for: The costs of administering the RDLF relending program, the provision of technical assistance to borrowers, the absorption of bad debts associated with RDLF loans, and repayment of debt. All proceeds in excess of those needed to cover authorized expenses, as described above, must be returned to FmHA.

(b) *Ultimate recipients.* (1) Financial assistance from the intermediary to the ultimate recipient must be for business facilities and community development projects in rural areas.

(2) Financial assistance involving Rural Development Loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisition, construction, conversion, enlargement, repair, modernization, or development cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services incidential to business development.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified as outlined in § 1948.116(b) of Part 1948, Subpart C.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stock of fish.

§ 1951.854 Ineligible assistance purposes.

(a) *RDLF Intermediaries.* RDLF loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses for providing technical service to ultimate recipients.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of RDLF loan funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided with RDLF funds.

(10) For any investing in securities or certificates of deposit.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from RDLF intermediates involving RDLF funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and

disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarly engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, motels, tourist homes, or convention centers.

(8) For any tourist, recreation, or amusement centers.

§§ 1951.855 through 1951.858 [Reserved]

§ 1951.859 Terms of loans.

(a) No loans shall be extended for a period exceeding 30 years. Principal payments on loans will be made at least annually. The initial principal payment may be deferred not more than 3 years.

(b) The terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

§ 1951.860 Interest on loans; allowable costs.

(a) RDLF intermediates: When the RDLF loan portfolio was transferred from HHS to USDA as required under Pub. L. 99–198, section 1323 of the Food Security Act of 1985, there were provisions that affected the interest rates on those loans.

(1) Those loans made in 1980 and 1981 carried an original note rate of 1 percent interest when they were first issued. The legislation provides for those loans made in 1980 and 1981 to have a permanent interest rate reduction to 1 percent effective December 23, 1985, to maturity. However, the interest rates on the loans made in 1983 and 1984 may remain the same as the original note rate.

(2) Loans made in 1983 and 1984 do not automatically qualify for a lower rate than the level of interest rates when the notes were first issued. Section 407 of Pub. L. 99–425 provides for a weighted average requirement that would affect those loans made in 1983 and 1984 to intermediary borrowers.

(3) In those cases where loans were made to RDLF intermediaries and the weighted average of all loans made by the RDLF intermediary after December 31, 1982, does not exceed the sum of 6 percent plus the interest rate to the intermediary (7 percent), the interest rate to be charged the RDLF intermediary will be the rate charged on such loans made in 1980, or 1 percent. Should the weighted average exceed 7 percent, the note rate will control.

(i) In order for FmHA to determine the weighted average of the loan portfolio, the RDLF intermediary will be required to complete a weighted loan average rate on its outstanding portfolio. The schedule prepared for FmHA's review should include:

(A) Calculations of the interest amount scheduled to accrue on each loan outstanding over a 1-year period based on the current interest rate of each ultimate recipient's loan.

(B) The sum total of interest on each individual loan will be added together to determine the total interest amount scheduled to accrue over a 1-year period.

(C) Divide the total of paragraph (a)(2) of this section by the total principal outstanding to determine the average interest percent yield in the intermediary's loan portfolio.

(D) The loans to be included in determining the weighted interest average will be those made from January 1, 1983, forward.

(E) FmHA will use the anniversary date for October 1 of each year to request the intermediary to complete a weighted interest average to determine the interest rate on its RDLF loan for the coming calendar year, January 1 thourgh December 31. All loans made in 1980 and 1981 have had the interest rate permanently reduced by legislation to 1 percent, effective December 25, 1985.

(F) The weighted loan average interest rate on the outstanding loan portfolio as referenced in this section will be forwarded to FmHA along with sufficient documentation which should include calculations, list of outstanding loans, current interest rate being charged on the loan, etc.

(b) Interest rates charged by intermediaries to the ultimate recipients shall be at rates negotiated by those parties. Intermediaries are encouraged to make loans to ultimate recipients at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

§§1951.861 through 1951.865 [Reserved]

§1951.8 Security.

(a) *Loans from RDLF intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA concurrence is required only when security for the loan from the intermediary to the utlimate recipient will also serve as security for the FmHA loan.

(b) *Additional security.* The FmHA may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security.

(c) *Appraisals.* Real property serving as security for all loans to intermediaries and for loans to ultimate recipients will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

§1951.867 Conflict of interest.

(a) The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary.

(b) Any organization which has on its governing board or as agent, consultant or employee, a person who is also a board member or employee, agent or consultant of the intermediary borrower must have specific prior written approval from FmHA, given with full knowledge of the relationship involved.

In the event FmHA determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§§1951.868 through 1951.870 [Reserved]

§1951.871 Post award requirements.

(a) RDLF intermediaries with undisbursed RDLF loan funds shall be governed by these regulations, the loan agreement, the approved work program, security interests, and other conditions which FmHA may require in awarding a loan.

(b) Unless otherwise specifically agreed to in writing by the FmHA, disbursed loan proceeds and any interest thereon not immediately needed by the intermediary for an ultimate recipient will be deposited in an interest-bearing account or time deposit in a bank or other financial institution which can be fully protected by Federal or State deposit insurance. Any interest or income earned as a result of such deposits shall be used by the intermediary only for purposes authorized by FmHA.

(c) Intermediaries operating relending programs must maintain separate ledgers and segregated accounts for RDLF funds at all times.

(d) Reporting requirements shall be those delineated in the loan agreement between the United States and the intermediary and such subsequent requirements as FmHA deems appropriate. The intermediaries must document periodically the extent to which increased employment, income and ownership opportunities are provided to rural residents for each loan made by such intermediary.

(e) No intermediary may make a loan to an ultimate recipient who has applied for or received a loan from another intermediary unless FmHA provides prior written apporval for such loan.

(f) All loan payments that are due on RDLF loans will be made payable to the Farmers Home Administration, using the number assigned, and mailed directly to: Farmers Home Administration, Finance Office, FC 35, 1520 Market Street, St. Louis, Missouri 63103.

§1951.872 Other regulatory requirements.

(a) *Intergovernmental consultation.* The RDLF program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The initial approval of a loan will be the subject of intergovernmental consulation. For each ultimate recipient to be assisted with a loan under this Subpart and for which the State in which the ultimate recipient to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the loan funds for the ultimate recipient. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA office.

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) When an ultimate recipient is to receive Federal funds, the intermediary must provide a completed Form FmHA 1940–20, "Request for Environmental Information," for each Class I or Class II project specifically identified in its plan. FmHA will review the materials and required Forms FmHA 1940–20 and initiate a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of loan funds for a specific project, no public notification requirements for a Class II assessment will apply. The affected public has not been sufficiently identified at this stage of the FmHA review. Each project to be assessed will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this chapter prior to FmHA's consent to use Federal funds. FmHA will prepare an Environmental Impact Statement for any ultimate recipient determined to have a significant effect on the quality of the human environment. Both the intermediary and the ultimate recipient will cooperate and furnish such information and assistance as FmHA needs to make any of its environmental determinations.

(3) As part of the intermediary's request to FmHA for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA 1940–20, if it is classified as a Class I or Class II action. FmHA will complete the environmental review required by Subpart G of Part 1940 of this chapter. The results of this review will be used by FmHA in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.* (1) In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime Federal funds are involved.

(2) The regulations contained in Part 1901, Subpart E of this chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000—2000d–4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§§ 1951.873 through 1951.876 [Reserved]

§ 1951.877 Loan agreements.

(a) A loan agreement will have been executed by the RDLF intermediary and OCS or HHS for each loan. The loan agreement ordinarily would contain the following provisions:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges.

(5) Provisions regarding default.

(6) Disbursement procedure.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be

required on every ultimate recipient in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The RDLF intermediary's interest in the insurance ordinarily will be assigned to the FmHA.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the RDLF intermediary and subsequently to FmHA. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The RDLF intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime Federal funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(b) The RDLF intermediary will agree:

(1) Not to make any changes in the RDLF intermediary's articles of incorporation or charter without the concurrence of FmHA.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA's concurrence in the proposed use of Federal funds.

§§ 1951.878 through 1951.880 [Reserved]

§ 1951.881 Loan servicing.

(a) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations. Preexisting documents control when in conflict with these regulations. The loan is governed by terms of existing legal documents of each intermediary. The RDLF/IRP intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(b) Each intermediary will be monitored by FmHA based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contact with the intermediary as necessary.

(c) Loan servicing is intended to be preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

(d) Written notices on payments coming due will be prepared and sent to the intermediary by the FmHA Finance Office approximately 15 days in advance of the due date of the payments. A copy of the notice will be sent to the FmHA Administrator or designee.

(e) If the scheduled payment is not made by the intermediary within 30 days after due date of the payment, the Finance Office will send a past due notice to the intermediary. The notice will show the late charge amount, if applicable, and the interest amount past due. The late charge amount, if applicable, and the interest past due amount will be capitalized as principal due 30 days after the due date of the monthly payment unless existing loan documents prior to this regulation state otherwise. If the loan documents state when late charge amounts or interest accruals are to be capitalized, the loan documents will prevail.

(1) A per diem amount will be shown on the late notice sent to the intermediary. The Finance Office will send this notice to the Administrator or designee 30 days after the past due notice has been sent to the intermediary and the account remains delinquent. Thereafter, further notices by FmHA designee will be sent to the intermediary on the late payments or any further payments until the account is in a current status.

(2) The Finance Office will notify the Administrator or designee on any payments due from the delinquent intermediary. It will be the responsibility of the Administrator or designee to follow up on delinquent payments to bring the account to a current status.

(3) A copy of any correspondence or notice generated by the Administrator or designee on any delinquent loan will be sent to the Finance Office.

(4) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(f) It is the responsibility of the Finance Office to maintain complete accounting records for each intermediary. The Finance Office will:

(1) Coordinate with the Administrator or designee to assure that interest and principal payments received are in accordance with the promissory notes and its companion documents, and the effective amortization schedule. If the payments received appear to be incorrect, the Finance Office will advise the Administrator or designee. The Administrator or designee will take the necessary action to clear the issue and promptly advise the Finance Office of the proper accounting procedure.

(2) Send monthly statements to the National Office reflecting all payments received to date on each borrower.

(3) Send to the Administrator or designee a monthly summary of all intermediary loans as follows:

(i) Number and amount of all loans.

(ii) Total advanced on all loans.

(iii) Total interest and principal received on the loans.

(iv) Total outstanding balance on all loans.

(4) Prepare reamortization schedules needed as a result of restructuring any loans and send to the Administrator or designee.

(5) Furnish in writing to the Administator or designee a per diem amount on the actual interest amount due when requested by the Administrator.

(g) It is the responsibility of the Administrator or designee to:

(1) Review and analyze the semiannual report of the intermediaries and reconcile same to the annual audits.

(2) Review the annual audits of the intermediaries.

(3) Review the semiannual reports of the intermediaries and take appropriate action when necessary.

(4) Follow up on delinquent intermediaries to bring the account current.

(5) Notify the Finance Office in writing when a loan is determined to be uncollectible in order for the Finance Office to make provisions for an appropriate timely entry to the loss account.

(6) Furnish to the Finance Office the necessary information to produce reamortization schedules.

(7) Provide the Finance Office a copy of any correspondence in regard to the restructuring of the loans.

(8) Review reamortization schedules, the schedule will then be forwarded to the intermediary.

(9) Confirm account balances, payment history of loans, and any other related matter will be furnished to the requesting party, (i.e. third party auditing firms) if warranted and proper. If there are discrepancies in any loan balances being confirmed, the Finance Office should be consulted before the Administrator or designee writes the requested parties.

(10) Furnish upon request by the Finance Office, the information necessary to help reconcile account balances, obtain evidence of payments made by the borrower, and any other related data necessary to keep the financial records correct and in balance.

(11) Answer Congressional and other correspondence.

(12) Review intermediary's plans, cash flow projections, balance sheets, and operating statements.

§ 1951.882 Field visits.

(a) During or in preparation for field visits to RDLF/IRP intermediaries by FmHA personnel, the following loan servicing activities are to be performed:

(1) Review what is being done to inform eligible applicants of the program's existence.

(2) Obtain current and proper financial information and analyze for trends on all RDLF/IRP intermediaries. Also determine if there is a sufficient interest rate spread between the interest rate charged the intermediary and the interest rate charged the ultimate recipients to cover the administrative costs, including bad debts of operating the program.

(3) Include in the write ups of the field visit any issues or problems not resolved from the last visitation in the agenda.

(4) Review credit elsewhere information (has the ultimate recipient been refused funds by other sources?) to determine if this information is in the files.

(5) Observe collateral and its condition, maintenance, protection and utilization by the intermediary or ultimate recipient.

(6) Review the process for handling loan proceeds to assure they are deposited in an interest-bearing account or time deposit in a bank or other financial institution fully protected by Federal or State insurance.

(7) Review materials to determine if the purpose of the program is being fulfilled; i.e., loan funds are being used in accordance with FmHA policies, procedures, the approved work plan and the Loan Agreement.

(8) A report of the visit will be made on "RDLF/IRP Review Summary Sheet," or otherwise documented and included in the loan file in the format of the "RDLF/IRP Review Summary Sheet." The report should include an opinion on the financial condition of the intermediary based upon the review of the annual audited financial statement, periodic financial statements, and observations made during the visit and other sources.

(9) Determine if the ultimate recipients' files are complete, organized, and current.

(10) Any instructions, directions, or corrective action should be confirmed by letter to the intermediaries.

(b) All intermediaries are required to provide an annual audited financial statement as well as a summary sheet of their lending program on each ultimate recipient receiving Federal funds. The summary sheet of their lending program on each ultimate recipient should include but not be limited to: the borrower's name and address, type of business, use of loan funds, loan amount, date of note, outstanding balance, date of final payment, interest rate, amount and type of collateral, insurance information, loan status, and the date of FmHA approval, if applicable.

(c) The intermediary should perform an analysis on its ultimate recipients and follow up in writing on any servicing action required. A copy of the analysis will be provided to FmHA for those ultimate recipients having Federal funds.

§ 1951.883 Reporting requirements.

(a) Intermediaries are to provide FmHA with reports as required in their respective loan agreements, applicable statutes and as required by FmHA. The report shall include the following:

(1) Annual audit; dates of audit report period need not necessarily coincide with other reports on the RDLF/IRP program. Audits must cover all of the intermediaries activities and shall be due 90 days following the audit period.

(2) Quarterly reports for periods ending March 31, June 30, September 30, and December 31 (due 30 days after the end of the period) as follows:

(i) Form FmHA 1951–4, "Report of RDLF/IRP Lending Activity," (available in the FmHA National Office). This report will include information on the intermediary's lending activity, income and expenses, and financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(ii) RDLF/IRP project progress review narrative.

(iii) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by the IRP intermediary.

(b) These reports, shall contain information only on the RDLF/IRP loan funds, or if other funds are included, the RDLF/IRP loan program portion shall be segregated. In the case where the intermediary has more than one RDLE/IRP loan from FmHA, a separate report shall be made for each of these RDLF/IRP loans.

(c) Intermediaries shall report to FmHA whenever an ultimate recipient is more than 90 days in arrears in the repayment of principal or interest.

§ 1951.884 Non-Federal funds.

Once all the FmHA-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and the loan agreement, assistance to new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA/RDLF-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§ 1951.885 Loan classifications.

All loans to intermediaries in the FmHA portfolio will be classified by FmHA at loan closing and again whenever there is a change in the loan which would impact on the original classification. No one classification should be viewed as more important than others. The uncollectibility aspect of Doubtful and Loss classifications is of obvious importance. However, the function of the Substandard classification is to indicate those loans that are unduly risky which may result in future losses. Substandard, Doubtful and Loss are adverse classifications. The special mention classification is for loans which are not adversely classified but which require the attention and followup of FmHA. The loans will be classfied as follows:

(1) *Seasoned Loan Classification.* To be classified as a seasoned loan, a loan must:

(1) Have a remaining principal loan balance of two thirds or less of the original aggregate of all existing loans made to that intermediary.

(2) Be in compliance with all loan conditions and FmHA regulations.

(3) Have been current on the loan(s) payments for 24 consective months.

(4) Be secured by collateral which is determined to be adequate to ensure there will be no loss on the loan.

(b) *Current Non-problem Classification.* This classification includes those loans which have been current for less than 24 consecutive months and are in compliance with the loan conditions and FmHA regulations,

and are not considered to pose a credit risk to FmHA. These loans would be classified as seasoned but for the "24 months" and "two-thirds" requirements for seasoned loans.

(c) *Special Mention Classification.* This classification includes loans which do not presently expose FmHA to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving FmHA's close attention because the failure to correct these deficiencies could result in greater credit risk in the future. This classification would include loans that may be high quality, but which FmHA is unable to supervise properly because of an inadequate loan agreement, the condition or lack of control over the colleteral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the intermediary's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this classification. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(d) *Substandard Classifications.* This classification includes loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in this classification must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that FmHA will sustain some loss.

(e) *Doubtful Classification.* This classification includes those loans which have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(f) *Loss Classifications.* This classification includes those loans which are considered uncollectible and of such little value that their continuance as loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

§§ 1951.886 through 1951.888 [Reserved]

§ 1951.889 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by FmHA. Such transfers and assumptions must be to an eligible intermediary.

(b) Available transfer and assumption options to eligible intermediaries include the following:

(1) The total indebtedness may be transferred to another eligible intermediary on the same terms.

(2) The total indebtedness may be transferred to another eligible intermediary on different terms not to exceed those terms for which an initial loan can be made to an organization that would have been eligible originally.

(3) Less than total indebtedness may be transferred to another eligible intermediary on the same terms.

(4) Less than total indebtedness may be transferred to another eligible intermediary on different terms.

(c) The transferor will prepare the transfer document for FmHA's review prior to the transfer and assumption.

(d) The transferee will provide FmHA with a copy of its latest financial statement and a copy of its annual financial statement for the past 3 years if available; its Federal Tax Identification number; organizational charter; minutes from the Board of Directors authorizing the transaction; certification of good standing from the Secretary of State or whatever regulatory agency oversees nonprofit corporations for that State or Commonwealth where the entity is headquartered; and any other information that FmHA deems necessary for its review.

(e) The assumption agreement will contain the FmHA case number of the transferor and transferee.

(f) When the transferee makes a cash downpayment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in inverse order of maturity.

(g) The Administrator or designee will approve or decline all transfers and assumptions.

§ 1951.890 Office of Inspector General and Office of General Counsel referrals.

(a) When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA Instruction 2012–B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG and FmHA and confirmed in writing.

(b) In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to the OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§ 1951.891 Liquidation; default.

(a) In the event that FmHA takes over the servicing of the ultimate recipient of an intermediary, those loans will be serviced by this regulation and in accordance with the contractual arrangement between the intermediary and the ultimate recipient. Should the FmHA determine that it is necessary or desirable to take action to protect or further the interests of FmHA in connection with any default or breach of conditions under any loan made hereunder, the FmHA may:

(1) Declare that the loan is immediately due and payable.

(2) Assign or sell at public or private sale, or otherwise dispose of for cash or credit at its discretion and upon such terms and conditions as FmHA shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property or security assigned to or held by the FmHA in connection with financial assistance extended hereunder.

(3) Adjust interest rates, use fixed or variable rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by FmHA and take such actions in respect to such loans as are necessary or appropriate, consistent with the purpose of the program and this Subpart. The Administrator will notify the FmHA Finance Office of any change in payment terms, such as reamortizations or interest rate adjustments, and effective dates of any changes resulting from servicing actions.

(b) Failure by an ultimate recipient to comply with the provisions of these regulations and/or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of its loan.

(c) Failure by an intermediary to comply with the provisions of these regulations or to relend funds in accordance with an approved work plan or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of the loan.

(d) In the event of default, the intermediary will promptly be informed

in writing of the consequences of failing to comply with loan covenant(s).

(e) Protective advances to the intermediary will not be made in lieu of additional loans, in particular working capital loans. Protective advances are advances made by FmHA for the purpose of preserving and protecting the collateral where the intermediary has failed to and will not or cannot meet its obligations. The Administrator or designee must approve in writing all protective advances.

(f) In the event of bankruptcy by the intermediary and/or ultimate recipient, FmHA is responsible for protecting the interests of the Government. All bankruptcy cases should be reported immediately to the Regional Attorney. The Administrator must approve in advance and in writing the estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be considered by FmHA to be reasonable and customary.

(g) Liquidation, management, and disposal of inventory property will be handled in accordance with Subparts A, B, and C of Part 1955 of this chapter.

§§ 1951.892 through 1951.893 [Reserved]

§ 1951.894 Debt settlement.

Debt settlement of all claims will be handled in accordance with the Federal Claims Collection Standards (4 CFR Parts 101 through 105).

§ 1951.895 [Reserved]

§ 1951.896 Appeals.

Any appealable adverse decision made by FmHA which affects the borrower may be appealed upon written request of the aggrieved party in accordance with Subpart B of Part 1900 of this chapter.

§ 1951.897 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: Demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§§ 1951.898 through 1951.899 [Reserved]

§ 1951.900 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number _____.

PART 1955—PROPERTY MANAGEMENT

6. The authority citation for Part 1955 continues to read as follows:

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

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

7. Section 1955.3 is amended by revising paragraphs (b), (e), and (k) to read as follows:

§ 1955.3 Definitions.

* * * * *

(b) CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

* * * * *

(e) *Loans to organizations.* Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); insured Business and Industrial (B&I) both to individuals and groups; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); loans to associations for Irrigation and Drainage (I&D) and other Soil and Water conservation measures; loans to Indian Tribes and Tribal Corporations; Shift-In-Land Use (Grazing Association); Economic Opportunity Cooperative (EOC); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type organization loans identified here are referred to in this subpart collectively as Multiple-family Housing (MFH) loans.

* * * * *

(d) *Servicing official.* For loans to individuals as defined in paragraph (d) of this section, the servicing official is the Country Supervisor. For FDLF, IRP, and insured B&I loans, the servicing official is the State Director. For all other types of loans, the servicing official is the District Director.

* * * * *

Subpart B—Management of Property

8. Section 1955.53 is amended by revising paragraphs (a), (h), and (l) to read as follows:

§ 1955.53 Definitions.

* * * * *

(a) *CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority of FmHA.

* * * * *

(h) *Loans to organizations.* Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-In-Land Use (Grazing Association); Business and Industrial (B&I) both to individuals and groups, Rural Development Loan Fund (RDLF), Intermediary Relending Program (IRP), Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. the housing-type loans identified here are referred to in this subpart collectively as MFH loans.

* * * * *

(l) *Servicing official.* For loans to individuals as defined in paragraph (f) of this section, the servicing official is the County Supervisor. For Rural Development Loan Fund loans, Intermediary Relending Program loans, and insured B&I loans, the servicing official is the State Director. For all other types of loans, the servicing official is the District Director.

* * * * *

Subpart C—Disposal of Inventory Property

9. Section 1955.103 is amended by revising paragraphs (d) and (l) to read as follows:

§ 1955.103 Definitions.

* * * * *

(d) *CONACT or CONACT property.* Property acquired or sold pursuant to

the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit At of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

* * * * *

(l) *Organization property.* Property for which the following loans were made is considered organization property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-In-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); and Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

* * * * *

10. Section 1955.105 is amended by revising paragraph (a) to read as follows:

§ 1955.105 Real property affected (CONACT).

(a) *Loan types.* Sections 1955.106 through 1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL): Soil and Water (SW); Operating (OL); Emergency (EM): Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); Community Facility (CF); Water and Waste Disposal (WWD); Resource Conservation and Development (RC&D); Watershed (WD); Association Recreation; EOC; Rural Renewal; Water Facility; Business and Industrial (B&I); Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Before property can be sold, § 1955.73 of Subpart B of this part concerning dwelling retention must be followed, if applicable.

* * * * *

Date: April 18, 1988.

Vance L. Clark,

Administrator, Farmers Home Association.

[FR Doc. 88-10803 Filed 5-13-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-48-AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Shorts Model SD3-60 series airplanes, that would require replacement of certain pitot tubes. This proposal is prompted by reports of inoperative pitot tubes due to icing. This condition, if not corrected, could result in erroneous airspeed and altitude indications.

DATES: Comments must be received no later than June 23, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Shorts Model SD3-60 series airplanes. There have been several reports of inoperative pitot tubes due to icing, which have resulted in erroneous airspeed and altitude indications.

Short Brothers, PLC, issued Service Bulletin SD360-34-09, dated March 1984, which indicates that pitot tubes produced between October 1982 and October 1983 were manufactured from stainless steel, in lieu of copper, with a resultant reduction of efficiency of the anti-icing system. These stainless steel pitot tubes bear a code letter "Z" adjacent to the serial number. The service bulletin describes inspection of pitot tubes for code letter "Z," and replacement, if necessary, with copper pitot tubes bearing a code letter other than "Z." The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the

Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of left and right pitot tubes bearing code letter "Z" adjacent to the serial number with pitot tubes bearing code letter other than "Z," in accordance with the service bulletin previously mentioned.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,920.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness direction:

Short Brothers, PLC: Applies to Model SD3-60 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent pitot tubes from becoming inoperative due to icing, which could result in erroneous airspeed and altitude indication, accomplish the following:

A. Within the next 180 days after the effective date of this AD, replace pitot tubes having the code letter "Z" adjacent to the serial number with one containing a code letter other than "Z," in accordance with accomplishment instructions in Service Bulletin SD360-34-09, dated March 1934.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 5, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10823 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-8]

Proposed Amendment to Transition Area, Lewistown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Lewistown, Montana, transition area. The action is necessary to provide additional controlled airspace to encompass a new approach procedure. It will segregate aircraft operating in visual flight rules conditions and aircraft operating in instrument flight rules conditions.

DATE: Comments must be received on or before July 18, 1988.

ADDRESS: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-8, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 88-ANM-8, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestion presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to contain a new approach procedure at Lewistown, Montana. The action is necessary to segregate aircraft operating in visual flight rules conditions and aircraft operating in instrument flight rules conditions. The area will be depicted on aeronautical charts for pilot reference.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lewistown, Montana, Transition Area [Revised]

That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Lewistown Municipal Airport (lat. 47°02'56.9" N., long. 109°28'08.1" W.) and within 4 miles each side of the Lewistown VORTAC 289° radial, extending from the 7 mile radius area to 10.5 miles west of the VORTAC; and within 4 miles each side of the Lewistown VORTAC 255° radial, extending from the 7-mile radius area to 17.5 miles west of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 16 miles north and 11 miles south of the Lewistown VORTAC 289° radial extending 31 miles west of the VORTAC, and within 5 miles north and 8 miles south of the Lewistown VORTAC 109° radial, extending from the VORTAC to 7 miles east of VORTAC; and excluding overlapping controlled airspace.

Issued in Seattle, Washington, on April 28, 1988.

Francis E. Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-10824 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASO-15]

Proposed Alteration of VOR Federal Airway V-437, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-437 located in the vicinity of Melbourne, FL. Federal Airway V-437 would be extended from Pahokee, FL, to Biscayne Bay, FL. This alteration would permit Patrick Air Force Base Approach Control to establish aircraft on an airway within a departure transition area, thereby reducing radar vectors. This action improves traffic flows in the terminal area and reduces controller workload.

DATE: Comments must be received on or before June 27, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 87-ASO-15, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASO-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-437 located in the vicinity of Melbourne, FL. The currently preferred routing to Miami is via Melbourne V-437, Pahokee V-267, to GREMM intersection to the Miami terminal area. The realignment of V-437 would improve the traffic flow within the Miami and Patrick Air Force Base terminal areas. This action would improve traffic flow and reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-437 [Amended]

By removing the words "From Pahokee, FL; Melbourne, FL;" and substituting the words "From Biscayne Bay, FL; INT Biscayne Bay 340°T(344°M) and Pahokee, FL, 150°T(150°M) radials; Pahokee; INT Pahokee 352°T(352°M) and Melbourne, FL, 217°T(219°M) radials; Melbourne;"

Issued in Washington, DC, on May 5, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-10825 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-15]

Proposed Alteration of VOR Federal Airways, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V-77 and V-568 located in the vicinity of Millsap, TX, by realigning V-77 between Abilene, TX, and Wichita Falls, TX, and by extending V-568 from Acton, TX, to Wichita Falls. This action would permit additional flexibility for maneuvering traffic in the Dallas/Fort Worth Airport terminal area, thereby reducing controller coordination and workload.

DATE: Comments must be received on or before June 27, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASW-15, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. the FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing

list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-77 by realigning that airway between Wichita Falls, TX, and by extending V-568 from Acton, TX, via Millsap, TX, to Wichita Falls. The realignment would permit extension of the Dallas/Fort Worth (DFW) terminal airspace as well as improve the traffic flow in the Sheppard Air Force Base terminal area. Also, the rapid growth of air traffic in and around the DFW Metroplex has outgrown the current assigned airspace. This action would improve coordination procedures, reduce en route and terminal delays, and reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-77 [Amended]

By removing the words "via Abilene, TX; Wichita Falls, TX;" and substituting the words "Abilene, TX; INT Abilene 047°T(037°M) and Wichita Falls, TX, 204°T(194°M) radials; Wichita Falls;"

V-568 [Amended]

By removing the words "to Acton" and substituting the words "Acton; Millsap, TX; to Wichita Falls, TX"

Issued in Washington, DC, on May 5, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-10826 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Proposed Change of Practice Regarding Tariff Classification of Imported Television Tubes and Chassis

AGENCY: Customs Service, Treasury.

ACTION: Proposed change of practice and request for comments.

SUMMARY: Customs is reviewing its practice of classifying imported color television picture tubes and television chassis, not assembled together at time of importation but nonetheless entered as a single tariff entity, as unfinished articles under item 684.96, Tariff Schedules of the United States (TSUS), which provides for "Television receivers and parts therefore: having a picture tube: assemblies (including kits containing all parts necessary for assembly into complete receivers): color." The proposed change would mean that television picture tubes would be separately classifiable under item 687.35, TSUS, and would be subject to a higher rate of duty than the 5 percent generally applicable to articles classified as television receivers. Comments are invited on the proposed change before any determination is made with regard to the issue.

DATE: Comments must be received on or before June 15, 1988.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Matthew B. Rohde, Classification and Value Division, (202) 566-2938.

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its practice of classifying, as an unfinished and unassembled article under General Headnote 10(h), TSUS, imported television picture tubes and television chassis that, while entered together, are separately packaged and have separate countries of origin. As a result of the classification of such merchandise as a single tariff entity under item 684.96, TSUS, a 5 percent *ad valorem* duty rate is applicable. A 15 percent *ad valorem* duty rate is generally applicable to color television picture tubes, provided for in item 687.35, TSUS.

The current practice is based upon a Customs Service ruling, dated November 15, 1984 (CLA-2 CO:R:CV:V 553020), which was issued in response to a petition filed under section 516 of the Tariff Act of 1930. A summation of the ruling was published in the **Federal Register** on February 19, 1985 (50 FR 7026). Pursuant to § 177.10(c), Customs Regulations (19 CFR 177.10(c)), prior to publication of a ruling which changes an established practice and which results in the assessment of a higher rate of duty, Customs is required to publish the fact that the practice is under review and to afford interested parties an opportunity to comment on the contemplated change. In accordance with § 177.10(b), Customs Regulations (19 CFR 177.10(b)), no ruling will be published unless the practice has been determined to be clearly wrong.

The classification practice is being reviewed upon the referral of a matter to Customs Service Headquarters under internal advice procedures pursuant to 19 CFR 177.11. The factual setting of this matter involves imported color television picture tubes and television chassis which enter the U.S. on the same vessel and generally in equal numbers. While the television tubes and chassis are technically compatible, at time of importation they are not assembled to each other, and have different countries of origin, as well as different countries of exportation. Review of the tariff treatment of such merchandise has brought to light certain factors that previously may not have been properly addressed or given adequate consideration.

The provision at issue, item 684.96, TSUS, provides for "Television apparatus, and parts thereof: Television receivers and parts thereof: Having a picture tube: Assemblies (including kits containing all parts necessary for assembly into complete receivers: Color." In the above-cited ruling of November 15, 1984, this provision (then item 685.14, TSUS) was determined to be the proper classification of color television picture tubes and television chassis entered in a manner similar to the matter currently being considered by Customs Service Headquarters; it was concluded that for tariff classification purposes such merchandise was an unfinished article (i.e., an unassembled, unfinished television receiver) within the scope of General Headnote 10(h), TSUS, which provides that "unless the context requires otherwise, a tariff description for an article covers such article whether assembled or not assembled, and whether finished or not finished."

However, in *Nichimen & Co.* v. *United States*, 565 F. Supp. 148 (CIT 1983), aff'd 726 F. 2d 1580 (Fed. Cir. 1984), the court held that certain radio chassis and tape players, covered by the same entry, were not properly classifiable as a single tariff entity. Rather, the chassis and tape players were classifiable separately because they did not comprise a complete commercial entity, requiring assembly with additional components to form a complete article of commerce.

In Customs Service Headquarters Ruling 553020, it was also determined that the presence of the language pertaining to "kits" in item 684.96, TSUS (then item 685.14), supports a conclusion that at least some of the merchandise classifiable therein need not be physically fastened together. However, the ruling did not address the crucial question of whether the same language in item 684.96, TSUS, by its very terms, precludes the provision from covering a collection of unassembled parts which does *not* contain all parts necessary for assembly into complete receivers.

General Headnote 10(h), TSUS, is inapplicable if it is shown to bring about a classification that is "against a specific provision that implements a policy of Congress, consciously arrived at and clearly stated." *United States* v. *J. Gerber & Co.*, 58 CCPA 110, 115 (1971). The phrase in item 684.96, TSUS, "including kits containing all parts necessary for assembly into complete receivers," is a description of the level of completion necessary before a collection of unassembled parts may be classified in that provision. Accordingly, the context of the provision would require a classification of the color television picture tubes and chassis at issue in a provision other than as an ad unfinished and unassembled article, as would otherwise be directed under General Headnote 10(h), TSUS. *Crabtree Vickers, Inc.* v. *United States*, 79 Cust. 60 1977).

Moreover, while 684.96, TSUS, is an *eo nomine* provision for "assemblies," the absence of legal definitional language relating to "assemblies" in Part 5, Schedule 6, TSUS, does not necessarily support a conclusion that "assemblies" can include not only complete "kits," but also other collections of unassembled parts. Rather, it is clear that the "assemblies" that are not a complete "kit" must be entities distinguishable other than by merely being collections of unassembled parts that are incomplete or unfinished "kits." Otherwise, the language in item 684.96, TSUS, providing for "kits containing all parts necessary" is rendered superfluous, since complete kits would already be contemplated by virtue of General Headnote 10(h), TSUS. It is axiomatic that significance and effect must be given to every word of the tariff schedules. *Carey & Skinner, Inc.* v. *United States*, 42 CCPA 86, C.A.D. 576 (1954).

In summary, the Customs Service is seeking comments on the proposal to classify color television picture tubes as a separate tariff entity, even though they may be entered with a similar number of compatible television chassis, thereby changing a practice of classifying such merchandise as an unfinished, unassembled television receiver, in item 684.96, TSUS.

Authority

Because the proposed change could increase duties assessed on the merchandise and could, because of the issues involved, be of significant interest to both importers and the domestic industry, the Customs Service is giving the notice and opportunity to comment as provided by section 315(d), Tariff Act of 1930, as amended, and § 177.10(c)(10), Customs Regulations (19 CFR 177.10(c)(1)).

Comments

The Customs Service will consider any timely written comments. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, at the Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Matthew B. Rohde, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs Service offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 18, 1988.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 88-10901 Filed 5-13-88; 8:45 am]

BILLING CODE 9106-81-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 85N-0241]

Hematology and Pathology Devices; Premarket Approval of the Automated Blood Cell Separator Intended for Routine Collection of Blood and Blood Components

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; alteration of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing the alteration of the comment period for a proposed rule from 60 days to 90 days. FDA is proposing to require the filing of a premarket approval application or a notice of completion of a product development protocol for the automated blood cell separator intended for the routine collection of blood and blood components. The agency is taking this action in response to a letter from a medical device trade association requesting additional time to submit comments.

DATE: Written comments by May 19, 1988.

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

FOR FURTHER INFORMATION CONTACT: Sukza Hwangbo, Center for Biologics Evaluation and Research (HFB-230), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-5433.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1988 (53

FR 5108), FDA proposed to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the automated blood cell separator intended for the routine collection of blood and blood components. In accordance with section 515(b)(2)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)(2)(A)), the agency provided for an opportunity to request a change in classification of the device based on new information relevant to the classification of the device and for the submission of comments on the proposed rule. In accordance with section 515(b)(2)(B) of the act, the proposed rule notified interested persons that requests for a change in classification of the device must be submitted within 15 days of the publication of the proposed rule. In addition, the notice provided for a 60-day comment period on the proposed rule, ending April 19, 1988.

The agency has received a request on behalf of the Health Industry Manufacturers Association to alter the comment period to 90 days. Section 520(d)(2) of the act (21 U.S.C. 360j(d)(2)) provides that the comment period for proposed rulemaking under section 515(b) of the act shall be at least 60 days but may not exceed 90 days unless extended for good cause. Within the discretion provided by the act (section 520(d)(2)), the agency has altered the comment period to 90 days rather than the 60-day comment period originally provided for in the proposed rule of February 19, 1988.

Interested persons may, on or before May 19, 1988, submit to the Dockets Management Branch (address above) written comments regarding this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10904 Filed 5-11-88; 3:33 pm]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-3380-7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EAP) announces its intent to delete three sites from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The reason this action is being taken is that Superfund remedial activities have been completed. Consequently, this action is to remove these sites from the Superfund NPL.

DATE: Comments concerning these sites may be submitted until June 15, 1988.

ADDRESSES: Comments may be mailed to Patrick M. Tobin, Director, Waste Management Division, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365. Comprehensive information on this site is available through the EPA Region IV Docket clerk.

Requests for comprehensive copies of documens should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is:

Gail Alston, Region IV, USEPA Library, Room G-8, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347-4216.

FOR FURTHER INFORMATION CONTACT: Patrick M. Tobin, Director, Waste Management Division, 345 Courtland Street NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Bases for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete three sites from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on these deletions. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The three sites EPA intends to delete from the NPL are:

1. Gallaway Pits, Gallaway, Tennessee.

2. Lee's Lane Landfill, Louisville, Kentucky

3. Newport Dump, Wilder, Kentucky

The EPA will accept comments on these three sites for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) on the NCP provides that sites:

* * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment. In addition section 121(f)(1)(c) of CERCLA requires state concurrence for deleting a site from the National Priorities List.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions § 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985, (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site. The Agency is considering using similar procedures in the future with the exception that the notice and comment period would be conducted concurrently at the local level and through the **Federal Register.**

The procedures used are:

1. EPA Regional Office recommended deletion and prepared relevant documents.

2. EPA Region IV is providing a 30-day public comment period on the deletion package. The notification is being provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories.

3. The comments received during the notice and comment period will be evaluated before the tentative decision to delete was made.

4. Comments received during the notice and comment period will be evaluated before the final decision to delete. Region IV will prepare a responsiveness summary that will address the comments given in the public comment period.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register.** The NPL will reflect any deletions in the final update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Region IV.

IV. Basis for Intended Site Deletions

The following summary provides the Agency's rationale for intending to delete these sites from the NPL.

Gallaway Pits Site, Gallaway, Tennessee

The Gallaway Pits site is located 2.3 miles northeast of Gallaway, Tennessee, in Fayette County. The five-acre site was extensively mined for sand and gravel, producing a landscape dotted with water-filled pits up to 50 feet deep. Some of the pits have been used for the disposal of residential trash, demolition debris, and appliances. One pit designated as Pond 1 was used for the disposal of liquid and solid waste (mainly pesticide or pesticide residues), glass jars containing solid waste, and drums. The site was proposed for inclusion on the National Priorities List (NPL) in December 1982 and appeared on the final NPL in September 1983. In October 1983, the EPA conducted an emergency clean-up of Pond 1, consisting of the excavation and offsite disposal of contaminated sludges and onsite treatment of the water in the pond. In February 1984, EPA obligated funds to conduct a Remedial Investigation/Feasibility Study (RI/FS). The RI/FS included a sampling program for surface water and sediments, surface soils, groundwater and the evaluation of clean-up alternatives. The RI found low levels of pesticide contamination in surface water and sediments in onsite ponds. Chlordane was the most prevalent contaminant with a few occurrences of Dieldrin and Toxaphene. Arsenic and Cadmium were detected above background levels in pond sediments. The groundwater investigation did not show any indication of site-related contamination. The only unacceptable risk presented by the Gallaway Pits site was the potential risk to offsite biota that could occur if ponds designated as Ponds 1, 2, and 5 would overflow to offsite tributaries.

The remedy selected and implemented at the Gallaway Pits site involved the removal of water from Ponds 1, 2 and 5 and subsequent discharge to an unnamed tributary of Cane Creek. The remedy also included the excavation and solidification of contaminated sediments from Ponds 2 and 5, with onsite disposal in Pond 1. Sediment sampling was conducted during excavation to ensure that clean-up levels specified in the ROD were achieved. A multi-media cap meeting RCRA requirements was constructed on Pond 1. Two additional monitoring wells were installed during construction to monitor groundwater quality at the site. Finally, a fence was constructed around the Pond 1 disposal site to restrict site access and future mining activity.

EPA, with the concurrence of the State of Tennessee, has determined that all appropriate Fund-financed response under CERCLA at the Gallaway Pits site has been completed, and has determined that no further clean-up by responsible parties is appropriate.

Lee's Lane Landfill Site, Louisville, Kentucky

The Lee's Lane Landfill site is located immediately adjacent to the Ohio River in Jefferson County, approximately 4.5 miles southwest of Louisvile, Kentucky. The site consisting of 112 acres, is approximately 5,000 feet in length and 1500 feet in width. Domestic, commercial and industrial wastes were disposed of in the landfill from the late 1940's to 1975. Prior to and during its use as a landfill, sand and gravel were quarried at the site. In 1975, residents were evacuated from their homes as a result of explosive levels of methane gas. Between 1975 and 1979 gas study concluded that there were no health hazard to the public. Although the gas collection system was found to be operating at a 41 percent efficiency the gas monitoring program confirmed that the system was preventing gas migration toward Riverside Gardens.

An Enforcement Decision Document (EDD) was signed on September 25, 1986. The remedy selected and implemented for the site included construction of the riprap system,

surface waste clean-up, inspection and repair of a gas collection system, hook-up to an alternate water supply, gas, air and groundwater monitoring, cautionary signs and installation of a gate at the entrance to the site. An action memorandum dated March 10, 1987 initiated the Remedial Action at the site by Region IV's Emergency Response and Removal Branch. All Remedial Action activities were completed by December 1987.

EPA, with the concurrence of the Commonwealth of Kentucky, has determined that all appropriate fund-financed response under CERCLA at the Lee's Lane Landfill site has been completed, and has determined that no further clean-up is appropriate. Operation and Maintenance have been assured by the Commonwealth of Kentucky.

Newport Dump Site, Wilder, Kentucky

The Newport Dump Site is a former municipal landfill located in the City of Wilder in Campbell County, Kentucky. Contiguous to the western boundary of the site is the Licking River, a tributary of the Ohio River. The 39 acre site was originally used by City of Newport for the disposal of residential and commercial wastes from its opening in the late 1940's until its closure in 1979. During this period the Kentucky Department of Natural Resources and Environmental Protection (KDNREP) cited the City of Newport for numerous waste disposal violations and the site was eventualy purchased by the North Kentucky Port Authority. In 1982, the Newport Dump Site was evaluated by the Hazard Ranking System (HRS) and received a score of 37.69 which ranked the site number 359 in Group 8 on the National Priorities List (NPL). The basis for the NPL ranking is that the Newport Site contains over 1,000,000 cubic yards of both hazardous and non-hazardous commercial waste, the site is adjoined on both the southern and western boundaries by an unnamed stream and the Licking River respectively, and across the Licking River, towards the west, is a potable water intake serving 75,000 nearby residents. A Remedial Investigation and Feasibility Study ensued and discovered several inorganic contaminants, barium, chromium, nickel and organic compounds, toluene, leaching into the Licking River sightly above health base levels established by the Safe Water Drinking Act's Maximum Contaminants Levels (MCLs). A Record of Decision (ROD) was signed at Region IV EPA, Atlanta, Georgia on March 27, 1987 selected the following response: monitoring groundwater and subsurface gas migration, construction of a leachate collection system, and regarding and revegetating the 39 acre site to prevent any erosion. An Action Memo to authorize a removal action was signed in June 1987. This response action was constructed and placed into operation within 7 months of the signing of the ROD and completed during December 1987. Groundwater, surface water, soil and sediment sampling were accomplished during the construction and post construction phases. Except for the waste sources, the sampling results listed negligible (well below the MCL criteria) to non-detectable contaminant levels in the adjacent Licking River, and in both on-site and off-site media demonstrated no significant or potentially harmful migration of contaminants to off-site receptors. Currently, Region IV EPA has been successfully implementing the start-up phase of the Operations and Maintenance Plan as mandated by the ROD. U.S. EPA has received a commitment from the State of Kentucky that the State of Kentucky will continue O&M after the EPA has completed the start-up phase. This start-up phase shall be completed by 1st quarter, FY–89. Furthermore, U.S. EPA, with the concurrence of the State of Kentucky, has determined that all appropriate Fund-financed response under CERCLA has been completed for the Newport Dump Site. It is the position of both the U.S. EPA and the State of Kentucky, except for any anticipated emergency action or response, no further clean-up by appropriate governmental authorities or responsible parties is required at this time.

Dated: April 28, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88–10875 Filed 5–13–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Docket No. 86-337]

Automatic Transmitter Identification System for Video Satellite Uplinks

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; oral proceeding.

SUMMARY: This action provides an opportunity for parties to appear and present additional information regarding an Automatic Transmitter Identification System (ATIS) for Video Satellite Uplinks as proposed in a *Further Notice of Proposed Rulemaking* adopted June 10, 1987, in General Docket No. 86–337. See 47 CFR Part 25 Satellite Radio. (52 FR 26538, July 15, 1987).

This action assist the Commission in its selection of an appropriate ATIS standard.

DATE: Oral proceeding will be held on May 16, 1988, 9:30 am, Washington, DC.

ADDRESS: The Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Jones, Field Operations Bureau, (202) 632–7090.

SUPPLEMENTARY INFORMATION:

In a Notice of Proposed Rulemaking and Notice of Inquiry adopted on August 7, 1986, in the above docket, the Commission proposed an Automatic Transmitter Identification System (ATIS) for video satellite uplink signals regulated under Part 25 of the Rules. By a Futher Notice of Proposed Rulemaking in that docket adopted on June 10, 1987, the Commission indicated that commenters overwhelmingly supported the concept of ATIS on video satellite uplinks and requested further comments concerning the technical parameters and methodology to be utilized in such a system.

The satellite radio industry is divided with regard to the appropriate methodology to employ in an ATIS system. The basic requirements of a system for video satellite uplinks include signal availability at all times, even during tune-up; no degradation of transmitted video; detectability under normal modulation conditions; and allowance of flexibility for utilizing the transponder bandwidth. Two ATIS methods discussed in the comments are modulation of the energy dispersal signal and subcarrier modulation.

To further assist the Commission in its selection of an appropriate ATIS standard for Part 25 video satellite uplinks, an oral proceeding will be held on May 16, 1988, at 9:30 a.m., in Room 856, 1919 M Street, NW., Washington, DC. Interested parties will be provided an opportunity to present their views on the following issues:

(1) Are both the energy dispersal and subcarrier systems, as discussed in the comments, compatible with all present uplink systems?

(2) Which proposal is less likely to cause conflicts in future video systems?

(3) Since both the energy dispersal and subcarrier systems are not commercially available, what rule flexibility in terms of technical standards, would aid commercial production and increase applicability to varying uplink signal conditions?

(4) What specific frequency or set of frequencies for a subcarrier based ATIS would allow applicability to varying uplink signal conditions?

(5) What are reasonable time frames for implementing ATIS on existing and new equipment?

The Oral proceeding will be chaired by Dr. Michael J. Marcus, Assistant Bureau Chief for Technology, Field Operations Bureau, and a "public town meeting" format will be used.

Any induvidual or company desiring to make an initial opening presentation should contact Ms. Barbara Jones, telephone No. 202/632-7090, by May 12, 1988, for appropriate arrangements. It may be necessary to limit such presentation time.

Following the meeting, a Public Notice will be issued announcing the availability of a video recording of the meeting. The recording will be associated with the comments of Docket 86-337. Thirty additional days will be provided for written comments regarding matters discussed in the Oral Proceeding.

A copy of this notice is being mailed to all parties of record in this proceeding.

For further information contact Barbara Jones, at (202) 632-7090 or Room 744, 1919 M Street, NW., Washington, DC 20554.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-10681 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-184, RM-6116]

Radio Broadcasting Services; Coalinga, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by William L. Zawila, permittee of Station KNGS(FM) (Channel 261A), Coalinga, California, seeking the substitution of Channel 261B1 for Channel 261A and modification of the permit accordingly.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and his consultant, as follows: William L. Zawila, 12550 Brookhurst Street, Garden Grove, CA 92640; Michael T. McKenna, McKenna Communications, Inc., P.O. Box 90277, Long Beach, CA 90809 (Consultant).

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. 88-184, adopted April 7, 1988, and released May 6, 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 1.1204(b) 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.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10841 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-188, RM-6287]

Radio Broadcasting Services; Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Broadco of Texas, Inc. proposing the substitution of Channel 258C2 for Channel 237A at Lawton, Oklahoma, and the modification of its license for Station KMGZ to specify the higher powered channel. Channel 258C2 can be allocated to Lawton in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 kilometers (8.2 miles) east to avoid a short spacing to Station KBOG, Cordell, Oklahoma. The coordinates for this allotment are North Latitude 34-34-43 and West Longitude 98-16-25. In accordance with established policy, we propose to modify the license of Station KMGZ to specify operation on Channel 258C2. However, pursuant to § 1.420(g) of the Commission's Rules, modification of the license may not be implemented if another party expresses an interest in the proposed allotment, unless an additional equivalent channel is available for Lawton.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 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: Mark Van Bergh, Esq., Kenkel, Barnard & Edmundson, 1220-19th Street NW., Suite 202, Washington, DC 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-188, adopted April 6, 1988, are released May 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10842 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-185, RM-6288]

Radio Broadcasting Services; Montgomery, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Upper Kanawha Valley Broadcasters, Inc., proposing the allocation of Channel 227A to Montgomery, West Virginia, as that community's first local FM service. A site restriction of 6.5 kilometers (4 miles) west of the community is required. The restricted site coordinates are 38-09-47 and 81-23-40.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 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: Jeffrey R. Batten, Manager, Upper Kanawha Valley Broadcasters, Inc., 1028 First Avenue, Montgomery, West Virginia 25136 (Petitioner).

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. 88-185, adopted April 4, 1988, and released May 5, 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 discussion 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 proceedin

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 1.1204(b) 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.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10843 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-186, RM-6246]

Radio Broadcasting Services; Prairie du Chien, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Prairie Broadcasting Company, licensee of Station WPRE-FM, Channel 232A, Prairie du Chien, Wisconsin, proposing the substitution of Class C2 Channel 232 for Channel 232A and modification of the station license accordingly. A site restriction of 0.6 kilometers (0.4 miles) southwest of the city is required.

DATES: Comments must be filed on or before June 27, 1988, and reply comments on or before July 12, 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: W.C. Schlaugat, Jr., President, Prairie Broadcasting Company, P.O. Box 90, Prairie du Chien, WI 53821 (Petitioner).

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. 88-186, adopted April 4, 1988, and released May 5, 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 1.1204(b) 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.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-10844 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 213

Department of Defense Federal Acquisition Regulation Supplement; Small Purchase and Other Simplified Purchase Procedures

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering proposed changes to DoD FAR Supplement 213.106 (b) and (c), to raise the threshold for competition and price reasonableness. The change will result in a threshold established at 10% of the Small Purchase limitation, which is currently at $25,000.

DATE: Comments must be received by the DAR Council at the address shown below on or before June 15, 1988, to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: The Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (A&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 88-

400 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed change, in part, implements the DoD's efforts to comply with the Packard Commission recommendation to eliminate overly restrictive regulations. Establishing the threshold at 10% of the Small Purchase limitation reduces the need for any future threshold changes should the Small Purchase limitation be increased by statute.

B. Regulatory Flexibility Act Information

The proposed rule does not constitute a significant revision within the meaning of Pub. L. 98-577 and, therefore does not require publication for public comment. Therefore, the Regulatory Flexibility Act does not apply. However, this change is considered to be of interest to the acquisition community and comments are solicited. In addition, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act Information

This proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et. seq.*

List of Subjects in 48 CFR Part 213

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 213 as follows:

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR Part 213 continues to read as follows:

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

§ 213.106 [Amended]

2. Section 213.106 is amended by substituting at the end of the titles for paragraphs (b) and (c) the words "10% of the Small Purchase Limitation" in lieu of the figure "$1,000".

[FR Doc. 88-10847 Filed 5-13-88; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Parts 245 and 252

Department of Defense Federal Acquisition Regulation Supplement; Government-Furnished Mapping, Charting and Geodesy Property

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Department of Defense is proposing to amend DFARS Subpart 245.3 and Part 252 so that "Mapping, Charting and Geodesy (MC&G) Property" in the possession of government contractors will be strictly controlled.

DATE: Comments must be received by the DAR Council at the address shown below on or before June 15, 1987 to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 87-74 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Many DoD MC&G products, although unclassified, are subject to strict controls on dissemination outside DoD. These limitations are imposed by terms of international agreements, copyrights, and other factors. These limitations require additional regulatory language to ensure that DoD furnished MC&G property is properly disposed of at the end of the contract performance period to preclude improper use. The proposed regulations stipluate that DoD furnished MC&G property shall not be used for other purposes than those necessary for performance of the contract. Upon completion of the contract performance period the contracting officer is required to direct the contractor to either destroy or return to the government, all DoD furnished MC&G property not consumed in the performance of the contract.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because currently MC&G property is accounted for under the existing property clauses. Small as well as large entities currently have to report unused government property at the completion of contract performance. Under the proposed rule, MC&G property will be disposed of by the contractor under separate directions provided by the Countracting Officer and not through the normal goverment peroperty disposal activities. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 245 and 252 as follows:

1. The authority citation for 48 CFR Parts 245 and 252 continues to read as follows:

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

PART 245—GOVERNMENT PROPERTY

2. Section 245.301 is amended by adding between the definition "Industrial Plant Equipment" and "Other Plant Equipment" the following definition to read as follows:

245.301 Definitions.

* * * * *

"Mapping, Charting and Geodesy (MC&G) Property", as used in this subpart, means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of

topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

* * * * *

3. Sections 245.310 and 245.310–1 are added to read as follows:

245.310 Providing Mapping, Charting and Geodesy Property.

(a) All government-Furnished Mapping, Charting and Geodesy (MC&G) Property is under the control of the Director, Defense Mapping Agency (DMA). (See DoD Directive 5105.40.)

(b) The clause at 252.245–7000 provides that Government-Furnished MC&G Property shall not be duplicated, copied, or othewise reproduced for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the contracting officer shall contact DMA for disposition instructions and then direct the contractor to either destroy or return all DoD furnished MC&G property not consumed in the performance of the contract. If the material is to be returned to the Government, the contracting officer shall specify the location and means of shipment.

245.310–1 Contract clause.

The contracting officer shall insert the clause at 252.245–7000, Government-Furnished Mapping, Charting and Geodesy Property, in solicitations and contracts when MC&G Property is to be furnished under the contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.245–7000 is added to read as follows:

252.245–7000 Government-Furnished Mapping, Charting and Geodesy Property.

As prescribed in 245.310–1 insert the following clause:

Government-Furnished Mapping, Charting and Geodesy Property (Date)

(a) *Definition.*

"Mapping, Charting and Geodesy (MC&G) Property", as used in this clause, means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

(b) MC&G Property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the contractor, as directed by the contracting officer, shall either destroy or return to the Government all Government-Furnished MC&G property not consumed in the performance of this contract.

(End of clause)

[FR Doc. 88–10849 Filed 5–13–88; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1140

[Ex Parte No. 402]

Reasonably Expected Costs; Implementation of the Railroad Accounting Principles Board Findings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing surcharge rule changes in 49 CFR Part 1140 to implement the recent findings of the Railroad Accounting Principles Board. For purposes of computing reasonably expected costs, the Commission proposes to: (1) Determine return on investment using the nominal cost of capital rate; (2) include as a reduction of return on investment any projected holding gains (or losses) that would accrue to the carrier from retention of the line's assets for a one-year period; and (3) emphasize that reasonably expected costs should be calculated on the basis of those costs anticipated during the 12-month period beginning on the effective date of the surcharge. Comment on each of these proposals is invited. The decision also seeks comment on the appropriateness of a deferred tax adjustment. Such an adjustment is designed to recognize the cost-free nature of deferred tax funds.

DATE: Comments are due July 8, 1988.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423; or call (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or energy conservation. Nor is it expected to have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1140

Administrative practice and procedures, Railroads, Reporting and recordkeeping requirements, Uniform system of accounts, Abandonment and discontinuances, Investigations, Public use conditions, Environmental protection, National trail system, National resources, Recreation and recreation areas.

For the reason set forth in the preamble, Title 49, Part 1140 is proposed to be amended as described above.

Authority: 49 U.S.C. 10705a, 10321, 11161, 11162, and 11163, and 5 U.S.C. 559.

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Vice Chairman Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10855 Filed 5–13–88; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 11A)]

Abandonment Regulations, Costing; Implementation of the Railroad Accounting Principles Board Findings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing abandonment (and subsidy) rule changes in 49 CFR Part 1152 to implement the recent findings of the Railroad Accounting Principles Board. Specifically, the Commission proposes to: (1) Determine opportunity cost in abandonment proceedings (and "return on investment" in subsidy proceedings) using the nominal cost of capital rate; (2) include as a reduction of opportunity cost (and return on investment in subsidy proceedings) any projected holding gains (or losses) that would accrue to the carrier from retention of the branch line assets for a one-year period; and (3) add a new "Forecast Year" column to Exhibit 1 showing the projected operating results on the line during the 12-month period beginning with the month of the abandonment

filing. Comment on each of these proposals is invited

The decision also seeks comment on the appropriateness of a deferred tax adjustment, an issue that has been raised in several recent abandonment cases

DATE: Comments are due July 8, 1988.

ADDRESS: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423; or call (202) 275-7428. (Assistance for the hearing impaired is available througfh TDD services (202) 275-1721).

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedures, Railroads, Reporting and recordkeeping requirements, Uniform system of accounts, Abandonment and discontinuances, Investigations, Public use conditions, Environmental protection, National trail system, National resources, Recreation and recreation areas.

For the reason set forth in the preamble, Title 49, Part 1152 is proposed to be amended as described above.

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, 10903 *et seq.*, 11161, 11162 and 11163.

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Vice Chairman Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10856 Filed 5-13-88; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 53, No. 94
Monday, May 16, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Carpet and Rugs
Form Number: Agency—MQ-22Q; OMB—0607-0559
Type of Request: New collection
Burden: 70 respondents; 140 reporting hours
Needs and Uses: The purpose of this survey is to monitor trade agreements with foreign countries. Census is requesting that this survey be done quarterly and on a mandatory basis because the current voluntary annual data collected is not available in a timely manner.
Affected Public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB desk Officer: Francine Picoult 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10833 Filed 5-13-88; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held June 8, 1988, 9:30 a.m. Herbert C. Hoover Building, Room 5230, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Election of Subcommittee Chairman.
4. Discussion of control hierarchy for packet switching.
5. Discussion of taxonomy for CCL 1519A.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1), shall be exempt from the provisions relating to public meetings found in section 10(a)(10) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377-4959.

Date: May 10, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-10834 Filed 5-13-88; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Applications; Columbus, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project performance of October 1, 1988 to September 30, 1989. The MBDC will operate in the Columbus, Ohio Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-88007-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector

resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is June 17, 1988. Applications must be postmarked on or before June 17, 1988.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603. 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

Date: May 10, 1988.

[FR Doc. 88-10854 Filed 5-13-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Hard Mineral Resources Exploration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Designation of Deep Seabed Mining Environmental Reference Area.

SUMMARY: Ocean Mining Associates (OMA), holder of the National Oceanic and Atmospheric Administration (NOAA) Deep Seabed Hard Mineral Resources Exploration License USA-3, has identified an area within its license site which contains manganese nodules but which it does not plan to mine, and for which it is willing to make available for scientific study all applicable resource and environmental data in its possession. The area is 6250 km² in area and is located in the Western portion of USA-3 as identified in the March 3, 1988, **Federal Register** (53 FR 6859).

NOAA recognizes this as an opportunity to examine the detailed characteristics of an area which could conceivably be utilized as a preservational reference area within the framework of the Deep Seabed Hard Mineral Rssources Act (DSHMRA).

Background: Concern about the effect of deep seabed mining on the benthic community of the ocean bottom led Congress to include in DSHMRA a clause requiring negotiations with other seabed mining nations for the purpose of establishing stable reference areas (SRAs). The reasons for establishing these areas would be to "preserve" representative deep-sea biota and to provide areas against which the extent of commercial mining's impact on biological organisms can be compared and thus determined. Similarly, DSHMRA calls for environmental monitoring of seabed mining with respect to those sites for which NOAA issues licenses or permits. NOAA is authorized to establish appropriate monitoring requirements for those sites.

After the 1980 law was enacted, NOAA asked the National Research Council's Ocean Policy Committee to examine the scientific validity of the SRA concept and, assuming the concept is valid, to outline a program for establishing SRAs. In its report, "Deep Seabed Stable Reference Areas" (National Academy Press, Washington, DC 1984, 74 pp.), the comittee found that the concept of SRAs is scientifically valid if two types of SRAs are designated: One type, the preservational reference area (PRA), must be located to ensure that the biota is not affected by mining activities or other anthropogenic activities (such as ocean dumping); the other type, the impact reference area (IRA), must be located close enough to mining to minimize inherent environmental differences so that statistically valid assessments of the impacts of mining can be made.

The committee recommended, as highest priority for near-term research, a small-scale (compared to mining) resuspension experiment designed to assess the effects of resedimentation resulting from the benthic plume that will be created by each mining collector. Knowledge of the nature and extent of the effects is a prerequisite for siting either IRAs or PRAs. NOAA is proceeding with research directed toward the resuspension experiment, now called a "controlled impact experiment."

On October 19, 1987, NOAA licensee OMA submitted a request to NOAA for consultation with the objective of early selection of a specified area as an interim preservational reference area. In proposing to have this area reserved, OMA pointed out that it represents a nodule mining environment which is characteristic of OMA's site as well as contiguous license areas, and offered to make data on the area available to the public following NOAA's approval of the designation. In its notice of this proposal at 53 FR 6859, NOAA explained that OMA's proposal to designate an area as an interim preservational reference area is consistent with the approach NOAA is pursuing for monitoring the environmental effects of deep seabed mining.

Initial consultations revealed that the knowledge is not yet at hand to predict whether or not the area identified by OMA could be affected by mining in adjacent areas. Nevertheless, NOAA recognizes OMA's proposal as an opportunity for concerned scientists to examine the characteristics of an area which could potentially be utilized as a preservational reference area in the future.

Accordingly, NOAA is announcing the designation of this area as an environmental reference area. The effect of this designation is to confirm NOAA's intention to have the area used for environmental study, with a view toward further refining our interpretation of criteria for interim preservational reference areas and toward reaching a final decision on designating the proposed area as a provisional interim preservational reference area.

Persons interested in receiving notices from NOAA on the subject, such as the availability of data for study as well as the conduct of scientific workshops involving the area, should so inform NOAA at the address below.

NOAA also wishes to advise that OMA subsequently has notified NOAA that OMA is preparing a proposal which will set forth an additional environmental monitoring site in the OMA license area as an interim impact reference area. OMA reports that its proposal will take into account its planning for mining activities under a

commercial recovery permit. NOAA will issue a notice after such a proposal from OMA is received.

FOR FURTHER INFORMATION CONTACT: James P. Lawless or John W. Padan, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235, (202) 673-5117.

Dated: May 10, 1988.

John J. Carey,

Deputy Assistant Administrator, for Ocean Services and Coastal Zone Management.

[FR Doc. 88-10851 Filed 5-13-88; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 commodities and military resale commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 15, 1988.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 11, and March 25, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 7963 and 53 FR 9798) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926). After consideration of the relevant matter presented, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a signficiant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and military resale commodities and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodities and services are hereby added to Procurement List 1988:

Commodities

Bag, Plastic
8105-00-837-7753
8105-00-837-7754
8105-00-837-7755

Military Resale Items Nos. and Names

No. 820 Opener, Can & Bottle
No. 824 Slicer, Cheese
No. 826 Peeler, Vegetable
No. 828 Cutter, Pizza
No. 832 Spatula, Plate & Bowl
No. 850 Bib, Baby, Cotton
No. 860 Hooks, Laundry, Plastic
No. 862 Brush, Lint, Plastic

Services

Janitorial/Custodial, Fort Gillem, Georgia
Janitorial/Custodial, AAFES Distribution Center, Newport New, Virginia

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-10967 Filed 5-13-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: June 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entitites of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Pamphlets (3229-S), 7690-00-NSH-0010 (Requirements of Government Printing Office, Philadelphia, PA—DLA Requisitions only)

Services

Parts Sorting, Robins Air Force Base, Georgia
Parts Sorting, Kelly Air Force Base, Texas
Restocking Parts, Kelly Air Force Base, Texas

E. R. Alley , Jr.,

Acting Executive Director.

[FR Doc. 88-10968 Filed 5-13-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Statement of Personal Injury—Possible Third Party Liability—CHAMPUS/CHAMPVA; DD Form X379 (draft); and OMB Control Number 0704-0090.

Type of Request: Extension.

Annual Burden Hours: 17,000.

Annual Responses: 30,000.

Needs and Uses: The State of Personal Injury Possible Third Party Liability Form is completed by CHAMPUS/CHAMPVA beneficiaries suffering from personal injuries and receiving medical care at Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in evaluating and processing these claims.

Affected Public: Individuals or households; Federal agencies or employees.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rasco-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rasco-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1988.

[FR Doc. 88-10870 Filed 5-13-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Contracts; Reduction of Data Acquired From Contractors

AGENCY: Under Secretary of Defense (Acquisition), DOD

ACTION: Notice.

SUMMARY: The Department of Defense is firmly committed to reducing the amount of data acquired from contractors under defense contracts. These data requirements are imposed in contracts through the citing of Data Item Descriptions (DID's) in the Contract Data Requirements List (CDRL). We suspect that there are DID's which overspecify requirements, are duplications of other DID's, or otherwise result in an unnecessary paperwork burden upon the public. Internal efforts are being undertaken by DoD to reduce the number of these types of DID's. Your help in specifically identifying the DID's which could be elimianted or improved will be appreciated. The input resulting from this request will be used to reduce the number of DID's and thereby reduce the paperwork burden placed upon the public. At this time comments are requested on DID's that fall into the following categories (reference DoD 5010.12-L, Acquisition Management Systems and Data Requirements Control List (AMSDL): CMAN (Configuration Management); DRPR (Drawing Practices); EDRS (Engineering Data Reproduction Systems); EGDS (Engineering Data Systems); FACR (Facility Construction Design Requirements); GDRQ (General Design Requirements); IPSC (Information Processing Standards for Computers); MCCR (Mission Critical Computer Resources). Comments on other categories of DID's will be requested in future **Federal Register** Notices.

DATE: Comments should be received by July 15, 1988.

ADDRESS: Comments should be forwarded to Mr. Carl Berry, Defense Data Management Office, OASD(P&L)DDMO, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: A copy of the DID's may be obtained from Mr. Carl Berry, Defense Data Management Office, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041, telephone (703) 756-2554.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1988.

[FR Doc. 88-10872 Filed 5-13-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Closed Meeting

May 10, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 31 May and 1 June 1988, from 8:00 a.m. to 5:00 p.m., at Sanders Associates, Inc., Nashua, NH 03061.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-10857 Filed 5-13-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Closed Meeting

May 10, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics will meet on 31 May and 1 June 1988, from 8:00 a.m. to 5:00 p.m., at AT&T, 100 South Jefferson Road, Whippany, NJ 07981.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force research and development efforts in integrated avionics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-10858 Filed 5-13-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 2, 1988.

The USAF Scientific Advisory Board Aeronautical Systems Division (ASD) Advisory Group will meet on 8-9 June 1988, from 8:00 a.m. to 5:00 p.m., at Wright-Patterson Air Force Base, OH, in Area B, Building 14.

The purpose of this meeting is to receive classified briefings and hold classified discussions on ASD system acquisition programs and technology efforts. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-10859 Filed 5-13-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Closed Meeting

May 2, 1988.

The USAF Scientific Advisory Board Electronic Systems Division (ESD) Advisory Group will meet on 7-8 June 1988, from 8:00 a.m. to 5:00 p.m., at

Hanscom Air Force Base, MA, in the Command Management Center, Building 1606.

The purpose of this meeting is to receive classified briefings and hold classified discussions on ESD Intelligence and C3/CM system acquisition programs and related Rome Air Development Center technology efforts. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-10860 Filed 5-13-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Closed Meetings

May 10, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Requirements for Hypersonic Test Facilities will meet on 8 June 1988, from 8:00 a.m. to 5:00 p.m., at Marquadt, Van Nuys, CA; on 9 June 1988, from 8:00 a.m. to 5:00 p.m., at the Aerojet Co., Sacramento, CA; and on 10 June 1988, from 8:00 a.m. to 5:00 p.m., at the NASA Ames Research Center, Moffett, CA.

The purpose of the meeting at Marquadt and Aerojet Co. is to tour their hypersonic test facilities and obtain information on future hypersonic facility upgrades/modifications and proposals. The purpose of the meeting at Ames Research Center is to tour their hypersonic test facilities, obtain information on future NASA hypersonic applications, and obtain information on future hypersonic test facility upgrades/modifications and proposals. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-10861 Filed 5-13-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Privacy Act of 1974; Amended Record System

AGENCY: Department of the Navy, DOD.

ACTION: Notice of an amended system of records subject to the Privacy Act.

SUMMARY: The Department of the Navy is amending a system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice June 15, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000, telephone: 202-697-1459, autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc 86-8485 (51 FR 12908) April 16, 1986
FR Doc 86-10763 (51 FR 18086) May 16, 1986 (Compilation)
FR Doc 86-12448 (51 FR 19884) June 3, 1986
FR Doc 86-19207 (51 FR 30377) August 26, 1986
FR Doc 86-19208 (51 FR 30393) August 26, 1986
FR Doc 86-28835 (51 FR 45931) December 23, 1986
FR Doc 87-1144 (52 FR 2147) January 20, 1987
FR Doc 87-1145 (52 FR 2149) January 20, 1987
FR Doc 87-5783 (52 FR 8500) March 18, 1987
FR Doc 87-9686 (52 FR 15530) April 29, 1987
FR Doc 87-13560 (52 FR 22671) June 15, 1987
FR Doc 87-27707 (52 FR 45846) December 2, 1987

The specific changes to the record system being amended is set forth below followed by the system notice, as amended, published in its entirety. The proposed amendment does not fall within the purview of the provision of 5 U.S.C. 552a(o), which requires the submission of a new or altered system report.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1988.

N06320-1

System name:

Uncollectible Accounts (51 FR 18190, May 16, 1986).

Changes:

System name:

Delete the entire entry and substitute with the following: "Health Care Accounts and Insurance Information"

Categories of individuals covered by the system:

In line one, after the word "individual," delete the phrase: "* * * incurring indebtedness to the United States by * * *"

Categories of records in the system:

In line 5, delete the phrase: "* * * insurance company * * *" and substitute with: "* * * patient's insurance information * * *"

Authority for Maintenance of the System:

In line three, delete the phrase: "* * * 10 USC 1078-179 * * *" and substitute with the following: "* * * 10 USC 1078-79 and 1095 * * *"

At the end of the entry, add: "* * * and E.O. 9397."

Purpose:

In line 11, after the word: "* * * suspended * * *" add the following phrase: "* * * to determine amounts owed by third party health insurers * * *"

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete the entry and substitute with the following: "Automated records stored on disc, tape, punched cards, and machine listings. Manual records stored on index cards (3" x 5") in card files and in file folders and reading files.

Safeguards:

In line five, delete the word: "* * * only * * *".

Notification procedure:

In line two, add the following: "* * * and Commanding Officers of Medical Treatment Facilities under the Command of the Commander, Naval Medical Command."

In lines four and five, delete the word: "* * * debtor * * *" and substitute with: "* * * patient and sponsor * * *"

NO6320-1

SYSTEM NAME:

Health Care Accounts and Insurance Information.

SYSTEM LOCATION:

Primary System—Commander, Naval Medical Command, Navy Department, Washington, DC 20372-5120. Decentralized Segments—Naval Hospitals and Medical Clinics which provide services or perform work giving rise to such accounts receivable. (See directory of Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual receiving health care treatment or examination services funded by the Navy Medical Department. Coverage also includes sponsors and other persons responsible for the debts of such persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and SSN, sponsor's SSN, if applicable, paygrade, branch of service of service, duty station address, account number, activity performing service, patient's insurance information, civilian employer, patient category, time and dates of service, units of service, physicians' and hospitals' statements of service a total charges for treatment including interest, administrative and penalty charges, payment receipts, admission documents, correspondence relating to collection attempts to ascertain eligibility status, patient category, and third party insurer liability, records of payment received and outstanding balances, letter reports of uncollectible accounts receivable, records suspending or terminating collection action or effecting compromise settlement agreements, and requests for recovery of CHAMPUS funds and substantiating documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 USC 191-195, 227, and 952 (also known as the Federal Claims Collection Act of 1966); 10 USC 1078-79 and 1095; 37 USC 702, 705, and 1007; and E.O. 9397.

PURPOSE(S):

To identify and facilitate payment of amounts owed the U.S. Users of the information include Naval Medical Command personnel who are directly involved in processing payments or billings of patient accounts. The information is used to determine amounts owed, methods to be employed to effect recovery, whether or not the claim can be compromised or collection action thereon terminated or suspended, to determine amounts owed by third party health insurers, and to collect charges for utility bills and other miscellaneous items. File may be forwarded to the Naval Investigative Service for investigation or to any component of DOD, as needed, in the performance of their duties related to same.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

DISCLOSURE OF CONSUMER REPORTING AGENCIES:

Disclosure may be made from this system to "consumer reporting agencies" 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:

Automated records stored on disc, tape, punched cards, and machine listings. Manual records stored on index cards (3" x 5") in card files and in file folders and reading files.

RETRIEVABILITY:

Automated records are retrieved by either a query or a request for a standard report. Data may be indexed by any data element although the primary search keys are name and SSN. Paper records are filed alphabetically by last name of debtor.

SAFEGUARDS:

Access to the automated system requires user account number and password sign on. Access to the paper records and/or terminals are limited to authorized personnel that are properly screened and trained. Office space where records and/or terminals are located is locked after official working hours.

RETENTION AND DISPOSAL:

Records are retained in active file until collection action has been completed, compromised, suspended, or terminated. They are held in inactive file until statute of limitations has run and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, DC 20372-5120 and Commanding Officers of Medical Treatment Facilities under the Command of the Commander, Naval Medical Command.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, Naval Medical Command and Commanding Officers of Medical Treatment Facilities under the Command of the Commander, Naval Medical Command. Requests should provide the full name of the patient and sponsor, the military or dependency status of the patient and sponsor, and the location and approximate dates of treatment or examination. Driver's license and/or military ID card will be considered adequate proof of identity.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Automated patient administration system records produced at Medical Treatment Facilities include but are not limited to Inpatient Admission/Disposition Records, NAVMEDCOM 6300/5; Report of Treatment Furnished Pay Patients-Hospitalization/Outpatient Treatment Furnished, DOD 7/7A, Part A/B. Other record source categories are: OCHAMPUS, Denver; U.S. Postal Service; Military Locator Service; State Departments of Motor Vehicles; any component of the DOD; the Department of Justice, the General Accounting Office, retail credit associations, financial institutions, current or previous employers, educational institutions, trade associations, automated system interfaces, local law enforcement agencies, the Department of Health and Human Services, the Internal Revenue Service, and the Office of Personnel Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-10871 Filed 5-13-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments

on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 15, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address sepcified above.

Dated: May 11, 1988

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Case Service Report.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden: Responses: 83.
Burden Hours: 3464.
Recordkeeping:
Recordkeeper: 0.
Burden Hours: 0.
Abstract: State Vocational Rehabilitative agencies report client and program data. The Department uses the information to assess the accomplishments of program goals and objectives, and to prepare the Annual Report to Congress.

[FR Doc. 88-10922 Filed 5-13-88; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Financial Assistance Award; University of California

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: In accordance with 10 CFR 600.7(b) eligibility for award of a grant resulting from (PR No. 01-88PE79038.001) will be restricted to the Regents of the University of California. DOE is conducting negotiations with the Regents of the University of California to support a transportation fuels conference. These negotiations are expected to result in the issuance of Grant No. DE-FGO1-88PE79038 in which DOE will provide $5000 of the total estimated cost of $25,000, for the performance period of twelve months estimated to begin May 23, 1988.

Project Scope: The grant will provide assistance for one conference entitled, "Transportation Fuels in the 1990's and Beyond," to bring together researchers, policymakers, analysts and experts in the field to focus attention and research on the non-petroleum fuels transition. Questions such as: How do we get from a state of complete dependence on petroleum transportation fuels, to some future state, where one or more clean fuels are viable and accepted fuels will be discussed? The emphasis will be on the public policy development and other decisionmaking by federal, state and local government.

The proposed grantee, the University of California and the conference organizer, Professor Sperling, are uniquely qualified to organize and conduct this conference. While other firms have expertise in technical aspects of alternative fuels, in an attempt to bring together policymakers, this conference will examine the comparative economic and market benefits including market development issues in an international context.

FOR FURTHER INFORMATION CONTACT: Stanley T. Colt, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5645.

Issued at Washington, DC, on May 10, 1988.

Thomas S. Keefe,

Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-10846 Filed 5-13-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time: Wednesday and Thursday, June 1 and 2, 1988, 8:30 a.m.-5:00 p.m., Friday, June 3, 1988, 8:30 a.m.-12:00 p.m.

Location: University of Wisconsin, Wisconsin Center Auditorium, 702 Langdon Street, Madison, Wisconsin.

Contact: James M. Turner, Office of Fusion Energy, Office of Energy Research, ER-51, U.S. Department of Energy, Mail Stop J-204, Washington, DC 20545, Phone: (301) 353-4941.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James M. Turner at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 10, 1988.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

MFAC Agenda Outline

June 1, 1988

1. 8:30 a.m. Welcome.
2. Recent Fusion Program Events—J. Clarke.
3. Report of Panel 18 (Environment, Safety and Economics)—P. Staudhamer.
4. MFAC Discussion of Panel 18 Report.

LUNCH (12:30 p.m.)

5. MFAC Summer Study—F. Ribe, J. Clarke.
6. Wisconsin Fusion Program—J. Callen, N. Hershkowitz, G. Kulcinski, S. Prager, and J. Shohet.
7. Public Comments.
8. Tour of Phaedrus and Stellarator Labs.
9. Dedication of the Madison Symmetric Torus (MST) Facility, Chamberlain Hall, Room 1233.

(Adjourn)

MFAC 2nd Day

June 2, 1988

1. 8:30 a.m. Report of Panel 20 (Long-Range Technology Development)—C. Baker.
2. MFAC Discussion.
3. MFAC Findings on Panel 18.
4. New Charge to Panel 21—F. Ribe.

LUNCH (12:30 p.m.)

5. Tokamak Fusion Test Reactor (TFTR) Status—D. Meade.
6. Compact Ignition Tokamak (CIT) Update—H. Furth, B. Montgomery, and R. Parker.
7. MFAC Discussion Panel 20 Report.
8. Public Comments.

(Adjourn)

MFAC 3rd Day

June 3, 1988

1. 8:30 a.m. Further Discussion of MFAC Summer Study.
2. MFAC Findings on Panel 20.
3. Public Comments.

(Adjourn 12:00 p.m.)

[FR Doc. 88-10909 Filed 5-13-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-383-000, et al.]

Duke Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 11, 1988.

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER88-383-000]

Take notice that on May 6, 1988, Duke Power Company (Duke) tendered for filing a Contract for Purchases of Economic Energy by Florida Power Light Company from Duke.

Duke requests an effective date of May 6, 1988. Duke requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations. If such waiver is not granted, however, Duke requests an effective date as soon after May 6, 1988 as the Commission deems appropriate.

Duke states that the price of service contemplated by the Contract is Duke's anticipated incremental production cost plus a negotiated adder that cannot exceed an equal share of the benefits.

Comment date: May 26, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER88-384-000]

Take notice that on May 6, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Regulations, amendments and revisions to its General Transfer Agreement, Contract No. DE-MS79-82BP90049 (Pacific's Rate Schedule FERC No. 237), with Bonneville Power Administration (Bonneville).

The General Transfer Agreement provides for reciprocal transfers of power and energy by Pacific or Bonneville, as the case may be, for the other party. The amendments and revisions tendered for filing hereunder provide for continued transfer service for Bonneville's Emerald People's Utility District (EPUD) load, establishes a new point of replacement for the Surprise Valley Electrification Corporation (SVEC) loads, and new service to Pacific's River and Sandpoint loads.

Pacific requests, pursuant to § 35.11 of the Commission's Regulations, that a waiver of prior notice be granted and that an effective date of October 31, 1985 be assigned to the revisions pertaining to SVEC and an effective date of February 8, 1988 be assigned to those pertaining to EPUD.

Copies of this filing have been supplied to Bonneville, EPUC, and the Oregon Public Utilities Commission.

Comment date: May 26, 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. 88-10925 Filed 5-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-286-000]

Supplement and Amendment to Complaint; Cascade Natural Gas Corp. et al.

May 10, 1988.

In the matter of: Cascade Natural Gas Corporation, Complainant v. Northwest Pipeline Corporation, Chevron Chemical Company, Llano, Inc., Hadson Gas Systems, Inc., Corpus Christi Industrial Pipeline Company, and Transco Energy Marketing Company, Respondents.

Take notice that on April 27, 1988, Cascade Natural Gas Corporation (Cascade), P.O. Box 24464, Seattle, Washington 98124, filed a supplement and amendment to the complaint filed in the referenced docket. Specifically, Cascade adds Corpus Christi Industrial Pipeline Company (Corpus Christi) and Transco Energy Marketing Company (Temco) as additional respondents to the complaint. Cascade also renews its request for immediate issuance of a restraining order directing Northwest Pipeline Company and Chevron Chemical Company to cease and desist from transportation of natural gas under section 311 of the Natural Gas Policy

Act pending a hearing and decision on Cascade's complaint.

Any person desiring to be heard with respect to this motion should file an answer, protest, or motion to intervene, as appropriate, within 30 days after the date of this notice. The substitute respondents are directed to answer within the same time period. Such pleading should be directed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance the Commission's Rules 211, 213, or 214 (18 CFR 385.211, 385.213 or 385.214), as appropriate. 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 persons wishing to become a party must file a motion to intervene. Persons who have heretofore filed a motion to intervene need not file again. Copies of the motion are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10924 Filed 5-13-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-498; FRL-3380-9]

E.I. Du Pont De Nemours & Co., Inc.; Amended Pesticide Tolerance Petition

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the filing of an amended pesticide petition by E.I. du Pont de Nemours & Co., Inc., for the combined residues of the herbicide ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoic acid in or on various commodities.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 21, 1985 (50 FR 33840), EPA issued pesticide petition (PP) 5F3252 by E.I. Du Pont de Nemours & Co., Inc., Agricultural Chemicals Department, Burley Mill Plaza, Wilmington, DE 19898, proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy) phenoxy] propanoic acid in or on the commodities cotton and soybeans at 0.05 ppm. Du Pont has amended its petition as follows:

It is proposed that a tolerance be established for the combined residues of quizalofop (2-[4-(6-chloroquinoxalin-2-yl)phenoxy]propanoic acid) and quizalofop ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoate), all expressed as quizalofop ethyl as follows:

Commodity	Parts per million (ppm)
Soybeans	0.05

It is proposed that tolerance be established for the combined residues of quizalofop (2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoic acid), quizalofop-ethyl (ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy propanoate), and quizalofop methyl (methyl-2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]propanoate), all expressed as quizalofop ethyl as follows:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, meat	.02
Cattle, mbyp	.05
Eggs	.02
Goats, fat	.05
Goats, meat	.02
Goats, mbyp	.05
Hogs, fat	.05
Hogs, meat	.02
Hogs, mbyp	.05
Horses, fat	.05
Horses, meat	.02
Horses, mbyp	.05
Milk	.01
Milk, fat	.05
Poultry, fat	.05
Poultry, meat	.02
Poultry, mbyp	.05
Sheep, fat	.05
Sheep, meat	.02
Sheep, mbyp	.05

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

Dated: May 11, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-10993 Filed 5-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400014; FRL-3380-5]

Toxic and Hazardous Substances Control; Computer Based Systems Inc.; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Computer Based Systems, Incorporated of Fairfax, VA for access to information which has been submitted to EPA under sections 303, 311, 312, and 313 of the Emergency Preparedness and Community Right-to-Know Act of 1986, also known as Title III. Some of the information may be claimed or determined to be trade secret information.

DATE: Access to the trade secret information submitted to EPA will occur no sooner than May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Newburg-Rinn, Acting Chief, Public Data Branch (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G008, 401 M Street SW., Washington, DC 20460, (202-382-3758).

SUPPLEMENTARY INFORMATION: Under the Superfund Amendments and Reauthorization Act of 1986 (SARA), industry must report information on the presence, use, production, and

manufacture of certain chemicals to EPA.

Under contract number 86D80013, Computer Based Systems, Incorporated, 2750 Prosperity Avenue, Suite 300, Fairfax, VA 22031, will assist the Office of Toxic Substances, Information Management Division in receiving and processing the information submitted by industry in response to the requirements of sections 303, 311, 312, and 313 of SARA. Specifically, Computer Based Systems, Incorporated will establish and maintain a facility, called the Title III Reporting Center, for this purpose, and will receive, process, archive, store, and retrieve the information.

In accordance with 40 CFR 2.306(j), EPA has determined that Computer Based Systems, Incorporated will require access to trade secret information under SARA to perform successfully the implementation and operation of the Title III Reporting Center. For example, Computer Based Systems, Incorporated personnel will be given access to SARA sections 303, 311, 312, and 313 submissions and related documents. Some of the information may be claimed or may be determined to be trade secret. Personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures.

EPA is issuing this notice to inform all submitters of information under sections 303, 311, 312, and 313 of SARA that EPA may provide Computer Based Systems, Incorporated access to these trade secret materials son a need-to-know basis. All access to SARA trade secret information under this contract will take place at the Title III Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, Computer Based Systems, Incorporated will return all materials to EPA.

Clearance to access to SARA trade secret information under this contract is scheduled to expire on September 30, 1992.

Dated: May 3, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-10878 Filed 5-13-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3380-3]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity to Comment for the City of Carthage, MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment for the City of Carthage, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act.

EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On May 4, 1988, EPA commenced the following Class II proceeding for the assessment of penalties: In the Matter of the City of Carthage, Missouri; EPA Docket No. VII 88-W-0004.

The proceeding was commenced by filling an Administrative Complaint with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2811. The Complaint proposes a penalty of $10,000 per day of violation not to exceed a maximum of $125,000, for discharging pollutants into the Spring River in violation of the effluent limitations in the city's National Pollutant Discharge Elimination System (NPDES) permit, and for failing to implement and enforce a program to require industrial dischargers to the city's sewers to pretreat their wastewaters, also in violation of the city's NPDES permit.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days.

Date: May 4, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88-10876 Filed 5-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSIONS

[PR Docket No. 88-214]

Summary of Order to Show Cause, Suspension Order and Designation Order; Nomar Vizcarrondo, et al.

Released April 29, 1988.

The Federal Communications Commission has released an *Order to Show Cause, Suspension Order and Designation Order* designating the application of Nomar Vizcarrondo to renew amateur station license NP4H and his Amateur Extra Class operator license for hearing. In the same *Order* the Commission initiated license revocation and suspension proceedings against Vizcarrondo and 10 other amateur service licensees. **Federal Register** publication of a summary of this document is required for the issues that relate to Nomar Vizcarrondo's application to renew amateur station license NP4H and his Amateur Extra Class radio operator license. The issues in this proceeding that pertain to Nomar Vizcarrondo are to determine: Whether he assisted others in obtaining amateur service licenses by fraudulent means, in willful and/or repeated violation of § 97.33 and/or 97.129 of the Commission's Rules, 47 CFR 97.33 and 97.129; whether he misrepresented material facts to the Commission; whether he is qualified to remain an amateur radio station licensee; whether the suspension of his amateur operator license should be affirmed, modified or dismissed; and whether granting his application would serve the public interest, convenience and necessity.

The *Order* also specifies issues pertaining to the 10 other amateur

service licensees involved in the proceeding. Following is a list of those licensees and their amateur station call signs: Carlos M. Colon (WP4U), Ramon R. Santos Vazquez (KP4FW), Ellie J. Rivera De Jesus (KP4KB), Belinda Rivera (WP4FOG), Iris Y. Rivera (WP4FOF), Ramon Vizcarrondo (NP4ZM), Margie Vizcarrondo (WP4GAW), Iris C. Lopez (NP4ZM), Richard Zambrana (KP4IN) and Joaquin Hernandez (NP4E). These licensees have been individually notified of their reply deadlines. Petitions to Intervene must be filed within 30 days of publication in the **Federal Register** in accordance with the specific provisions of 47 CFR 1.223(b) and the general provisions of 47 CFR Part 1.

A copy of the complete *Order to Show Cause, Suspension Order and Designation Order* 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Federal Communications Commission.

Robert H. McNamara,

Chief, Special Services Division.

[FR Doc. 88-10845 Filed 5-13-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002480-004.

Title: Port of Oakland Supplemental Agreement.

Parties:

Port of Oakland (the Port)

American President Lines, Ltd. (APL)

Synopsis: The proposed agreement sets forth amendments to Agreements Nos. 224-002480, 224-002605 and/or 224-003038 relating to the division of secondary use revenues in certain instances and the Port's option to purchase assignee's container cranes on the premises.

Agreement No.: 224-002758-005.

Title: Port of Oakland Terminal Agreement.

Parties:

City of Oakland

American President Lines, Ltd. (APL)

Synopsis: The agreement amends the basic agreement to provide for the division of secondary use revenues of 40% to the Port and 60% to APL in certain instances of long term committed secondary users obtained by APL. It also provides for the monthly payment of maximum guaranteed compensation in equal monthly installments of $153,750.00.

Agreement No.: 224-003038-002.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland

American President Lines, Ltd. (APL)

Synopsis: The agreement amends the basic agreement to provide for the division of secondary use revenues of 40% to the Port and 60% to APL in certain instances of long term committed secondary users obtained by APL.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88-10827 Filed 5-13-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011193.

Title: Conbulk Carriers Discussion Agreement.

Parties:

Star Shipping A/S

Westwood Shipping Lines

Gearbulk Ltd. dba Gearbulk Container Services

Synopsis: The proposed agreement would authorize the parties to agree on rates, practices and service contracts in the trade from ports and points in Japan and Korea to ports on the west coast of the United States and Canada and inland points via such ports. Adherence to any agreement reached would be voluntary.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88-10828 Filed 5-13-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

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

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

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

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041888 AND 050288

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Datapoint Corporation, Centel Corporation, Centel Corporation	88-1231	04/18/88
Sakata Inx Corp., Acme Printing Ink Company, Acme Printing Ink Company	88-1248	04/18/88
Morningstar Foods, Inc., Kraft, Inc., Avoset Corp	88-1252	04/18/88
Reed International P.L.C., Mr. Stephen K. Pond, c/o Communications/Today Ltd., Communications/Today Ltd., Home Textiles Today, Ltd	88-1290	04/18/88
Dr. Michael Otto (Spiegel, Inc.), Honeybee, Inc., Honeybee, Inc	88-1297	04/18/88
James M. Goldsmith, Generale Occidentale, Diamond Group Inc	88-1304	04/18/88
Exxon Corporation, Westland Oil Development Corporation, Westland Oil Devel. Corp. Westland Oil & Gas Properties	88-1316	04/18/88
Bally Manufacturing Corporation, Pacific West Sports & Racquet Club, Ltd., Pacific West Sports & Racquet Club, Ltd	88-1317	04/18/88
Gannett Co., Inc., New York Subways Advertising Co., Inc., New York Subways Advertising Co., Inc	88-1324	04/18/88
Cummins Engine Company, Inc., Cortes Equipment Service Co., Cortes Equipment Service Co	88-1359	04/19/88
Commonwealth Equity Trust, Del E. Webb Investment Properties, Inc., Del E. Webb Investment Properties, Inc	88-1378	04/19/88
Frank Stronach, Ligma Corporation, Ligma Corporation	88-1208	04/20/88
Crystal Brands, Inc., Voting Trust—Hallmark Cards, Incorporated, Trifari, Krussman & Fishel, Inc	88-1280	04/20/88
Mark IV Industries, RTE Corporation, RTE Corporation	88-1311	04/20/88
Crescott, Inc., The William Carter Company, The William Carter Company	88-1328	04/20/88
Tele-Communications, Inc., Merton Shapiro, assets of Shapiro's movietheater operations	88-1404	04/20/88
Cookson Group plc, Peter and Daphne Farago, husband and wife, NEPTCO, Incorporated and NEPT International, Inc	88-1262	04/21/88
CMS Energy Corporation, The Oxford Energy Company, The Oxford Energy Company	88-1398	04/21/88
Lonrho Plc, Compagnie Financiere de Paribas, Banque Paribas	88-1216	04/22/88
Borden, Inc., Robert H. Orchard, The Orchard Corporation of America	88-1256	04/22/88
The Philp Co. Trust, Arabian Investment Banking Corporation, Bertram-Trojan, Inc	88-1257	04/22/88
The Greyhound Corporation, The RTZ Corporation, PLC, 20 Mule Team Division of United States Boraz & Chemical	88-1286	04/22/88
International Semi-Tech Microelectronics Inc., Provigo Inc., Consumers Distributing Company Limited	88-1322	04/22/88
Total Compagnie Francaise Des Petroles, CSX Corporation, CSX Oil & Gas Corporation plus certain assets of CSX	88-1327	04/22/88
Norman M. Lear, Multimedia, Inc., Reel Broadcasting Co., Inc	88-1342	04/22/88
Tate & Lyle, Staley Continental, Inc., Staley Continental, Inc	88-1345	04/22/88
Provigo Inc., Petrini's Meat, Inc., Petrini's Meat, Inc	88-1351	04/22/88
William W. LaRoche, KaiserTech Limited *, Kaiser Aluminum & Chemi-cal Corporation	88-1354	04/22/88
U S West, Inc., Enhance Financial Services, Inc., Enhance Financial Services, Inc. and Securities	88-1355	04/22/88
Roy E. Disney and Patricia A. Disney, husband & wife, Show Industries, Inc., Show Industries, Inc	88-1358	04/22/88
Highness Kosan Co., Inc., Ronald L. Fenolio, Mililani Shopping Center	88-1362	04/22/88
Sequa Corporation, WMRI Leasing Corp., WMRI Leasing Corp	88-1364	04/22/88
Landmark Land Company, Inc., American First Corporation, First Life Assurance Company	88-1366	04/22/88
Maersk Inc., James G. Costello, II, J.G.C. Enterprises Corporation	88-1369	04/22/88
Schroder Real Estate Fund A, Equity Financial Investment Co., Orlando Joint Venture	88-1373	04/22/88
General Coast Enterprises Co., Ltd., Minstar, Inc., Min-V Corp	88-1375	04/22/88
David R. Williams, Jr., Santa Fe Southern Pacific Corporation, Black Mesa Pipeline, Inc	88-1379	04/22/88
The Rank Organisation Plc, Gulf & Western Industries, Inc., Fifty-Four Century Corporation	88-1394	04/22/88
TW Services, Inc., Jack Galione, Corporate Foot Services, Inc	88-1397	04/22/88
Varity Corporation, TRW, Inc., TRW, Inc	88-1213	04/23/88
Occidental Petroleum Corporation, Cain Chemical, Inc., Cain Chemical Inc	88-1303	04/25/88
Jean Noel Bongrain, Bongrain, S.A., Real Fresh, Inc., Real Fresh, Inc	88-1356	04/26/88
The Rank Organisation Plc, Bell & Howell Company, Bell & Howell Video Systems, Inc	88-1392	04/26/88
The Rank Organisation Plc, Columbia Pictures Industries, Inc., Colvita Productions, Inc	88-1393	04/26/88
Health and Rehabilitation Properties Trust, Gerard M. Martin, Heywood Corp	88-1410	04/26/88
The Rank Organisation Plc, BHCP Video, BHCP Video	88-1421	04/26/88
ConAgra, Inc., Blue Star Foods, Inc., Blue Star Foods, Inc	88-1318	04/27/88
J.G.L. Investments Pty. Ltd., Anac Holding Corporation, Carls Parent Corporation	88-1319	04/27/88
Brunswick Corporation, Jack J. White, Jr., Marine Group, Inc., and Marine Group Associates	88-1326	04/27/88
Meggitt Holdings PLC, Charles H. and Margaret M. Dyson, Plastic Fabricating Co. division of Criton Corporation	88-1329	04/27/88
Sam J. Frankino, Replacement Enterprises, Inc., Replacement Rent-A-Car, Inc	88-1336	04/27/88
Golder, Thoma, Cressey Fund III Limited Partnership, Ero Industries, Inc., Ero Industries, Inc	88-1399	04/27/88
John J. Rigas, Campbell Communications, Inc. Campbell Communications, Inc	88-1405	04/27/88
Michael J. Rigas, John J. Rigas, Adelphia Communications Corporation	88-1406	04/27/88
Timothy J. Rigas, John J. Rigas, Adelphia Communications Corporation	88-1407	04/27/88
James P. Rigas, John J. Rigas, Adelphia Communications Corporation	88-1408	04/27/88
Engelhard Corporation, KaiserTech Limited, Kaiser Clay & Catalyst Company and The Harshaw Chemical	88-0902	04/29/88
Craig O. McCaw, Voting Trustee for MFC, Inc., Voting Tru. Affiliated Publications, Inc., Nine Subs and Nine Partnerships	88-1235	04/29/88
Affiliated Publications, Inc., Craig O. McCaw, Voting Trustee for MFC, Inc., Voting Trus McCaw Cellular Communications, Inc	88-1237	04/29/88
R.H. Macy & Co., Inc., Robert Campeau, I. Magnin and Bullock/Bullock Wilshire divisions	88-1330	04/29/88
General Motors Corporation, M&SD Corp., M&SD Corp	88-1339	04/29/88
The May Department Stores Company, Robert Campeau, Filene's & Foley's department store divisions of	88-1344	04/29/88
Enron Corp., TNP Enterprises, Inc., Capital Cogeneration Company, Ltd	88-1347	04/29/88
Enron Corporation, H.B. Zachry, Jr., Capital Cogeneration Company, Ltd	88-1348	04/29/88
American Magnetics Corporation, Damon Corporation, Damon Corporation	88-1349	04/29/88
Ballantrae Partners, L.P., Damon Corporation, Damon Corporation	88-1350	04/29/88
Craig O. McCaw, Craig O. McCaw, Voting Trustee for MFC, Inc., v/t McCaw Cellular Communications, Inc	88-1382	04/29/88
John E. McCaw, Jr., Craig O. McCaw, Voting Trustee for MFC, Inc., V/T McCaw Cellular Communications, Inc	88-1383	04/29/88
Bruce R. McCaw, Craig O. McCaw, Voting Trustee for MFC, Inc., V/T McCaw Cellular Communications, Inc	88-1384	04/29/88
Keith W. McCaw, Craig O. McCaw, Voting Trustee for MFC, Inc. V/T McCaw Cellular Communications, Inc	88-1385	04/29/88
Reynolds Metals Company, Presto Industries, Inc., Presto Industries, Inc	88-1389	04/29/88
LivingWell, Inc., Paramount Acceptance Corporation, Paramount Acceptance Corporation	88-1418	04/29/88
Peter Kiewit Sons', Inc., Union Pacific Corporation, Certain assets of UPE	88-1423	04/29/88
Price Pfister, Inc., GIR Properties, GIR Properties	88-1435	04/29/88
Donald J. Trump, Aoki Corporation, Plaza Operating Partners, Ltd	88-1436	04/29/88
Murphy Oil Corporation, Mobil Corporation, Mobil Exploration & Producing U.S. Inc., Mobil	88-1457	04/29/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041888 AND 050288—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Jupiter Industries, Inc., Elgin National Industries, Inc., Elgin National Industries, Inc	88-1459	04/29/88
Maxpharma, Inc., Neoax, Inc., C & H Nationwide, Inc	88-1461	04/29/88

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

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-10830 Filed 5-13-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Availability of Funds for Fiscal Year 1988

In the Matters of a Cooperative Agreement To Support A Southern Occupational and Environmental Health Clinical Examination Center.

The National Institute for Occupational Safety and Health (NIOSH) solicits applications for a cooperative agreement to support a Southeastern Occupational and Environmental Health Clinical Examination Center (CENTER) to serve working population in the Souteast that have been increasing in number.

Although research-based occupational and environmental health clinical examination centers have been established in other parts of the country, the Atlanta area lacks such a center. In this area of the country that is both expanding economically and is a focal point for disease control, the public is currently underserved by a CENTER. With the working population growing in the Southeastern United States and specifically, Federal Region IV, clinical-based epidemiology needs to address emerging work-related disease problems of this expanding population. Region IV includes Alabama, Florida, Kentucky, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee, of which Atlanta serves as the Regional Office.

Because recent epidemologic studies into community and workplace hazards have required increasing methodological sophistication, research has turned to new medical diagnostic tests for increasingly subtle health conditions. As epidemiologic research employs such clinical tools, there is a need to contribute to the process of developing new or improved methods for evaluating the health of exposed populations in Region IV.

The CENTER would address several problems. First, it would overcome the constraints of medical testing under field conditions that limit the availability of sophisticated techniques and specialized personnel. Second, it would provide for clinical testing where quality is sacrificed in performing certain tests under field conditions. Third, it would provide a stable unit in occupational and environmental health in the center of Region IV to perform medical evaluations. Fourth, it would respond to a continuing need to perform health surveys, some of which are unpredictable. Fifth, the CENTER would contribute to the process of developing new or improved methods for evaluating the health of exposed populations.

Atlanta, Georgia, serves as the headquarters for the Centers for Disease Control (CDC). Over the years the mission of CDC has expanded from the control of infectious diseases to include the prevention of chronic diseases.

This expansion is evidenced by the location of the Center for Environmental Health and Injury Control and the headquarters of the National Institute for Occupational Safety and Health in Atlanta within the organization of CDC and the location of the Agency for Toxic Substances and Disease Registry with CDC in Atlanta.

The location of the CENTER, in close proximity to Atlanta, is thus, a factor in selecting an institution to support. The CENTER will be observing cases that require the technical assistance of these agencies, and in critical situations, timeliness becomes paramount in providing this assistance.

Authority

The legislative authority for this program is contained in section 22(a) and 20(a) (3) and (5) of the Occupational Safety and Health Act and section 301 of the Public Health Service Act.

Eligibility Requirements

Eligible applicants for this cooperative agreement are medical schools and educational institutes. Essential requirements are to:

A. Be located in an academic health center with—

1. A multidisciplinary faculty with expertise in areas such as pathology, toxicology, pulmonary medicine, dermatology, and emergency medicine; and

2. An established outpatient clinic providing care to patients who are employed and may possess work-related diseases.

B. Conduct—

1. Research on biological assays designed to detect the effects of exposure to potentially harmful substances or their products in biologic materials; and

2. Outpatient health evaluations on a referral basis from the project officer covering a service area of growing employment within Region IV of the Department of Health and Human Services which includes—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. The Regional Office is located in Atlanta, Georgia.

Availability of Funds

It is expected that approximately $95,000 will be available in Fiscal Year 1988 to fund one award. The award will be funded within a 12-month budget period and a 5-year project period. It is planned that $200,000 per year will be available for years 2, 3, 4, and 5. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and availability of funds. The funding estimate outlined above may vary and is subject to change.

Program Objectives

Objectives of this cooperative agreement are to:

A. Perform research necessary to improve and develop health testing methodologies needed to evaluate health effects of chemical and physical hazards found among the growing Southeastern populations.

B. Provide a stable, proficient resource for performance of screening and medical evaluations of selected populations of growing concern in the Southeast.

C. Generate hypotheses for further research of these populations so as to

benefit the affected public based upon case findings.

D. Study the causes, diagnoses, and treatments of occupational and environmental diseases found in the growing Southeast for use by the medical community at large.

Cooperative Activities

1. Recipient Activities in the First Year of Award

a. Develop the requirements for staffing, management, and administrative system and controls, equipment, and the purpose and goals of the CENTER.

b. Identify and pursue alternative approaches for the provision of resource support for the operational budget of the CENTER that are independent of direct support from the government.

2. Recipient Activities in the Second Through Fifth Year of Award

a. Conduct research activities directed toward the protection of the health of workers and members of the general community in the southeastern States, which include—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. The purpose of the research to be conducted at the CENTER will be to gain information regarding the etiology, pathogenesis, and treatment of occupational and environmental diseases among the populations in the Southeast, particularly where economic growth is evident.

b. Provide an outpatient capacity that covers a large catchment area in the Southeast. When operational, conduct human clinical studies utilizing patients ill with occupational or environmental disease. Occupational diseases include, among others, those that result from chemical and physical exposures at work. Environmental diseases result from the contamination by pollutants of any environmental media including air, water, and soil. There will be no funds authorized for direct treatment of patients.

3. CDC/NIOSH Activities

a. Assist the recipients in the diagnosis, treatment, and follow-up of occupational and environmental diseases within the service area of the proposed CENTER and how these cases may generate hypotheses for research. This assistance addresses both known diseases as well as suspected diseases in this service area.

b. Provide technical assistance on cases of vague or unknown etiologies.

Application Submission and Deadline

The original and 2 copies of the application should be submitted on Form PHS 5161-1 (revised 3-86) on or before July 7, 1988, to: Henry Cassell, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305.

A. *Deadline*: Applications shall be considered as meeting the deadline if they are either:

1. Received on or beofre the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

B. *Late Applications:* Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Application Content

Applications must include a narrative which includes the following:

A. Clearly defined and measurable objectives consist with the applicant's proposed activities and the goals of the program outlined as objectives in this document. The CENTER'S proposed objectives should likewise promote clarity of purpose and facilitate integration of activities into a conceptual whole.

B. A method of evaluation aimed at monitoring progress in meeting the CENTER'S objectives.

C. A description of the CENTER director's role and authority relative to staffing the CENTER, coordination of effort, and control over CENTER space and equipment.

D. A description of the core faculty and its role in implementing and evaluating the proposed program.

E. A list of staff, including the director and core faculty who are expected to participate in the CENTER, including titles, tenure status, areas of expertise, and the amount of time devoted to each component of the proposed program, and whether paid from the cooperative agreement or other sources.

F. A list of relevant current funded and/or pending grants and/or contracts for the core faculty under part 5 above. For each grant or contract include:

1. Source of funds;
2. Amount of funding;
3. Identifying numbers;
4. Whether funded or pending;
5. Date of funding, initiation, and termination; and
6. Relationship to the CENTER'S proposed activities, objectives and implementation plan.

G. Charts showing the proposed organizational structure of the CENTER and its relationship to the applicant institution and, where applicable, to affiliated institutions or collaborating organizations.

H. A detailed budget for the CENTER.

Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Review and Evaluation Criteria

Review of the application will be conducted in accordance with PHS Grants Administration Manual, Part 134, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the scientific merit of the applications. The applications will be evaluated by the following criteria:

A. Soundness and particularity of the proposed approach and work plan for implementing the 4 program objectives of the CENTER.

B. Demonstrated familiarity with, and experience and success in the development of, a financial support system. The support system should be designated to identify, elicit, and successfully coordinate the provision of phased financial support to an undertaking jointly sponsored by public and private organizations with legitimate interest in the success of the effort.

C. Demonstrated understanding of the need for, and the intended purpose of the CENTER. Explicitly stated understanding of the concept/function of the CENTER to serve as a center for clinical research within the professional, medical, and academic community.

D. Plans to establish facility within 50 mile radius of Atlanta, Georgia.

Information

Information on application procedures, copies of application forms, and other material may be obtained from: Henry Cassell, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305, Telephone: (404) 639-6575.

Technical assistance may be obtained from: Melvin L. Myers, Deputy Assistant Director, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta,

Georgia 30333, Telephone (404) 639-3901; FTS 236-3901.

Dated: May 9, 1988.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 88-10853 Filed 5-13-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Veterinary Medicine Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Veterinary Medicine Advisory Committee by the Secretary of Health and Human Services (the Secretary). This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on April 24, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: May 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10905 Filed 5-13-88; 8:45 am]

BILLING CODE 4160-9-M

Advisory Committees; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Adminsitration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. June 1 and 2, 1988, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 1, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5:30 p.m.; open committee discussion, June 2, 1988, 9 a.m. to 5:30 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research, HFD-110, Rm. 16B-45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730 or 419-259-6211.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cardiovascular disorders and diseases and makes recommendations regarding the appropriate clinical development of such products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss guidelines for the clinical testing of antihypertensive drugs, and Cipralan (cibenzoline succinate), NDA 19-544, Hoffman-La Roche, Inc., for suppression and prevention of ventricular arrhythmias.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. June 2 and 3, 1988, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 2, 1988, 9 a.m. to 10:00 a.m., unless public participation does not last that long; open committee discussion, 10:00 a.m. to 5 p.m.; open public hearing, June 3, 1988, 9 a.m. to 10:00 a.m., unless public participation does not last that long; open committee discussion, 10:00 a.m. to 12:30 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research, HFD-510, Food and Drug Adminsitration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in obstetrics and gynecology.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On June 2, 1988, the committee will discuss the use of bromocriptine for the suppression of lactation. On June 3, 1988, the committee will discuss reports of functional ovarian cysts associated with the use of oral contraceptives.

Microbiology Devices Panel

Date, time, and place. June 13, 1988, 9 a.m., Rm. 703A-727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Adminsitration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 22, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an over-the-counter Group A Streptococcus detection device, and for a device to detect certain types of human papillomavirus.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum

rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** ntoice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10907 Filed 5-11-88; 3:34 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[MT-020-08-4121-02]

Receipt of an Exchange Proposal, and Intention to Prepare an Environmental Statement and Hold Scoping Meetings; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement, hold scoping meetings and receipt of exchange proposal between Meridian Minerals Company, a subsidiary of Burlington Northern, Inc. and the Bureau of Land Management, filed in accordance with provisions of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, and Title 43 CFR Part 2200. In accordance with the provisions of section 102 of the National Environmental Policy Act of 1969 as amended, 43 U.S.C. 4321 and Title 40 CFR Parts 1500-1508, an environmental impact statement will be prepared.

SUMMARY: The proposal, filed in the Miles City District on May 3, 1988, involves the exchange of 3,674.36 acres of federal coal ownership in Yellowstone and Musselshell Counties, about fourteen miles south of Roundup, Montana in the Bull Mountains area. The proposed exchange would consolidate coal ownership, which is presently in a checkerboard pattern, for development as an underground mining tract.

In exchance, Meridian would convey lands described as having outstanding recreational, wildlife habitat or watershed values. These lands are currently managed by Plum Creek Timber Company and Glacier Park Land Company, both subsidiaries of Burlington Northern, Inc., Meridian is willing to consider a coal for coal exchange, as an alternative, should BLM prefer that option.

An environmental impact statement (EIS) will be prepared to analyze the proposed exchange and the reasonably foreseeable consequences of it, including an assessment of the underground mining scenario mentioned in the exchange application. In addition, BLM will analyze the impacts or benefits of changing land ownership from private to federal of the lands likely to be exchanged. In general, all impacts will be traced to the point they become insignificant or cannot be attributed to the proposed exchange. The no action or denial of the proposal will also be analyzed

All interested parties, including federal, state and local agencies, are invited to participate in the EIS scoping process. The scoping process begins immediately and will close on June 30, 1988. Agencies with particular expertise are invited to join in the EIS process as cooperators.

Geographic Area: The geographic area to be analyzed for effects is mostly in Yellowstone and Musselshell counties, Montana, the site of the probable underground coal mine. However, lands are being offered for exchange in eleven Montana counties; Beaverhead, Broadwater, Carbon, Custer, Dawson, Deer Lodge, Gallatin, Jefferson, Madison, Musselshell and Prairie counties. Regional or cumulative effects may extend somewhat beyond these counties.

Issues and Concerns: The following issues and concerns have been identified to date:

—Possible impact to ground water from the underground mine.

—Increased road hazards and road deterioration resulting from over the road transportation of the mined coal.

—Air quality degradation around the mine area, and from increased vehicle use.

—Possible subsidence problems, following mining, and the impact of that on local water supplies.

—Social and economic changes which would likely impact the town of Roundup, Montana, and surrounding area.

—Potential loss of tax revenue by federal acquisition of privately owned lands.

—Wildlife impacts from increased traffic.

—Evaluation of the federal coal and the offered private lands.

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in preparing the EIS.

The scoping process used to collect issues and concerns on the proposed exchange will involve two public meetings and a mail-out packet, which

individuals may request, fill out, and return to the BLM Miles City District at the following address: Bureau of Land Management, Attn: Rob McWhorter, Project Manager, P.O. Box 940, Garyowen Road, Miles City, Montana 59301.

DATES: Scoping packets will be distributed immediately, upon request. Responses and comments will be accepted through June 30, 1988. Public meetings will be held at the following times and locations:

Date: May 25, 1988

Time: 7 p.m. m.d.t.

Location: Central School Multipurpose Room, Sixth Avenue and Second Street, Roundup, Montana

Date: May 26, 1988

Time: 7 p.m. m.d.t.

Location: Town Hall Ennis, Montana

In addition to scoping meetings, an open house "drop in" session to explain the proposal will be held:

Date: May 24 and 25, 1988

Time: 9 p.m. to 5 p.m. m.d.t.

Location: USDA Building, Conference Room, 109 Railroad Avenue, Roundup, Montana

It is anticipated that the draft environmental impact statement will be available for public review in late November 1988.

The federal coal ownership proposed to be acquired by Meridian in their application is:

	Acres
Musselshell County, Montana	
Township 6 North, Range 27 East, M.P.M.:	
Section 18: All (Fractional)	636.92
Section 20: All	640.00
Section 30: All (Fractional)	638.00
Total Musselshell County	1,914.92
Yellowstone County, Montana	
Township 5 North, Range 27 East, M.P.M.:	
Section 4: Lots 1(39.86); 2(39.86); 3(39.86); and 4(39.86)	159.44
Township 6 North, Range 27 East, M.P.M.:	
Section 28: All	640.00
Section 32: N½, SE¼	480.00
Section 34: N½, SW¼	480.00
Total Yellowstone County	1,759.44
Grand Total Musselshell and Yellowstone counties	3,674.36

Candidate lands offered in exchange by Meridian, from which BLM could choose lands totalling equal value to the coal, include the following:

	Acres
Madison River—McAtee Bridge	
T. 8 S., R. 1 W.:	
Section 15	572
Section 25	48
T. 9 S., R. 1 W., Section 1	77
Devils Fence Area—Boulder Valley	
T. 5 N., R. 2 W.:	
Section 19	655
Section 29	640
Section 31	635
Trident—Missouri River	
T. 2 N., R. 2 E.,:	
Section 3	553
Section 9	227
T. 3 N., R. 2 E., Section 27	304
Lombard—Missouri River	
T. 4 N., R. 3 E.,:	
Section 7	251
Section 13	7
Radersburg Area	
T. 5 N., R. 1 E., Section 3	160
Hells Canyon	
T. 1 S., R. 6 W., Section 31	655
Ruby Range	
T. 5 S., R. 5 W., Section 21	654
T. 6 S., R. 6 W.,:	
Section 27	160
Section 35	321
T. 7 S., R. 6 W., Section 1	650
Big Hole—Block Mountain	
T. 4 S., R. 8 W.,:	
Section 1	660
Section 13	639
Section 23	320
Section 25	478
T. 4 S., R. 7 W.,:	
Section 19	160
Section 31	183
Big Hole	
T. 1 N., R. 13 W., Section 17	640
Big Dry 1	
T. 9 N., R. 51 E., Section 35	640
Grove Creek Allotment	
T. 9 S., R. 21 E.,:	
Section 1: Lots 1, 2, 3, 4	±6800
Section 3: S½, S½N½, N½NW¼, NE¼NE¼	
Section 5: N½, N½S½, S½SE¼	
Section 7: All	
Section 9: N½N½, S½NE¼	
Section 11: All	
Section 13: Lots 3, 4	
Section 15: N½, W½SW¼, NW¼SE¼, S½SE¼	
Section 17: All	
Section 19: All	
Section 21: All	
Section 23: All	
Section 31: Lots 1, 2, 3, 4	
Big Dry 2	
T. 13 N., R. 48 E.,:	
Section 27: E½	960
Section 35: All	
Big Dry 3	
T. 13 N., R. 47 E., Section 21: All	640
Big Dry 4	
T. 13 N., R. 48 E., Section 25: All	640
North of Round-Up	
T. 9 N., R. 26 E.,:	
Section 28: NW¼, W½SW¼	±1200
Section 29: All	
T. 10 N., R. 27 E., Section 27: E2	
Powder River Breaks	
T. 7 N., R. 51 E., Section 1: All	1506.77
T. 8 N., R. 51 E., Section 35: Lots 1, 4, 5, 8, and SE¼NE¼, E½SE¼ (All East of Powder River)	
T. 7 N., R. 52 E., Section 7: All	
Big Dry 5	
T. 12 N., R. 45 E., Section 17: All	640
Big Dry 6	
T. 12 N., R. 45 E., Section 5: All	638
Big Dry 7	
T. 18 N., R. 56 E., Section 25: SW¼	160
Big Dry 8	
T. 18 N., R. 56 E., Section 35: River Frontage	120

The Miles City District, Bureau of Land Management is soliciting public comment on the public interest and environmental factors of this exchange proposal. All scoping comments should be received by June 30, 1988. Specific areas where comments are desired are as follows:

(1) Comments or thoughts on how or why the public interest might or might not be served by the proposed exchange.

(2) Comments on the values associated with either the private lands to be acquired or the public coal to be transferred into private ownership.

(3) What are the expected environmental impacts of the proposed exchange?

(4) What are the impacts of the proposed exchange on competition in the coal industry or on competitive coal leasing?

(5) What human or environmental concerns should the EIS address, and to what extent?

FOR FURTHER INFORMATION CONTACT: All comments and requests for further information should be addressed to Rob McWhorter, Project Manager, Miles City District Office, Bureau of Land Management, Box 940, Miles City, Montana 59301 (406) 232-4331.

If, at any time during the EIS process, any person wishes to raise issues for consideration in the EIS, he/she should feel free to do so by contacting the BLM at the above address.

Date: May 9, 1988.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 88-10894 Filed 5-13-88; 8:45 am]

BILLING CODE 4310-DN-M

[WY-010-08-4333-08]

Intent to Conduct an Evaluation and Public Scoping on the Grass Creek Management Framework Plan for Off-Road Vehicle Designations; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to conduct an evaluation and public scoping on the Grass Creek Management Framework Plan for Off-Road Vehicle (ORV) designations. Request for resource data, including a call for coal resource information.

SUMMARY: The Bureau of Land Management (BLM) is considering the possible need for a Category 1 plan amendment to the 1983 Grass Creek Management Framework Plan (MFP) for ORV designations. Public scoping will be conducted to identify interested parties, issues and concerns, and to encourage public participation. The ORV designations of open, closed, or limited will be applied to all public lands in the Grass Creek Resource Area (GCRA), Worland District, Wyoming. The designations would affect portions of Washakie, Hot Springs, Park, and Big Horn Counties, Wyoming.

Anyone having any resource information and inventory data pertaining to the GCRA, particularly any that has been gathered since 1983, is requested to share the information with BLM. This includes any coal resource information per 43 CFR 3420.1-2. The BLM will use any such new information to update its resource data base and in conducting the plan evaluation.

DATE: Scoping letters were distributed by mail on or about April 13, 1988. Responses and comments will be accepted through June 15, 1988. A public open house will be held June 15, 1988 from 8:00 a.m. to 7:00 p.m. at the Worland District BLM Office, 101 S. 23rd, Worland, Wyoming. Individual contacts will be made with user groups and interested individuals. If additional meetings and public hearings are needed, they will be scheduled and the public notified through individual mailings or the news media.

ADDRESSES: Information and scoping letters can be obtained by writing, telephoning, or visiting the Worland District Office, 101 S. 23rd, P.O. Box 119, Worland, Wyoming 82401, (307) 347-9871.

Comments and resource information should be sent to the Area Manager, BLM, Grass Creek Resource Area, 101 S. 23rd, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: Phyllis Roseberry, Grass Creek Resource Area Manager, Bureau of Land Management, 101 S. 23rd, P.O. Box 119, Worland, Wyoming 82401, phone (307) 347-9871.

SUPPLEMENTARY INFORMATION: The possible need for a plan amendment was identified as a result of an interdisciplinary team review of the 1983 MFP Decisions; input from an *ad hoc* citizens group; public comments; a concern for conflicts occurring between ORV use and other public land users; the increased use by ORV's in the area; and potential environmental impacts, including those to wilderness study areas.

The following preliminary issue and concerns have been identified to date:

Issue: Which lands in the GCRA should be designated open, closed, or limited for ORV use?

Concerns:

a. What negative or positive impacts could potentially occur to other resource activities, BLM permittees and licensees, private landowners, trappers, and recreationists. What options exist for the mitigation of potential impacts from ORV use?

b. How will the ORV designations affect geophysical exploration and mining activity under the 43 CFR Parts 3802 and 3809 regulations?

c. How can the BLM encourage public safety, and if needed, control public recreation in/or around oil fields? Can oil fields be signed to discourage public uses such as hunting?

d. How can conflicts be resolved between motorized and non-motorized recreation uses, particularly during hunting seasons?

e. What motorized vehicle use and non-motorized recreation opportunities are desired by the public, and where should those opportunities be provided?

The public is encouraged to present their ideas and views on these and other issues and concerns.

In addressing the issues and concerns, at least two ORV management alternatives will be analyzed in detail and an environmental assessment (EA) will be prepared.

The alternatives are:

1. Implement the existing ORV designations made in the 1983 MFP.

2. Modify the ORV designations made in the 1983 MFP. Based on the preliminary findings, this alternative represents more stringent restrictions on ORV use in the GCRA.

The draft EA will be made available for public review and comment for 60 days. The final EA and proposed planning decision, including whether or not the Grass Creek MFP will be amended, will be made available for a 30 day protest period and a Governor's consistency review before the decisions are adopted. In addition to deciding the ORV designations for the GCRA, another determination to be made in the process is whether or not the proposed ORV designations would constitute a significant impact that would require preparation of an environmental impact statement (EIS). The public will be notified of these activities and time frames through individual mailing and the news media. Anyone who wishes to be placed on the mailing list should contact the Worland District BLM Office at the above address or phone number.

May 10, 1988.

Marlyn V. Jones,

Associate State Director.

[FR Doc. 88-10893 Filed 5-13-88; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.)*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.)* and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant

Name: University of Oregon Visual Arts, Resources Center, Eugene, OR. File no. PRT-693357.

Type of Permit: Public Display.

Name of Animals: Walrus and unidentified pinnipeds.

Summary of Activity to be Authorized: The applicant proposes to reimport from Canada 40 Eskimo dolls (Alaskan native handicrafts) some of which are partially constructed from walrus ivory and various seal and walrus parts. The exhibit is currently on tour in Canada and the United States. It will be returned to the Alaska State Council of the Arts which owns the exhibit at the end of the tour.

Source of Marine Mammals for Display: Alaska-wild.

Period of Activity: One reimportation—approximately September 30, 1988.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to

the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, at 1375 K Street, NW., Washington, DC.

Dated: May 10, 1988.

R.K. Robinson,

Chief, Branch of Permits.

[FR Doc. 88–10810 Filed 5–13–88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Accident Investigation Reports

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an investigation report.

SUMMARY: Notice is hereby given that an investigation report of a blowout and fire that occurred November 10, 1986, on Outer Continental Shelf Lease No. 0244, West Cameron Block 71, is available to the public upon request.

ADDRESS: Copies of the report may be obtained from Minerals Management Service; Offshore Rules and Operations Division, Mail Stop 646; 12203 Sunrise Valley Drive; Reston, Virginia 22091, or Public Information Section; Gulf of Mexico OCS Region; Minerals Management Service; 1420 Elmwood Park Boulevard; New Orleans, Louisiana 70123; Telephone (504) 736–2519, (FTS) 680–9519.

FURTHER INFORMATION CONTACT: Mr. Price McDonald, Chief, Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive, Mail Stop 646; Reston, Virginia 22091; Telephone (703) 648–7813, (FTS) 959–7813.

SUPPLEMENTARY INFORMATION: The available accident investigation report is identified as follows:

Open File No.: 88–0007

Event and Date: Blowout and Fire, November 10, 1986

Area and Block: West Cameron, Block 71

Region: Gulf of Mexico

Dated: May 4, 1988.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–10831 Filed 5–13–88; 8:45 am]

BILLING CODE 4310-MR-M

Request for Comments Concerning Meetings To Discuss Revised Rules Governing Consolidated Oil, Gas, and Sulphur Operations in the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The MMS is planning public meetings to discuss the implementation of the consolidated offshore operating rules for oil, gas, and sulphur which were published on April 1, 1988. Interested parties are invited to indicate interest in attendance at such meetings and to comment on the schedule and locations for holding meetings.

DATE: Comments should be received by June 6, 1988.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 642; Room 6A112; Reston, Virginia 22091; Attention: Richard B. Krahl.

FOR FURTHER INFORMATION CONTACT: Richard B. Krahl, Deputy Associate Director for Offshore Operations; Minerals Management Service; (703) 648–7808.

SUPPLEMENTARY INFORMATION: On April 1, 1988, MMS published a final rule which consolidated and revised requirements governing oil, gas, and sulphur operations in the OCS effective May 31, 1988 (53 FR 10596). Following the publication of the new rules, several lessees requested that MMS conduct public meetings with industry to discuss the implications of the new rules. In response to the requests, MMS is planning to hold public meetings and is requesting comments from interested parties to assist MMS in scheduling the meetings.

The MMS expects that there will be sufficient interest to warrant one or more meetings in each of several locations around the country. At this time, MMS is anticipating that at a minimum, meetings will be held in New Orleans, Louisiana; Los Angeles, California; and Anchorage, Alaska, and that the first meeting will be in late June or July. Interested parties are requested to respond to the following questions.

(1) How many people from your organization do you estimate would attend a meeting in each of the three listed locations?

(2) How many of the people estimated in response to question 1 would prefer an alternate location(s)? What is the suggested alternate location(s)? Besides the people estimated in response to question 1, how many additional people would be able to attend if a meeting were held in locations other than the three locations listed above? Identify alternate location(s) and number of additional attendees.

(3) When should the meetings be held?

Companies are invited to respond individually or through associations. Associations are encouraged to consolidate responses from their member companies.

Interested parties are requested to respond at the earliest possible time but definitely before the date identified above to enable MMS to proceed with planning the meetings and providing interested parties sufficient time to schedule their attendance. The MMS will publish a Notice in the **Federal Register** indicating the exact times and locations of the meetings as soon as this information has been determined.

Date: May 9, 1988.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88–10911 Filed 5–13–88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Environmental Impact Statement; Congaree Swamp National Monument, SC

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a draft plan approval and finding of no significant impact on a General Management Plan/Wilderness Suitability Study/Environmental Assessment for Congaree Swamp National Monument, South Carolina.

SUMMARY: The National Park Service has prepared a draft Plan Approval and Finding of No Significant Impact (FONSI) on the General Management Plan/Wilderness Suitability Study/Environmental Assessment for Congaree Swamp National Monument in Richland County, South Carolina which was released for public review in November 1987. During this review period, a public

hearing was held pursuant to the requirements of the Wilderness Act.

A total of 589 written and oral comments were received. Nine addressed the subject of wilderness. All nine favored designation as proposed or suggested additions to the proposal. All but two of the 589 respondents favored boundary expansion. As a result of new information, the Wilderness Proposal has been changed to include 15,010 acres to be designated wilderness and 3,685 acres to be designated potential wilderness. An addition to the monument of approximately 3,900 acres instead of the 2,464 acres proposed in the General Management Plan/ Wilderness Suitability Study/ Environmental Assessment is proposed.

DATES: A 30-day comment period on the draft FONSI, in accordance with the Council on Environmental Quality Regulations, will extend until June 16, 1988.

ADDRESSES: Send written comments to: Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Chief, Planning and Compliance Division, Southeast Region, National Park Service, 75 Spring Street, SW, Atlanta, Georgia 30303, Telephone (404) 331-5465.

Date: May 10, 1988

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-10917 Filed 5-13-88; 8:45 am]

BILLING CODE 4310-70-M

[DES 88-25]

Environmental Statements; Glacier Bay National Park and Preserve, AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Glacier Bay National Park and Preserve, Alaska and the holding of public hearings and public meetings.

For Glacier Bay National Park and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating an additional 69,580 acres of suitable lands and waters within the study area as wilderness. Alternative 2, the proposed action, recommends 62,790 acres of study area lands and waters for wilderness designation. Also included in the proposed action would be 48,520 acres of waters deleted or excluded from wilderness designation.

DATES AND ADDRESS: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, AK 99503. Comments must be received by August 29, 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. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Noatak National Preserve, Aniakchak National Monument and Preserve, Cape Krusenstern National Monument, Katmai National Park and Preserve, Denali National Park and Preserve, and Kobuk Valley National Park draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, July 18, 1988, at 7:00 p.m., Room 300, Alaska Region Office, National Park Service, 2525 Gambell Street. Another hearing will be held on Tuesday, July 19, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, four public meetings will be held on Glacier Bay National Park and Preserve Wilderness DEIS. On Tuesday, July 19, 1988 a meeting will be held at the city offices in Hoonah at 2:00 p.m. and a second meeting on that day will be held at the school at Gustavus at 7:00 p.m.; on Wednesday, July 20, 1988, at the Borough Assembly Room, Juneau, 7:00 p.m.; and on Thursday, July 21, 1988 at the city offices in Yukutat. A section 810 review will be conducted as part of the meetings.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654. The headquarters at Gustavus, Alaska 99826, phone (907) 697-2232 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.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date: May 10, 1988.

[FR Doc. 88-10915 Filed 5-13-88; 8:45 am]

BILLING CODE 4310-70-M

[DES 88-26]

Environmental Statements; Noatak National Preserve, AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Noatak National Preserve, Alaska and the holding of public hearings and public meetings.

For Noatak National Preserve, two alternatives were examined ranging from no action, which means no additional wilderness designation, to designating a portion of suitable lands within the study area as wilderness. Alternative 2, the proposed action, recommends 757,175 acres or nearly 100 percent of study area lands for wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end August 29, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, Alaska 99503. Comments must be received by August 29, 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. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Aniakchak National Monument and Preserve, Cape Krusenstern National Monument, Glacier Bay National Park and Preserve, Katmai National Park and Preserve, Denali National Park and Preserve, and Kobuk Valley National Park draft EISs, which are also on public review. One hearing will be held in Anchorage Alaska, on Monday, July 18, 1988, 7:00 p.m., Room 300, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held on Tuesday, July 19, at 7:00

p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive.

In addition, five public meetings will be held on Noatak National Preserve DEIS. On Monday, July 25, 1988, in the community hall at Kivalina at 2:00 p.m. and in the community hall at Noatak at 7:00 p.m.; on Tuesday, July 26, 1988, in the National Park Service visitor center in Kotzebue at 7:00 p.m.; on Wednesday, July 27, 1988 in the IRA building in Ambler at 7:00 p.m.; and on Thursday, July 28, 1988 in the community building in Kiana at 7:00 p.m. A section 810 review will be conducted as part of the meetings.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654. The headquarters at P.O. Box 1029, Kotzebue, Alaska 99752, phone (907) 442–3890 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.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date: May 11, 1988.

[FR Doc. 88–10916 Filed 5–13–88; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, May 26, at 1:00 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street, NW, Washington, DC.

The Commission was established by Pub. L. 99–652, for the purpose of advising the Secretary of the Interior or the Administrator or the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC., or its environs.

The members of the Commission are as follows:

William Penn Mott, Jr. Chairman, Director, National Park Service, Washington, DC

George M. White, Architect of the Capitol, Washington, DC

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC

Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC

John Alderson, Administrator, General Service Administration, Washington, DC

Honorable Frank Carlucci, Secretary of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

I. Preliminary Design Approval

a. Kahlil Gibran Memorial, authorized by Pub. L. 98–537, October 19, 1984. Presentation of preliminary design by the Kahlil Gibran Centennial Foundation.

II. Site Location Approval

a. Peace Garden Memorial, authorized by Pub. L. 100–63, June 30, 1987. Presentation of the proposed site by the Peace Garden Project.

b. Black Revolutionary War Patriots Memorial, authorized by Pub. L. 99–558, October 27, 1986. Presentation of the proposed site by the Black Revolutionary War Patriots Foundation.

c. Korean War Memorial, authorized by Pub. L. 99–572, October 28, 1986. Presentation of the proposed site by the American Battle Monuments Commission.

III. Discussion of Regulations Pursuant to Public Law 99–652

IV. Status Reports of Pending Memorials

Date: May 19, 1988.

Manus J. Fish Jr.,

Regional Director, National Capital Region.

[FR Doc. 88–10914 Filed 5–13–88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31253]

Bluegrass Railway Museum, Inc.; Acquisition Exemption; Southern Railway Co. and Bluegrass Railroad Co.; Operation Exemption; Bluegrass Railway Museum, Inc.

BlueGrass Railway Museum, Inc. (BGRM) and its wholly-owned subsidiary, BlueGrass Railroad Company, Inc. (BGRR), have filed a joint notice of exemption. BGRM seeks exemption to acquire a line of railroad owned by Southern Railway Company. The line extends from milepost 9.0–LL near Versailles, KY to milepost 3.5–LL at the east bank of the Kentucky River near Tyrone, KY, a distance of 5.5 miles. The line will be used principally for operation of passenger excursion trains by BGRM. BGRR seeks exemption to operate the line in common carrier service, if such service should be requested. The transaction is expected to be consummated on May 31, 1988. Any comments must be filed with the Commission and served on: Arthur J. Bryson, Attorney at Law, 376 South Broadway, Lexington, KY 40508.

BGRM & BGRR must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 is achieved. *See Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. 10901,* ___ I.C.C.2d ___, served February 17, 1988.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10800 Filed 5-13-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 247X)]

CSX Transportation, Inc.; Exemption; Abandonment in Calhoun County, AL

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 12.7-mile line of railroad between milepost SG-661.0 near Maxwellborn, AL and milepost SG-673.7 near Wellington, AL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 15, 1988 (unless stayed pending reconsideration and provided no formal expression of intent to file an offer of financial assistance has been filed). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May 26, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 5, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CXS Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 21, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 5, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10798 Filed 5-13-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party of by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, served March 8, 1988.

[2] *See 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).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87-64]

Vincent A. Sundry, D.O.; Denial of Applications

On July 27, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued on Order to Show Cause to Vincent A. Sundry, D.O. (Respondent) of 805 S. Pinellas Avenue, Suite #5, Tarpon Springs, Florida 33589 proposing to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the registration of Respondent with the Drug Enforcement Administration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

By letter dated August 24, 1987, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following perhearing procedures, a hearing was held on October 22, 1987, in Tampa, Florida. On February 12, 1988, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed, and on March 18, 1988, Judge Young 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 or about October 25, 1972, in the United States District Court for the Western District of Pennsylvania, Respondent was convicted of four counts of illicit sale and distribution of amphetamine, felony offenses relating to a Schedule II controlled substance. On or about December 14, 1972, in the United States District Court for the Western District of Pennsylvania, Respondent was also convicted of two counts of willfully and knowingly failing to make an income tax return in violation of 26 U.S.C. 7203. On or about April 27, 1981, in the United States District Court for the District of Kansas, Respondent was convicted of acquiring and obtaining possession of Schedule II non-narcotic controlled substances to be distributed and dispensed in violation of 21 U.S.C. 841(a)(1), felony offenses relating to controlled substances. At the same time, Respondent was convicted of 12 counts of causing controlled substances to be distributed and dispensed unlawfully by writing prescriptions in names other than those of the actual recipients of the prescriptions. As a result of these convictions, Respondent served about 45 days in Federal prison.

In 1982, Respondent applied for a DEA registration at an address in Florida. An Order to Show Cause was issued by DEA proposing to deny that application. Respondent requested a hearing which was ultimately scheduled for February 17, 1983, in Tampa, Florida. Govenrment counsel appeared at the hearing, however Respondent's counsel failed to show up. Thereafter, on September 19, 1983, the then-Acting Administrator denied Respondent's application in a final order published in the **Federal Register**, Volume 48, at page 43415 on September 23, 1983.

In October 1982, while Respondent's 1982 application for registration was pending, the Pinellas County, Florida, Sheriff's Office initiated an investigation of Respondent's controlled substance handling practices after receiving information that Respondent was writing prescriptions for controlled substances without being registered by DEA. The investigation revealed that Respondent did, in fact, write prescriptions for controlled substances for various individuals knowing that he was not registered with DEA and, therefore, not authorized to write such prescriptions. As a result of this investigation, Respondent was convicted in a Florida State court on or about August 24, 1983, after pleading *nolo contendere* to thirteen counts of sale or delivery of controlled substances in violation of the Florida Comprehensive Drug Abuse Prevention and Control Act, felony offenses relating to controlled substances.

Respondent has submitted two applications for registration with DEA, one dated November 28, 1986, and the other dated February 26, 1987. These applications are the subject of these proceedings. The Administrative Law Judge concluded that Respondent's registration would be inconsistent with the public interest. Respondent has exhibited flagrant disregard for the laws relating to controlled substances. He has been convicted in three different states of controlled substance-related felonies over a period of eleven years.

In addition, the Administrative Law Judge concluded that Respondent does not appear to have any real need for a DEA Certificate of Registration. A number of Respondent's patients testified on his behalf at the hearing. Most, if not all, of them stated that they have been very satisfied with the professional care and treatment received from Respondent over the past several years. During that period, Respondent was not registered with DEA. Also, during an interview conducted on February 6, 1987, Respondent told a DEA Diversion Investigator that the only reason he was applying for DEA registration was because he needed it to obtain hospital privileges. DEA does not register individuals to enable them to obtain hospital privileges. Registrations under the Controlled Substances Act are issued for one purpose—to enable the registrant to lawfully handle controlled substances.

Based on his conclusion that Respondent's registration would be inconsistent with the public interest, the Administrative Law Judge recommended that Respondent's applications for registration be denied. The Administrator adopts the Administrative Law Judge's opinion and recommended ruling in its entirety. Respondent cannot be trusted to responsibly handle controlled substances.

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 any pending applications for registration under the Controlled Substances Act submitted by Vincent A. Sundry, D.O., be, and they hereby are, denied. This order is effective immediately.

John C. Lawn,

Administrator.

Date: May 10, 1988.

[FR Doc. 88-10903 Filed 5-13-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit Program; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level; request for comments.

SUMMARY: The Job Training Partnership Act (JTPA) and the Internal Revenue Code of 1954 provide that the term "economically disadvantaged" may be defined as 70 percent of the "lower living standard income level" (LLSIL). To provide the most accurate data possible, the Department of Labor is issuing revised figures for the LLSIL.

DATE: *Effective date:* This notice is effective on May 31, 1988.

Comments: Written comments on this notice will be accepted through May 31, 1988.

ADDRESS: Send written comments to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, U.S. Department of Labor, Room N-4703, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Telephone: 202-535-0577.

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those *economically disadvantaged* individuals * * * who are in special need of such training to obtain productive employment." (Emphasis added) JTPA section 2; see 20 CFR 626.1(a)(2). JTPA section 4(8) defines, for the purposes of JTPA eligibility, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See 20 CFR 626.4. Similar definitions of "economically disadvantaged," which also include references to the LLSIL, are provided at JTPA sections 201(b)(3)(B) and 202(a)(4)(B) for JTPA Title II allotment and within-State allocation purposes. See 20 CFR 629.39 and 630.1.

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes. JTPA section 4(16) defines LLSIL as follows:

> The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary (of Labor) based on the most recent "lower living family budget" issued by the Secretary.

Internal Revenue Code (I.R.C.) sections 44B and 51 establish a Targeted Jobs Tax Credit (TJTC) Program for a portion of the wages paid by employers from "targeted" groups. Certain of the targeted groups require that the worker be a member of "an economically disadvantaged family". See, e.g., I.R.C. sections 51(d) (3)(A)(ii), (4)(C), (7)(B), (8)(A)(iv), and (12)(A)(iv). The LLSIL figures published in this notice shall be used to determine whether an individual is a member of an economically disadvantaged family for applicable TJTC purposes.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act, and for the TJTC program. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under JTPA, the Employment and Training Administration (ETA), published the 1987 updates to the LLSIL in the **Federal Register** of July 14, 1987 (52 FR 26378). ETA has again updated the LLSIL to reflect cost of living increases for 1987, by applying the percentage change in the December 1987

consumer price index (CPI), compared with the December 1986 CPI, to each of the July 14, 1987, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to section 4(8) of JTPA, those figures are listed below as well.

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL BY REGION [1]

Region	1988 Adjusted LLSIL	70 Percent LLSIL
Northeast:		
Metro	19,790	13,850
Non-Metro	19,130	13,390
North Central:		
Metro	18,820	13,170
Non-Metro	18,000	12,600
South:		
Metro	17,940	12,560
Non-Metro	16,820	11,780
West:		
Metro	19,790	13,850
Non-Metro	19,710	13,800

[1] For ease of calculation, these figures have been rounded to the nearest ten.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce are as follows:

Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

North Central

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Kentucky
Louisiana
Marshall Islands
Maryland
Mississippi
Micronesia
North Carolina
Northern Marinanas
Oklahoma
Palau
Puerto Rico
South Carolina
Tennessee
Texas
Virginia
West Virginia

West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii and Guam as indicated in Table 2 below.

For Alaska, Hawaii and Guam, the 1987 figures were updated by creating a "State Index" based on the ratio of the urban change in the State (using Anchorage and Honolulu) compared to the West regional metropolitan change, and then applying that index to the West regional nonmetropolitan change.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL—ALASKA, HAWAII AND GUAM [1]

Region	1988 Adjusted LLSIL	70Percent LLSIL
Alaska:		
Metro	26,310	18,420
Non-Metro	24,750	17,320
Hawaii-Guam:		
Metro	25,390	17,770
Non-Metro	22,800	15,960

[1] Rounded to the nearest ten.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on monthly, bimonthly or semiannual CPI changes for a 12-month period ending in December 1987. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the nearest ten, are set forth in Table 3 below.

TABLE 3.—Lower Living Standard Income Level—25 MSA's

Region MSA	1988 adjusted LLSIL	70 percent LLSIL
Anchorage, AK	26,310	18,420
Atlanta, GA	18,300	12,810
Baltimore, MA	19,100	13,370
Boston, MA	20,970	14,680
Buffalo, NY	18,200	12,740
Chicago, IL & Northwestern, IN	19,570	13,700
Cincinnati, OH/KY/IN	19,330	13,530
Cleveland, OH	19,650	13,750
Dallas-Ft Worth, TX	17,590	12,320
Denver-Boulder, CO	19,050	13,330
Detroit, MI	18,100	12,670
Honolulu, HI	25,390	17,770
Houston, TX	16,990	11,890
Kansas City, MO/KS	18,670	13,070
Los Angeles/Long Beach/ Anaheim, CA	20,,690	14,480
Milwaukee, WI	18,840	13,190
Minneapolis-St Paul, MN	18,530	12,970
New York, NY/ Northeastern, NJ	20,520	14,370
Philadelphia, PA/NJ	19,510	13,660
Pittsburgh, PA	18,800	13,160
San Diego, CA	20,580	14,400
San Francisco-Oakland, CA	20,750	14,530
Seattle-Everett, WA	20,230	14,160
St Louis, MO/IL	18,630	13,040
Washington, DC/MD/ VA	21,530	15,070

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1988 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figures, the figure is indicated in parentheses.

(Section 4(8) of JTPA defines "economically disadvantaged" as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. The Department of Health and Human Services published the annual update of the poverty-level guidelines at 53 FR 4213 (February 12, 1988).)

TABLE 4.—SEVENTY PERCENT OF UPDATED 1988 LLSIL, BY FAMILY SIZE [1]

Family of one	Two	Three	Four	Five	Six
(4,240)					
(4,280)	(6,950)	(9,540)	11,780	13,900	16,260
(4,440)	(7,020)	(9,630)	11,890	14,030	16,410
(4,520)	(7,270)	9,980	12,320	14,540	17,000
(4,540)	(7,410)	10,170	12,560	14,820	17,330
(4,560)	(7,430)	10,210	12,600	14,870	17,390
(4,590)	(7,480)	10,260	12,670	14,950	17,480
(4,610)	(7,520)	10,320	12,740	15,030	17,580
	(7,560)	10,380	12,810	15,120	17,680

TABLE 4.—SEVENTY PERCENT OF UPDATED 1988 LLSIL, BY FAMILY SIZE [1]—Continued

Family of one	Two	Three	Four	Five	Six
(4,670)	(7,650)	10,510	12,970	15,300	17,900
(4,690)	(7,690)	10,560	13,040	15,390	18,000
(4,710)	(7,710)	10,590	13,070	15,420	18,040
(4,740)	(7,760)	10,660	13,160	15,530	18,160
(4,440)	7,770	10,670	13,170	15,540	18,170
(4,750)	7,780	10,680	13,190	15,560	18,200
(4,800)	7,860	10,800	13,330	15,730	18,400
(4,810)	7,890	10,830	13,370	15,780	18,450
(4,820)	7,900	10,850	13,390	15,800	18,480
(4,870)	7,980	10,960	13,530	15,970	18,670
(4,920)	8,060	11,060	13,660	16,120	18,850
(4,930)	8,080	11,100	13,700	16,170	18,910
(4,950)	8,110	11,140	13,750	16,230	18,980
(4,970)	8,140	11,180	13,800	16,280	19,040
(4,990)	8,170	11,220	13,850	16,340	19,110
(5,100)	8,350	11,470	14,160	16,710	19,540
(5,170)	8,480	11,640	14,370	16,960	19,830
(5,180)	8,500	11,660	14,400	16,990	19,870
(5,210)	8,540	11,730	14,480	17,090	19,980
(5,230)	8,570	11,770	14,530	17,150	20,050
(5,290)	8,660	11,890	14,680	17,320	20,260
(5,430)	8,890	12,210	15,070	17,780	20,800
(5,750)	9,420	12,930	15,960	18,830	22,020
(6,240)	10,220	14,030	17,320	20,440	23,900
(6,400)	10,480	14,390	17,770	20,970	24,520
(6,630)	10,870	14,920	18,420	21,740	25,420

[1] Figures provided in Tables 1–3 of this notice are for a family size of four persons. To use Table 4, the appropriate figure should be found in the Family of *Four* column. Then one may read across the row for family sizes other than four in the appropriate columns.

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies (SESAs), and employers in their States to use in determining eligibility for JTPA and TJTC programs. Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulation at 20 CFR 627.1, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the extent that they are consistent with the JTPA and the JTPA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA and TJTC programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL but are not in the CPI. Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA and TJTC.

Signed At Washington, DC, this 29th day of April, 1988.

Robert T. Jones,

Acting Assistant Secretary of Labor.

[FR Doc. 88–10754 Filed 5–13–88; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Announcement of Availability of One-Time Grant Funds for the Provision of Legal Services in the State of Louisiana

AGENCY: Legal Services Corporation.

ACTION: Request for proposals.

SUMMARY: The Legal Services Corporation (LSC) announces the availability of one-time grant funds for the provision of legal services to eligible clients residing in the Louisiana parishes of Catahoula, Concordia, and LaSalle. Southwest Louisiana Legal Services has served as the interim provider for the three parishes since late 1986. Legal Services Corporation is hereby soliciting proposals for the establishment of a provider of legal services to the three parishes.

DATE: All applications for grant funds must be received on or before June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Victoria O'Brien, Counsel to the Director, Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751; (202) 863–1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation, the national, independent organization charged with implementing the federally-funded system or legal services for low-income people, announces the availability of one-time grant funds for the provision of legal services to eligible clients residing in the Louisiana parishes of Catahoula, Concordia, and LaSalle. The recipient of this one-time grant award will subsequently be invited to submit an application for refunding.

The annualized level of Legal Services Corporation funding for the service area is approximately $125,190 for calendar year 1988.

All groups and persons interested in applying for this grant should request a grant application from the Grants Assistant, Grants and Budget Division, Office of Field Services, 400 Virginia Avenue, SW., Washington, DC 20024–2751; (202) 863–1837.

Five copies of the grant application should be sent to the Grants Assistant at the Washington, DC address noted above.

Any grant application recommended by the Legal Services Corporation will be announced, pursuant to section 1007(f) of the LSC Act, in the **Federal Register**, and additional comments and recommendations will be requested at least thirty days prior to final approval of the grant.

Date: May 11, 1988.

Mary C. Higgins,

Director, Office of Field Services.

[FR Doc. 88-10919 Filed 5-13-88; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-47]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); 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, Space Station Advisory Committee.

DATE AND TIME: May 19, 1988, 8:30 a.m. to 5 p.m. and May 20, 1988, 8:30 a.m. to 3:00 p.m.

ADDRESS: Loews L'Enfant Plaza Hotel, Pierre Suite, 480 L'Enfant Plaza SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 20 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room, (which is approximately 50 persons including team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda

May 19, 1988

8:30 a.m.—Administrative Items
9 a.m.—Introductory Remarks to Committee
9:30 a.m.—Program Status Update
  Budget
  Baseline Schedule
  International Agreements
  Special Congressional Interests
10:15 a.m.—Current Program Activity
11:15 a.m.—Technical and Management Information System (TMIS) Task Force
11:30 a.m.—Private Sector
  Station Infrastructure
  Commercially Developed Space Facility (CDSF) Utilization
1:30 p.m.—Transportation
  Space Transportation System (STS)/Orbiter
    Performance
    Safety Requirements
    Extended Duration
    Influence on Station
  Expendable Launch Vehicles
  Developments
    Advanced Solid Rocket Motor (ASRM)
    Advanced Crew Return Capability (ACRC)
    Orbital Maneuvering Vehicle (OMV)
3:30 p.m.—Evolution
  Evolutionary Requirements
  Other NASA Programs
4:15 p.m.—Automation and Robotics
  Advanced Automation
  Flight Telerobotics Service
5 p.m.—Adjourn

May 20, 1988

8:30 a.m.—Utilization
  United States (Public/Private)
  Foreign
  Management
10 a.m.—Committee Work Sessions
1 p.m.—Committee Discussion, Planning, Assignments
3 p.m.—Adjourn

May 10, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-10897 Filed 5-13-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Partially Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographer's Fellowships Section) to the National Council on the Arts will be held on June 6-7, 1988 from 9:00 a.m.-8:00 p.m., and on June 8, 1988 from 9:00 a.m.-9:00 p.m., and on June 9, 1988 from 9:00 a.m.-7:00 p.m., and on June 10, 1988 from 9:00 a.m.-6:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 10, 1988, from 4:30 p.m.-6:30 p.m. for a policy discussion.

The remaining sessions of this meeting on June 6-7, 1988 from 9:00 a.m.-8:00 p.m., and on June 8, 1988 from 9:00 a.m.-9:00 p.m., and on June 9, 1988 from 9:00 a.m.-7:00 p.m., and on June 10, 1988 from 9:00 a.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

May 11,1988.

[FR Doc. 88-10926 Filed 5-13-88; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Partially Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/Organizations) to the National Council on the Arts will be held on June 7-9, 1988 from 9:00 a.m.-5:30 p.m., and on

June 10, 1988 from 9:00 a.m.–5:00 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 10, 1988, from 2:30 p.m.–5:30 p.m. for a policy discussion.

The remaining sessions of this meeting on June 7–9, 1988 from 9:00 a.m.–5:30 p.m., and on June 10, 1988 from 9:00 a.m.–2:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

May 11, 1988.

[FR Doc. 88–10927 Filed 5–13–88; 8:45 am]

BILLING CODE 7537-01-M

Office of Partnership Advisory Panel; Partially Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Partnership Advisory Panel (State Programs) to the National Council on the Arts will be held on June 2, 1988, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

May 11, 1988.

[FR Doc. 88–10928 Filed 5–13–88; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Artistic Advancement Section) to the National Council on the Arts, will be held on June 2, 1988 from 9:00 a.m.–6:30 p.m. to room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

May 11, 1988.

[FR Doc. 88–10929 Filed 5–13–88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Publication of Systems of Records

AGENCY: National Labor Relations Board.

ACTION: Revised publication of Notices of Systems of Records.

SUMMARY: The purpose of this publication is to comply with the requirement of 5 U.S.C. 552a(e)(4) to announce the intention to establish or revise a notice of the existence and character of a system of records. This document contains a complete and current listing of the National Labor Relations Board's 16 Notices of Systems of Records identified as NLRB–1 through NLRB–16 and Appendix listing the NLRB offices. The last complete listing of NLRB systems of records was issued in 47 FR 42043. One notice, NLRB–7, was altered, and one notice, NLRB–15, was added as published in 51 FR 12947. Another notice, NLRB–16, was added as published in 51 FR 31382.

All persons are advised that in the absence of submitted comments, views, or arguments considered by the Agency as warranting modification of the routine uses of the systems as published herein, it is the Agency's intention that the notices as herewith published shall become effective upon expiration of the comment period without further action by the Agency. Pending adoption of the proposed changes described in this publication, the Agency's records will be covered by its previous complete notice issued in 47 FR 42043 (September 23, 1982), the revision of NLRB–7 and the addition of NLRB–15 issued in 51 FR 12947 (April 16, 1986), and NLRB–16 issued in 51 FR 31382 (September 3, 1986).

All persons who desire to do so may submit written comments, views, or arguments for consideration by the Agency in connection with the proposed changes to the notices.

DATE: Written comments, views, or arguments must be submitted no later than July 15, 1988.

ADDRESSES: Written responses should be sent to the Executive Secretary, National Labor Relations Board, Room 701, 1717 Pennsylvania Avenue NW., Washington, DC 20570. Copies of such communications will be available for examination by interested persons during normal business hours (8:30 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays), in the Office of the Executive Secretary, Room 701, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, National Labor Relations Board, Room 701, 1717 Pennsylvania Avenue NW., Washington, DC 20570. Telephone (202) 254–9430.

SUPPLEMENTARY INFORMATION: The following changes have been made to the NLRB Notices of Systems of Records:

1. Two routine uses have been added to NLRB-1 through 6 and NLRB-8 through 14 to provide for disclosure to the Department of Justice for use in litigation, and for Agency disclosure in a proceeding before a court or other adjudicative body. Also, new language has been added to these two routine uses in NLRB-16 so that they are consistent with the language used in other Agency notices.

2. One routine use has been added to NLRB-13, Time and Attendance Records—NLRB, to provide for disclosure to the U.S. Treasury Department for payroll purposes.

3. New System Managers and locations are shown for NLRB-4, Claim Records, and NLRB-9, Occupational Injury and Illness Records, to reflect administrative changes.

4. System safeguards have been changed for NLRB-1, Accounting Records—Financial; NLRB-4, Claim Records; NLRB-9, Occupational Injury and Illness Records; and NLRB-11, Payroll—Finance Records, to reflect changes in operating procedures.

5. Changes have been made to notice NLRB-14, Equal Employment Opportunity Management System, to include the EEO office as a second system location, and to include organizational unit as a category of records in the system and a category by which records can be retrieved.

6. The records retention and disposal information has been changed for all notices except NLRB-3, NLRB-7, NLRB-10, and NLRB-15. These changes were made so that the instructions contained in the notices would conform with current Agency procedures.

7. New paragraphs on Security Classification, Authority for Maintenance of the System, Purpose, and Disclosure to Consumer Reporting Agencies have been added to NLRB-1 through 15.

8. The system location and manager in NLRB-3 has been changed from the Office of the Executive Secretary to the Division of Information.

9. The title of the Data Systems Branch in NLRB-11 in the System Manager and Address paragraph and in NLRB-14 in the System Location paragraph.

10. References to 29 CFR 102.117 have been added to the paragraphs on Notification Procedure, Records Access Procedures, and Contesting Record Procedures in NLRB-1 through 15, where details on these procedures may be found.

11. The Appendix has been completely updated to show all current NLRB office listings.

A listing of all NLRB Notices of Systems and Records and their complete texts appear below. Copies of these notices were forwarded to Congress and the Office of Management and Budget on April 14, 1988, as required by 5 U.S.C. 552a(o).

Dated: Washington, D.C. May 11, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

NLRB-1 Accounting Records—Financial
NLRB-2 Applicant Files for Attorney and Field Examiner Positions
NLRB-3 Biographical Data File—Presidential Appointees
NLRB-4 Claim Records
NLRB-5 Employment and Performance Records, Attorneys and Field Examiners
NLRB-6 Employment and Performance Records, Nonprofessionals and Nonlegal Professionals
NLRB-7 Grievances, Appeals, Complaints, and Related Litigation Records
NLRB-8 Health Maintenance Program Records
NLRB-9 Occupational Injury and Illness Records
NLRB-10 Pay Records—Retirement
NLRB-11 Payroll—Finance Records
NLRB-12 Prefiling Communications
NLRB-13 Time and Attendance Records—NLRB
NLRB-14 Equal Employment Opportunity Program Management System
NLRB-15 Employee Counseling Services Program Records
NLRB-16 Investigative Services Case Files
Appendix

NLRB-1

SYSTEM NAME:

Accounting Records—Financial.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Current records are maintained in: Financial Management Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. Each Washington and Field Office is authorized to maintain copies of records relating to reimbursements to employees of that office and other individuals covered within the system. See the attached appendix for addresses of these offices. Inactive records are stored at the appropriate Federal records center in accordance with regulations issued by the National Archives and Records Administration (36 CFR 1228.152).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals reimbursed for expenses in connection with the official functions of the NLRB: i.e., travel on official business, witness fees and transportation expenses, and miscellaneous expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include name; home or office address; organizational unit number; purpose, duration, and cost for travel assignment of Agency employees; purpose, duration, points of travel, and cost for witnesses used by the Agency; purpose, category, and cost of miscellaneous expenses incurred by Agency employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 et seq.; 29 U.S.C. 153, 155, 159, 160, and 161(4).

PURPOSE:

These records document financial transactions regarding reimbursement of expenses in connection with official NLRB functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. In the processing of claims for reimbursements.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

4. The U.S. General Accounting Office for audit purposes or determination of validity of claims.

5. The U.S. Department of Treasury for issuance of checks.

6. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the

responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

7. Another agency, whether Federal, State, or local, or private organization where reimbursable arrangements exist between this Agency and such other agency or private organization.

8. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

9. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

10. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

11. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on original source documents except travel summary cards, some of which are also maintained on microfilm.

RETRIEVABILITY:

Chronologically by year, and within each year alphabetically by name.

SAFEGUARDS:

Original source documents are maintained in file cabinets within the Finance Section offices. Microfilm is maintained in locked cabinets within Finance Section offices. During duty hours cabinets are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel who have a need for access in order to perform their official functions.

RETENTION AND DISPOSAL:

Maintained and disposed of in accordance with the provisions of applicable General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officer, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

See the attached appendix for the titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Travel vouchers, witness vouchers, and lodging and miscellaneous receipts submitted by the individual; travel orders submitted by Agency officials; subpoenas; claims for reimbursements; and miscellaneous correspondence and information related thereto.

NLRB–2

SYSTEM NAME:

Applicant Files for Attorney and Filed Examiner Positions.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Office of Executive Assistant, Division of Operations Management; Board Members' Offices; Office of Representation Appeals; Office of the Solicitor, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

Washington and Field Offices are authorized to maintain the records or copies of the records in connection with processing of applications for employment in the Agency. See the attached appendix for addresses of the Washington and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Attorney or Field Examiner positions in offices under the general supervision of the General Counsel; applicants for Attorney positions on Board Members' staffs, in the Office of the Solicitor, and in the Office of Representation Appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include copies of employment applications, educational transcripts, resumes, employment interview reports, and other information related to employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 et seq.; 29 U.S.C. 153(d), 154, 159, and 160.

PURPOSE:

These records document the skills and background of applicants for attorney and field examiner positions within the NLRB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. To process applications and evaluate applicants.

b. As a data source for management information for production of summary statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. Individuals who need the information in connection with the processing of a grievance, appeal, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

4. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

5. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

6. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

7. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

8. To a court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, or (b) any employee of the Agency in his or her official capacity, or (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper including forms, letters, and memoranda.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets. During duty hours cabinets are under surveillance of personnel charged with custody of the records and after duty hours are behind locked doors. Access to the cabinets is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Employment applications not resulting in appointment are destroyed when 2 years old.

SYSTEM MANAGER(S) AND ADDRESS:

1. To those applicants for positions under supervision of the General Counsel—Executive Assistant, Division of Operations Management, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

2. To those applicants for positions under supervision of a Board Member—Chief Counsel to that Board Member, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

3. Attorneys under supervision of the Director, Office of Representation Appeals—Director, Office of Representation Appeals, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

4. To those applicants for positions under supervision of the Solicitor—Solicitor, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

See the attached appendix for titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Applicants, educational institutions, interviewers, evaluators, personnel specialists, references, previous employers.

NLRB–3

SYSTEM NAME:

Biographical Data File—Presidential Appointees

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Information, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Presidential appointees to NLRB positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include biolgraphical sketches; news releases, news articles or speeches and other newsmaking activities; photographs, and material incidental thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 153 (a) and (d), 154(a); 44 U.S.C. 3101.

PURPOSE:

These records document pertinent aspects of the personal and professional history of NLRB's most senior officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information in the performance of their duties.

2. The public upon demonstrated interest.

3. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

4. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on original sources or related papers in file folders.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets within the Office of the Executive Secretary. During duty hours, cabinets are under the surveillance of office personnel charged with custody of the records, and after duty hours are behind locked doors.

RETENTION AND DISPOSAL:

Permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Information, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information in this system is submitted by the individual, written by Agency staff and approved by the individual, and obtained from general news sources.

NLRB-4

SYSTEM NAME:

Claim Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Chief, Administrative Services Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing claims under the Federal Tort Claims Act of 1946; the Military Personnel and Civilian Employees' Claims Act of 1964; claims filed under 41 CFR 101–39.4, Interagency Fleet Management Systems, Accidents and Claims; and claims under contracts with rental car companies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include reports of accidents or other events causing damage or loss; data bearing upon the scope of employment of motor vehicle operators; statements of witnesses; claims for damage or loss; investigations of claims, including doctors' reports, it any; police reports; rental agreements; repair estimates; records on disposition of claims; and information related to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2671 et seq.; 29 U.S.C. 153(d), 154(a) and (b); 31 U.S.C. 3701 et seq.

PURPOSE:

These records document the initiation, investigation and disposition of claims filed with the NLRB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, ae disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. In processing claims against this Agency.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department

of Justie is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

5. Investigators utilized by the Agency to obtain information relevant to a claim against the Agency.

6. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

7. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

8. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

9. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on forms, documents, and other papers.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file safe within the office of the Chief, Administrative Services Branch. During duty hours file safe is under the surveillance of personnel charged with the custody of the records, and after duty hours is behind locked doors. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Claims reports involving pecuniary liability are destroyed 10 years after the close of the fiscal year in which final action was taken. All other claims reports are destroyed 3 years after the close of the fiscal year in which final action was taken.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager is accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Claimants, investigators, and witnesses.

NLRB–5

SYSTEM NAME:

Employment and Performance Records, Attorneys and Field Examiners.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Office of Executive Assistant, Division of Operations Management; Board Members' Offices; Office of Representation Appeals; Office of the Solicitor, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

Washington and Field Offices are authorized to maintain the records or copies of the records for current and former NLRB employees of that office. See the attached appendix for addresses of the Washington and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Attorneys and Field Examiners in offices under the general supervision of the General Counsel; current and former Attorneys employed on Board Members' Staffs, in the Office of the Solicitor, and in the Office of Representation Appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include copies of employment applications, copies of personnel records, educational transcripts, résumés, employment interview reports, evaluation reports, career development appraisals, recommendations concerning promotion, copies of the official personnel file, correspondence, memoranda, and other information relevant thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4301 et seq.; 29 U.S.C. 153(d), 154, 159, 160.

PURPOSE:

These records document employee actions and performance appraisals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information.

2. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

3. A congressional office in response to any inquiry from the congressional office made at the request of the subject individual.

4. Officials of labor organizations recognized under Pub. L. 95–454, when

relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

5. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

6. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her individual capacity, (c) any employee of the Agency in his or her official capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper including forms, letters, and memoranda, and on magnetic disks.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets. During duty hours cabinets are under the surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions. Data captured on magnetic disks are limited to those with access codes and are stored in a locked room during and after duty hours.

RETENTION AND DISPOSAL:

Retained in accordance with applicable General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

1. Attorneys and field examiners under supervision of the General Counsel—Executive Assistant, Division of Operations Management, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

2. Attorneys under supervision of a Board Member—Chief Counsel to that Board Member, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

3. Attorneys under supervision of the Director, Office of Representation Appeals—Director, Office of Representation Appeals, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

4. Attorneys under supervision of the Solicitor—Solicitor, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

See the attached appendix for titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

The individual, the Personnel Branch, educational institutions, interviewers, evaluators, references, previous employers, and supervisors.

NLRB-6

SYSTEM NAME:

Employment and Performance Records, Nonprofessionals and Nonlegal Professionals.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Records are authorized to be maintained for current and former NLRB employees in all Agency offices. See the attached appendix for the addresses of these offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former nonprofessional employees and nonlegal professional employees of the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include copies of employment applications, educational transcripts, resumes, employment interview reports, evaluation reports, career development appraisals, recommendations concerning promotion, copies of personnel records, correspondence, memoranda, and other information relevant thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4301 et seq.; 29 U.S.C. 153(d), 154, 159, 160.

PURPOSE:

These records document employee actions and performance appraisals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information to evaluate job

performance, developmental needs, potential within the Agency, and readiness for promotion.

2. Individuals who have a need for the information in connection with the processing of a grievance, appeal, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

3. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

4. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

5. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

6. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. A court or other adjudicative body before the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper including forms, letters, and memoranda, and on magnetic disks.

RETRIEVABILITY:

Alphabetically by name:

SAFEGUARDS:

Maintained in file cabinets. During duty hours cabinets are under the surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions. Data captured on magnetic disks are limited to those with access codes and are stored in a locked room during and after duty hours.

RETENTION AND DISPOSAL:

Retained in accordance with applicable General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

See the attached appendix for the titles and addresses of officials responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

The individual, the Personnel Branch, professional employees, educational institutions, interviewers, evaluators, references and previous employers.

NLRB–7

SYSTEM NAME:

Grievances, Appeals, Complaints, and Related Litigation Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are authorized to be maintained for current and former NLRB employees in all Agency offices. See the attached appendix for the addresses of these offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include formal or informal grievances, appeals, and complaints, together with information and documents related thereto; letters or notices to the individual; records of hearings when conducted; material placed in the file to support or contradict the decision or determination on such grievance, appeal, or compliant; affidavits or statements; testimonies of witnesses; investigative reports; related correspondence and recommendations; and records on court proceedings, arbitration, or subsequent litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 7101 et seq.; 5 U.S.C. 7501 et seq.; 5 U.S.C. 7701 et seq.; 29 U.S.C. 153(d), 154.

PURPOSE:

These records document the employee grievance process within the NLRB, and also contain material gathered and used in representing the Agency in other appeals, complaints, and litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information in the performance of their duties.

2. Individuals who have a need for the information in connection with the processing of a grievance, appeal, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

3. An arbitrator for use in arbitrating a grievance or complaint.

4. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

6. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

7. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the subject individual.

8. The appropriate Federal (including offices of Inspector General), State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

9. Individuals making general requests for statistical information (without personal identification of individuals).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on forms, documents, letters, memoranda, and other similar papers.

RETRIEVABILITY:

Alphabetically by name of individual or party filing a grievance, claim, or complaint.

SAFEGUARDS:

Access to and use of the records are limited to those persons whose official duties require such access until the records are required to be made public in support of an Agency action or position. These records are maintained in file cabinets which during duty hours are under the surveillance of personnel charged with custody of the records and after duty hours are behind locked doors.

RETENTION AND DISPOSAL:

Placed in inactive file when case is closed. Destroyed 3 years after the end of the fiscal year in which the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

1. To those employees under supervision of the General Counsel—Deputy General Counsel, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

2. To those employees under supervision of the Board—Deputy Executive Secretary, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

See the attached appendix for titles and addresses of officials responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual to whom the record pertains; Agency officials; affidavits, statements, and record testimony of individuals; and other documents and memoranda relating to the grievance, appeal, or complaint.

NLRB–8

SYSTEM NAME:

Health Maintenance Program Records

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NLRB employees participating in Agency-sponsored health maintenance programs, such as diabetes tests, glaucoma tests, vision tests, blood donor program, and similar programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may involve recorded information on individual's names and dates of participation in health maintenance programs, and the name of the screening program in which participated. Also, for blood donor program, contains social security number, sex, donor identification number, home address and telephone, date of last donation, medications being taken, blood type, whether accepted or deferred as donor, and information relevant to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 29 U.S.C. 153(a) and (d), 154.

PURPOSE:

These records document employee participation in the NLRB health

maintenance programs such as screening and blood donor programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees working with the program who have a need for the records or information:

a. The administration of voluntary health maintenance programs.

b. As a data source for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained (without personal identification of individuals).

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. The American Red Cross insofar as the records or information pertain to the blood donor program.

4. The U.S. Department of Health and Human Services in the administration of public health service programs.

5. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

6. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on logs, forms, and other papers.

RETRIEVABILITY:

By program name and within each program alphabetically by name.

SAFEGUARDS:

Maintained in file safe within the office of the Personnel Branch. File safe remains locked except during access to records. During duty hours, file safe is under the surveillance of personnel charged with the custody of the records, and after duty hours is behind locked doors. Combination is known only to designated members of the Personnel Branch. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Retained for 6 years after last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Programs and Services Unit, Personnel Branch, Room 533, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.177(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information submitted by individual; officials of the servicing health units; and American Red Cross.

NLRB-9

SYSTEM NAME:

Occupational Injury and Illness Records

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. Each Washington and Field Office is authorized to maintain copies of records in this system. See the attached appendix for addresses of the Washington and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NLRB employees who have reported a work-related injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include information pertaining to the complete history of the employee's occupational injury or illness, including any doctors' or investigative reports submitted, and the disposition of claims for compensation filed under the Federal Employees Compensation Act and information relative thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 5 U.S.C. 8101 et seq.; 29 U.S.C. 153(a) and (d),154.

PURPOSE:

These records document the processing of claims filed by NLRB employees for compensation based on an occupational injury or illness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. In processing reports of occupational injury or illness and claims for compensation under the Federal Employees Compensation Act.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

5. The U.S. Department of Health and Human Services in the administration of public health service programs.

6. Investigator utilized by the Agency to obtain information relevant to a claim arising under the Federal Employees Compensation Act.

7. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

8. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

9. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

10. Individuals who need the information in connection with the processing of an appeal, grievance or complaint. Whenever feasible such information shall be furnished in depersonalized form, i.e., without personal identifiers.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on forms and related correspondence.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in locked filing cabinet within the Personnel Branch. Filing cabinet remains locked except during access. During duty hours filing cabinet is under surveillance of personnel charged with the custody of the records, and after duty hours is behind locked doors. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Retain and dispose of in accordance with the General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Programs and Services Unit, Personnel Branch, Room 533, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Forms completed by the employee; witnesses; investigators; employee's supervisor; claims examiners of the U.S. Department of Labor; and doctors' statements, if any.

NLRB–10

SYSTEM NAME:

Pay Records—Retirement

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Financial Management Branch, NLRB, 1717 Pennsylvania, Avenue, NW., Washington, DC 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NLRB employees under the Civil Service Retirement System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include name, previous name if any; social security number; sex; birth date; entrance-on-duty date; employment history, including prolonged leave without pay; and monetary contributions to retirement fund made during employment, and information relevant thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8301 et set.; 29 U.S.C. 153(a) and (d), 154.

PURPOSE:

These records document NLRB employee participation in the Civil Service Retirement System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. To administer the Civil Service Retirement System within the Agency.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. The Office of Personnel Management for administering the Civil Service Retirement System.

4. The U.S. General Accounting Office for audit purposes.

5. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

6. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

7. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Whenever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

8. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

9. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

10. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on employment history cards and source documents.

RETRIEVABILITY:

By organizational unit and within each unit by employee name or social security number.

SAFEGUARDS:

Maintained in file cabinets within the Payroll Unit. During duty hours file cabinets are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Maintained only on current employees. Transferred to the Office of Personnel Management upon termination of service with the Agency.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officer, NLRB, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Personnel Branch, timekeepers, and supervisors.

NLRB-11

SYSTEM NAME:

Payroll—Finance Records

SYSTEM LOCATION:

Current records are maintained in the Financial Management Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

Inactive records are stored at the appropriate Federal records center in accordance with applicable provisions of the General Records Schedules issued by the National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include each employee's name, date of birth, home address, payroll identification number, organizational unit number, block number pay plan, grade and step, social security number, state identification code and name, leave earned and used, composite designator code and account number, and for the current pay period quarterly and year-to-date hours worked, base pay, overtime pay, premium pay, miscellaneous pay, gross earnings, net earnings, and all withholdings from pay including retirement, taxes (Federal, State, and local) FICA, exemptions (Federal, State, and local), life, group, and optional, insurance, bonds (authorization number and date of issuance), and miscellaneous allotments and deductions. Employment history is also maintained for retirement purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5501 et seq.; 31 U.S.C. 3501 et seq.; 29 U.S.C. 153(a) and (d), 154.

PURPOSE:

These records document the payroll process as it relates to NLRB employees and are used to support various fiscal and personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. To compile payroll records.

b. To maintain Agency salary and expense accounts.

c. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

d. To transfer information from the records to the individual to whom the record permits.

e. To determine life insurance eligibility, costs, and types of coverage employees shall receive.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

4. The U.S. Department of the Treasury for payroll purposes.

5. The Office of Personnel Management concerning pay, benefits, retirement deductions and other information necessary for the Office to carry out its Government-wide personnel management functions.

6. State and local authorities for the purpose of verifying tax collections, unemployment compensation claims, and administering public assistance programs.

7. The U.S. Department of Health and Human Services for the administration of the social security program.

8. The U.S. General Accounting Office for audit purposes.

9. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

10. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

11. Officials of labor organizations recognized under Pub. L. 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

12. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

13. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on original source documents, computer printouts, and on a computer disk file with two magnetic tape backups and microfiche.

RETRIEVABILITY:

Employee payroll file maintained chronologically by year, and within each year by organizational unit, and within each unit by social security number or by employee name.

SAFEGUARDS:

Use of the computer file for information printouts is restricted to designated personnel and access is password protected. Original source documents and microfiche are maintained in file cabinets. During duty hours cabinets are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Payroll records are retained and disposed of in accordance with the applicable General Records Schedules issued by the National Archives and Records Administration and with General Accounting Office approval. Microfilm, magnetic strip ledgers, and microfiche and maintained for 56 years after the date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officer, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570, and Chief, Management and Information Systems Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

The individual, the Personnel Branch, timekeepers, and supervisors; Office of Personnel Management bulletins; taxing authority notices; and withholding authorizations.

NLRB–12

SYSTEM NAME:

Prefiling Communications.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are authoried to be maintained in all Field Offices of the

Agency, at the address listed in the attached appendix, and Office of the General Counsel, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have sought assistance regarding possible institution of an unfair labor practice, representation, or other civil action or proceeding before the National Labor Relations Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include file memoranda detailing the substance of oral communications; letters of inquiry and responses thereto; information relating to an individual's employment history, job performance, earnings, home address, telephone number, union activity; or other information relevant to a potential action or proceeding before the National Labor Relations Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 158–169.

PURPOSE:

These records document the processing of preliminary inquiries regarding potential unfair labor practices, representation, or other civil action or proceding before the NLRB, or representation case issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information in the processing of cases before the Agency.

2. The appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature.

3. A congressional office in response to an inquiry from the congressional office made a request of the subject individual.

4. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee or Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets in the nonpublic area of the office under the immediate control of the System Manager. During duty hours cabinets are under surveillance of personnel charged with custody of the records and after duty hours are behind locked doors.

RETENTION AND DISPOSAL:

In the event a civil action or proceeding is instituted prior to the record being destroyed, the record is placed in the case file which is not indexed by the name of the individual. In the event no action or proceeding is instituted, the records are destroyed when 1 year old.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, NLRB, 1717 Pennsylvania Avenue NW., Washington, DC 20570. See the attached appendix for titles and addresses of officials responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Individual who seeks assistance.

NLRB–13

SYSTEM NAME:

Time and Attendance Records, NLRB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Current records are maintained in:

Financial Management Branch, NLRB, 1717 Pennsylvania Avenue NW., Washington, DC 20570. Each Washington and Field Office maintains a copy of time and attendance records for current employees in that office, and is authorized to retain such records on former employees of that office. See the attached appendix for addresses of these offices.

Inactive records are stored at the appropriate Federal records center in accordance with provisions of applicable General Records Schedules issued by the General Service Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include name; home address; organizational unit number, payroll identification number; entrance-on-duty date; time worked, including regular hours, overtime, compensatory

time, and premium pay status; leave earned and used; absences without leave; and doctors' certificates, when required.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6101 et seq.; 5 U.S.C. 6301 et seq.; 29 U.S.C. 153 (a) and (d), 154.

PURPOSE:

These records document various pay and pesonnel functions, including the hours of work performed by employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom, are disclosed to:

1. Agency officials and employees who have a need for the records or information:

a. In the compilation of biweekly payrolls.

b. To maintain leave accounts.

c. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. Another Federal Government agency in connection with the transfer of an NLRB employee to that agency.

4. The Office of Personnel Management for administering the Civil Service Retirement System.

5. The U.S. General Accounting Office for audit purposes.

6. Another Government agency or private organization in connection with an agreement under the Intergovernmental Personnel Act.

7. The U.S. Treasury Department for payroll purposes.

8. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

9. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

10. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

11. Officials of labor organizations recognized under Public Law 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

12. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

13. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on Form TDF 10–11.H–1, H–2, and H–3 and related forms and papers, and on microfilm/microfiche.

RETRIEVABILITY:

Chronologically by year, and within each year by organizational unit, and within each unit by social security number or by employee name.

SAFEGUARDS:

Original source documents or copies thereof are maintained in file cabinets. Microfilm/microfiche is maintained in locked fireproof metal cabinets. During duty hours, cabinets are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Destroyed after GAO audit or when 3 years old, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officer, NLRB, 1717 Pennsylvania Avenue NW., Washington, DC 20570. See the attached appendix for the titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, timekeeper or supervisor, doctors' statements.

NLRB–14

SYSTEM NAME:

Equal Employment Opportunity Program Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Management and Information Systems Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. Office of Equal Employment Opportunity, NLRB, 1717 Pennsylvania, Avenue, NW., Washington, D.C. 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NLRB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include information such as employee name, social security number, Minority Group Designator (MGD) Code, employment status, sex, date of birth, payroll block and unit number, pay plan, grade and step, entrance-on-duty date, and date of last promotion, date of last quality step increase, organizational unit, employment class, and date of separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR 1613; 29 U.S.C. 153(a) and (d), 154.

PURPOSE:

These records document the implementation of the NLRB Equal Employment Opportunity Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records, or information therefrom are disclosed to:

1. Agency officials and employees who have a need for the record or information:

a. In monitoring and evaluating the status and progress of minority/female employment.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the Agency's EEO Program (without personal identification of individuals).

c. In connection with the investigation, processing, adjudication and/or settlement of an EEO complaint or civil action.

2. Individuals making general requests for statistical information (without personal identification of individuals).

3. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

4. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, or to any agency in connection with its oversight review responsibility.

5. Officials of labor organizations recognized under Public Law 95–454, when relevant and necessary to their duties of exclusive representation of NLRB employees under the Act. Wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

6. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint. Wherever feasible, such information shall be furnished in depersonalized form, i.e., without personal identifiers.

7. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capactiy where the Department of Justice has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justicee is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

8. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

DISLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer disk file and magnetic tape backup.

RETRIEVABILITY:

By social security account number, alphabetically by name, or by employee's organizational unit or post of duty.

SAFEGUARDS;

All doors to the computer room have combination locks and during duty hours the computer and magnetic tape backup are under surveillance of Agency personnel charged with custody of the records. After duty hours the computer disk file and magnetic tape backup are stored in a fireproof safe behind locked doors. Access is limited to authorized personnel only. All format programs are password protected and use of the machines for information printouts is restricted to designated personnel.

Information printouts are maintained in file cabinets. During duty hours cabinets are under surveillance of office personnel charged with custody of the printouts and after duty hours are behind locked doors. Access to cabinets is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

The information in these records is updated as changes in the data elements occur. The files and information printouts are disposed of according to applicable provisions of the General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Equal Employment Opportunity, NLRB, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

Any individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual to whom the record pertains, Agency officials, and from personnel records.

NLRB-15

SYSTEM NAME:

Employee Counseling Services Program Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Branch, NLRB, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NLRB employees who have been counseled or otherwise treated for alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors, psychologists, and physicians (Federal, State, local government, or private) and the assessment, diagnosis, recommended treatment, results of treatment, and other notes or records of discussions held with the employee, as well as family members of the employee, which may be made by the counselor. Additionally, records in this system may include documentation of treatment by a private therapist or a therapist at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 21 U.S.C. 1101 et seq.; 29 U.S.C. 153 (a) and (d), 154.

PURPOSE:

These records are used to ducument the nature of the individual's problem and progress and to record an individual's participation in and the results of community or private sector treatment or rehabilitation programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be disclosed to:

1. The Department of Justice for use in litigation when either (a) the Agency or any component thereof, or (b) any employee of the Agency in his or her official capacity, or (c) any employee of the Agency in his or her individual capacity where the Department of Justices has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

3. Qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient identities in any manner (when such records are provided to qualified researchers employed or contracted by the Agency, all patient identifying information shall be removed).

Note: Disclosure of these records beyond officials of the Agency having a bona fide need for them or to the person to whom they pertain, is rarely made as disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restriction of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR Part 2. Records pertaining to the physical and mental fitness of employees are, as a matter of Agency policy, afforded the same degree of confidentiality and are generally not disclosed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets labeled confidential with access strictly limited to employees directly involved in the Agency's Employee Assistance Program.

RETENTION AND DISPOSAL:

Files are destroyed 3 years after termination of counseling. The records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Programs and Services Unit, Personnel Branch, Room 533, NLRB, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

NOTIFICATION PROCEDURE:

An indivdual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by the supervisor, the Employee Assistance Program Coordinator, or staff member whom records the counseling session.

and therapists or institutions providing treatment.

NLRB-16

SYSTEM NAME:

Investigative Services Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of contractors of the Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals sought by the Agency for purpose of effecting compliance with the National Labor Relations Act and Board Orders and court decrees issued thereunder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of investigative reports on efforts to trace individuals, entities, and assets, and include copies of interview reports, public documents, and certain confidential data gathered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(m)(1) and 29 U.S.C. 153(d) and 160.

PURPOSE:

These records are used to effect compliance with the National Labor Relations Act and Board Orders and court decrees issued thereunder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used in disclosing information to:

1. A congressional office in response to an inquiry from congressional office made at the request of the subject individual.

2. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency, or any component thereof, (b) any employee of the Agency his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has interest in such litigation, and the Agency determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

3. The Department of Justice for use in litigation when either (a) the Agency, or any component thereof, (b) any employee of the Agency is his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. The appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto or to any agency in connection with its oversight review responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file holders in locked filing cabinets in offices of contractors of the Agency. Automated information storage and retrieval systems may also be used by individual contractors.

RETRIEVABILITY:

Records are maintained alphabetically by name, or may be retrieved by other personal identifier.

SAFEGUARDS:

Access to and use of the records is limited to authorized persons on a need-to-know basis.

RETENTION AND DISPOSAL:

The records are retained by the contractor for no more than 3 years after the case is closed, and are destroyed upon notification from the Agency.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Contempt Litigation Branch, Division of Enforcement Litigation, National Labor Relations Board, Room 923, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.11(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Public records, state, and local law enforcement authorities, third party informants, and Agency personnel.

Appendix

Names and Addresses of NLRB Offices referenced in Notice of Record Systems shown above.

NLRB Headquarters Offices

OFFICES OF THE BOARD

Member of the Board
Executive Secretary, Office of the Executive Secretary
Director, Office of Representation Appeals
Director, Division of Information
Solicitor

OFFICES OF THE GENERAL COUNSEL

General Counsel
Associate General Counsel, Division of Operations Management
Associate General Counsel, Division of Advice
Associate General Counsel, Division of Enforcement Litigation
Director, Division of Administration
Director, Equal Employment Opportunity
Address: 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570

Chief Administrative Law Judge, Division of Administrative Law Judges

Address: Room 1121, Hamilton Building, 1375 K Street, NW., Washington, D.C. 20005

San Francisco Office, Division of Administrative Law Judges

Address: Suite 300, 901 Market Street, Federal Building, San Francisco, California 94102

New York Office, Division of Administrative Law Judges

Address: Paramount Building, 4th Floor, 1501, Broadway Street, New York, New York 10036

Atlanta Office, Division of Administrative Law Judges

Address: 44 Broad Street NW., Ninth Floor, Atlanta, Georgia 30303

NLRB Field Offices

Regional Director, National Labor Relations Board, Region 1, Boston Federal Office Building, 10 Causeway Street, Boston, Massachusetts 02222–1072.

Regional Director, National Labor Relations Board, Region, 2, Jacob K. Javits Federal Building, Room 3614, 26 Federal Plaza, New York, New York 10278.

Regional Director, National Labor Relations Board, Region 3, Federal Building, Room 901, 111 West Huron Street, Buffalo, New York 14202.

Regional Director, National Labor Relations Board, Region 4, 1 Independence Mall, Seventh Floor, 615 Chestnut Street, Philadelphia, Pennsylvania 19106.

Regional Director, National Labor Relations Board, Region 5, Candler Building, Fourth Floor, 109 Market Place, Baltimore, Maryland 21202.

Regional Director, National Labor Relations Board, Region 6, 1501 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Regional Director, National Relations Board, Region 8, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Room 1695, Cleveland, Ohio 44199.

Regional Director, National Relations Board, Region 9, John Weld Peck Federal Office Building, Room 3003, 550 Main Street, Cincinnati, Ohio 45202.

Regional Director, National Relations Board, Region 10, Marietta Tower, Suite 2400, 101 Marietta Street, NW., Atlanta, Georgia 30323.

Regional Director, National Relations Board, Region 11, U.S. Courthouse, Federal Building, 251 North Main Street, Room 447, Winston-Salem, North Carolina 27101.

Regional Director, National Relations Board, Region 12, 700 Twigg Street, Suite 511, P.O. Box 172068, Tampa, Florida 33672–0068.

Regional Director, National Relations Board, Region 13, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604.

Regional Director, National Relations Board, Region 14, 210 Tucker Boulevard North, Room 448, St. Louis, Missouri 63101.

Regional Director, National Relations Board, Region 15, 1515 Poydras Street, Suite 610, New Orleans, Louisiana 70112.

Regional Director, National Relations Board, Region 16, Federal Office Building, Room 8A24, 819 Taylor Street, Forth Worth, Texas 76102.

Regional Director, National Labor Relations Board, Region 17, Two Gateway Centre, Room 616, Fourth at State, Kansas City, Kansas 66101.

Regional Director, National Labor Relations Board, Region 18, Federal Building, Room 316, 110 South Fourth Street, Minneapolis, Minnesota 55401.

Regional Director, National Labor Relations Board, Region 19, Henry M. Jackson Federal Building, Room 2948, 915 Second Avenue, Seattle, Washington, 98174.

Regional Director, National Labor Relations Board, Region 20, Suite 400, 901 Market Street, San Francisco, California, 94103.

Regional Director, National Labor Relations Board, Region 21, 615 South Flower Street, 11th Floor, Los Angeles, California, 90017–2803.

Regional Director, National Labor Relations Board, Region 22, Peter D. Rodino, Jr. Federal Building, Room 1600, 970 Broad Street, Newark, New Jersey 07102.

Regional Director, National Labor Relations Board, Region 23, Bob Casey Federal Building/Courthouse, 515 Rusk Street, Room 4014, Houston, Texas 77002.

Regional Director, National Labor Relations Board, Region 24, Federico Degatau Federal Building, U.S. Courthouse, Room 591, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918.

Regional Director, National Labor Relations Board, Region 25, Minton-Capehart Federal Building, Room 238, 575 North Pennsylvania Street, Indianapolis, Indiana 46204.

Regional Director, National Labor Relations Board, Region 26, Mid-Memphis Tower Building, Suite 800, 1407, Union Avenue, P.O. Box 41559, Memphis, Tennessee 38174.

Regional Director, National Labor Relations Board, Region 27, South Towers, 3d Floor, 600 17th Street, Denver, Colorado 80202–5433.

Regional Director, National Labor Relations Board, Region 28, Security Building, 234 North Central Avenue, Suite 440, Phoenix, Arizona 85004.

Regional Director, National Labor Relations Board, Region 29, 16 Court Street, Fourth Floor, Brooklyn, New York 11241.

Regional Director, National Labor Relations Board, Region 30, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53203.

Regional Director, National Labor Relations Board, Region 31, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024.

Regional Director, National Labor Relations Board, Region 32, Breuner Building, Second Floor, 2201 Broadway, Post Office Box 12983, Oakland, California 94604.

Regional Director, National Labor Relations Board, Region 33, Savings Center Tower, Sixteenth Floor, 411 Hamilton Boulevard, Peoria, Illinois 61602.

Officer-in-Charge, National Labor Relations Board, Subregion 36, Portland Building, Room 1360, 1120 Southwest Fifth Avenue, Portland, Oregon 97204.

Officer-in-Charge, National Labor Relations Board, Subregion 37, 300 Ala Moana Boulevard, Room 7318, P.O. Box 50208, Honolulu, Hawaii 96850.

Officer-in-Charge, National Labor Relations Board, Subregion 39, One Commercial Plaza, 21st Floor, Hartford, Connecticut 06103.

Resident Officer, National Labor Relations Board, Resident Office-Region 3, Leo W. O'Brien Federal Building, Room 342, Clinton Avenue at North Pearl Street, Albany, New York 12207.

Resident Officer, National Labor Relations Board, Resident Office-Region 5, Gelman Building, Suite 100, 2120 L Street NW., Washington, D.C. 20037.

Resident Officer, National Labor Relations Board, Resident Office-Region 7, Third Floor, The Furniture Co., 82 Ionia, NW., Grand Rapids, Michigan 49503.

Resident Officer, National Labor Relations Board, Resident Office-Region 10, Bank of Savings Building, Suite 305, 1919 Morris Avenue, Birmingham, Alabama 35203.

Resident Officer, National Labor Relations Board, Resident Office-Region 12, Federal Building, Room 278, 400 West Bay Street, Jacksonville, Florida 32202.

Resident Officer, National Labor Relations Board, Resident Office-Region 12, Federal Building, Room 916, 51 Southwest Avenue, Miami, Florida 33130.

Resident Officer, National Labor Relations Board, Resident Office-Region 16, Robert S. Kerr Building, 440 South Houston Avenue, Room 210, Tulsa, Oklahoma 74127.

Resident Officer, National Labor Relations Board, Resident Office-Region 18, Federal Building, 210 Walnut Street, Room 909, Des Moines, Iowa 50309.

Resident Officer, National Labor Relations Board, Resident Office-Region 19, Anchorage Federal Office Building, 701 C Street, Room 510, Box 21, Anchorage, Alaska 99513.

Resident Officer, National Labor Relations Board, Resident Office-Region 21, 555 West Beech Street, Suite 302, San Diego, California 92101.

Resident Officer, National Labor Relations Board, Resident Office-Region 23, Federal Building, Room A–509, 727 East Durango Boulevard, San Antonio, Texas 78206.

Resident Officer, National Labor Relations Board, Resident Office-Region 26, Capitol Centre Building, 303 West Capitol Street, Suite 350, Little Rock, Arkansas 72201.

Resident Officer, National Labor Relations Board, Resident Office-Region 26, Estes Kefauver Federal Building, U.S. Courthouse, Room A–702, 801 Broadway, Nashville, Tennessee 37203.

Resident Officer, National Labor Relations Board, Resident Office-Region 28, Patio Plaza Building, Upper Level, 5000 Marble Avenue, NE., Albuquerque, New Mexico 87110.

Resident Officer, National Labor Relations Board, Resident Office-Region 28, Federal Building, Suite C403, 700 East San Antonio Avenue, El Paso, Texas 79901.

Resident Officer, National Labor Relations Board, Resident Office-Region 31, 600 Las Vegas Boulevard, South Suite 400, Las Vegas, Nevada 89101.

[FR Doc. 88–10880 Filed 5–13–88; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-409]

Dairyland Power Cooperative; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional License No. DPR–45, issued

to Dairyland Power Cooperative (the licensee) for the La Crosse Boiling Water Reactor (LACBWR), located in Vernon County, Wisconsin.

Environmental Assessment

Description of Proposed Action

The proposed amendment revises the Physical Security Plan (which includes the LACBWR Security Force Training and Qualifications Plan and the LACBWR Reactor Safeguards Contingency Plan).

LACBWR was permanently shutdown on April 30, 1987 and reactor defueling completed on June 11, 1987. The LACBWR Operating License No. DPR-45 was modified to possess-but-not-operate status on August 4, 1987.

Need for the Proposed Action

The amendment is needed to change the Physical Security Plan which was appropriate for an operating plant but not for the permanently shutdown LACBWR Facility.

Environmental Impact of the Proposed Action

The proposed action will have no environmental impact because with the reactor permanently shutdown and the fuel moved to the Fuel Element Storage Well our accident analysis shows that there can be no reactor accident and that potential offsite exposures are reduced to less than protective action guide levels. Furthermore, this proposed action has no impact on our accident analysis. The staff has also determined that the proposed change to the Physical Security Plan involves no increase in the amounts, and no significant change in the types of any effluents that may be released offsite and that there would be no increase in individual or cumulative occupational radiation exposures.

Alternative Use of Resources

This action does not involve the use of any resources.

Agencies and Persons Consulted

The licensee initiated this amendment action. The NRC staff has reviewed their request. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action would not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the liceness's application dated September 24, 1987 as revised March 28 and April 28, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Dated at Rockville, Maryland, this 10th day of May 1988.

For the Nuclear Regulatory Commission.

Peter B. Erickson,

Project Manager, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-10888 Filed 5-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated February 10, 1988, the amendment would revise the Fermi-2 Technical Specifications to remove the requirement to perform 10 CFR Part 50, Appendix J, Type C leakage testing on the Residual Heat Removal Shutdown Cooling inboard isolation valves.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 15, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel Muller: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

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).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 10, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 6th day of May 1988.

For the Nuclear Regulatory Commission.

Daniel Muller,

Acting Director, Project Directorate III-1, Division of Reactor Projects-III, IV, V & Special Projects.

[FR Doc. 88-10890 Filed 5-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Further Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a further amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated March 10, 1988, as supplemented March 22 and 29, 1988.

The proposed amendment would extend the interim authorization granted by Amendment No. 101 dated May 6, 1988 to permanently revise the steam generator tube plugging criteria to allow tubes with defects in the rolled region of the tube sheet to remain in service provided that the first inch of rolled tube contains no imperfections. The interim authorization expires at the end of the next refueling outage, approximately July 1988.

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 June 15, 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 or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(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-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, 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 General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 6th day of May, 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–10891 Filed 5–13–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–3 issued to Yankee Atomic Power Company, (the licensee), for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would add requirements to the Technical Specifications (TS) related to the surveillance testing of first level undervoltage protection associated with the 480 volt emergency busses.

The proposed action is in accordance with the licensee's application for amendment dated January 5, 1988.

The Need for the Proposed Action

The proposed change to the TS was submitted by the licensee in response to an NRC request to include first level undervoltage protection in the TS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions include surveillance testing in the T.S. that was previously performed under plant operating procedures. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 17, 1988 (53 FR 8826). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

Alternatives Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 5, 1988 which is available for public inspection at the Commission's Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 9th day of May 1988.

For the Nuclear Regulatory Commission.

Vernon Rooney,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–10889 Filed 5–13–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Occupational and Environmental Protection System; Meeting

The ACRS Subcommittee on Occupational and Environmental Protection System will hold a meeting on May 31, 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, May 31, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will review changes to Part 20, "Standards for Protection Against Radiation."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring

to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. 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 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: May 9, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-10895 Filed 5-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-224-OLA; ASLBP No. 88-574-07-OLA]

University of California, Berkeley; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1982), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

University of California, Berkeley, Research Reactor, Facility Operating License No. R-101.

This Board is being established pursuant to a notice published by the Commission on March 10, 1988, in the **Federal Register** (53 FR 7823-24) entitled, "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License." The proposed Orders would authorize the University of California, Berkeley (the Licensee) to dispose of the component parts of the research reactor in their possession, in accordance with the Licensee's application dated January 8, 1988 and terminate the Facility Operating License No. R-101.

The Board is comprised of the following Administrative Judges:

Sheldon J. Wolfe, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

James A. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 10th day of May 1988.

[FR Doc. 88-10896 Filed 5-13-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25682; File No. SR-NYSE-88-07]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Global Certification of Debt Securities, Filing of Proposed Rule Change

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 March 24, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its *Listed Company Manual* to clarify its practice of listing debt securities represented by a global certificate. The text of this proposed revision is set out in Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It 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

The Exchange's *Listed Company Manual* specifies standards for the textual contents of certificates and for technical requirements for their physical form. The Manual neither prohibits nor provides for a global certificate/book entry system, and the engraving standards of Section 5 have been interpreted to apply only where the issuer intends to create individual certificates for its security holders.

In 1985, the Securities and Exchange Commission determined that the use of a global certificate renders an issue a certificated issue under Article 8 of the Uniform Commercial Code and recommended its use for debt securities. In August 1987, the Exchange listed a $200 million debt offering, the first security listed on the Exchange to utilize a single or global certificate.

The proposed language clarifies the Exchange's practice of permitting the listing of debt securities using a global certificate.

The statutory basis under the Securities Exchange Act of 1934 (the "Act") is section 6(b)(5) and its requirement that a national securities exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement of Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule change Received from Members, Participants, or Other

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such data if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submission 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 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 at 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 (File No. SR-NYSE-88-07) in the caption above and should be submitted by June 6, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

May 9, 1988.

Jonathan G. Katz,

Secretary.

Exhibit A

501.02 Bond Certificates

(A) General Requirements

Bond certificates shall contain a statement as to such of the following provisions as are applicable:

• Terms of payment of principal and interest.

• A summary of optional and sinking fund redemption provisions, including redemption prices.

• A summary of conversion provisions, including appropriate dates, initial conversion price and reference to subsequent conversion prices.

• A summary of the bondholder's rights with respect to registration and interdenominational exchanges.

Suitable space for entries with respect to registration, transfer and discharge from registration must be provided on coupon bonds registerable as to principal.

Registered bonds and coupon bonds of the same issue must be fully interchangeable.

Bonds shall be issued in the denomination of the unit of trading.

While the normal unit of trading is $1,000, bonds in denominations of $500 and in larger denominations that are in multiples of the unit of trading also are deliverable under Exchange rules provided:

• They are prepared in accordance with the engraving requirements set forth in this section, and

• They are exchangeable without charge for other bonds in the unit of trading.

Registered bonds shall carry the form of assignment as indicated in Para. 501.03(B).

(B) Global Certificates

Bonds using a single global certificate may be listed if: (1) interests therein may be transferred by book-entry on the books of a Qualified Clearing Agency or a Fully-Interfaced Clearing Agency as defined in Rule 132 and Exchange Contracts as defined in Article VII of the Constitution in respect of interests therein may be compared through a Qualified Clearing Agency or a Fully-Interfaced Clearing Agency, and (2) the certificate is on deposit at (a) a depository which is a registered clearing agency under Section 17A of the Securities Exchange Act of 1934 or (b) a depository which is exempt from such registration and which the NYSE has designated as acceptable for this purpose. Since a global certificate is not readily susceptible to fraudulent duplication, the Exchange will dispense with the content and engraving requirements of Section 5 in the case of bonds certificated in this manner. In addition, a specimen certificate is not required as a supporting document to the listing application. The contents and format of the global certificate will be determined by the issuer and depository.

A global certificate may be used for convertible bonds. However, the securities issued upon conversion must comply with the content and engraving requirements of Section 5.

Issuers shall make available to bondholders upon request a statement as to such of the following provisions as are applicable;

• Terms of payment of principal and interest.

• A summary of optional and sinking fund redemption provisions, including redemption prices.

• A summary of conversion provisions, including appropriate dates, initial conversion price and reference to subsequent conversion prices.

• A summary of the bondholder's rights with respect to registration and interdenominational exchanges.

If the depository is at any time unwilling or unable to continue as depository and a successor depository is not appointed by the issuer within 90 days, the issuer shall issue certificates as set forth in (A) above in exchange for the global certificate. In addition, the issuer may at any time determine not to have the bonds represented by a global certificate and, in such event, will issue bonds in the required form in exchange for the global certificate. In either instance, an owner of a beneficial interest in the global certificate will be entitled to have bonds equal in principal amount to such beneficial interest registered in the owner's name and will be entitled to physical delivery of such bonds in required form.

702.04 Supporting Documents

* * * * *

Specimens of the Securities for Which Listing Application is Made—

One specimen certificate of each form, *except global*, and denomination currently isssued, or to be issued, shall be filed. They should be mutilated by perforation or otherwise, and clearly and indelibly marked "Specimen".

If the specimens are not available for filing by the time the Exchange takes action on the listing application, they must be filed prior to the original listing date.

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703.01 General Application

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(C) Supporting Documents.

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Specimens—

In the event of a new issue, the company's bank note company should be instructed to submit latest drafts, models and proofs and specimens of the stock certificates, bonds *(except if globally certificated)*, scrip, etc. in latest form. Specimens should be mutilated by perforation or otherwise and clearly and indelibly marked "Specimen".

703.06 Debt Securities Offerings Listing Process

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(G) Supporting Documents

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• Specimen certificates *(except for globally certificated bonds).*

(Additional language italicized.)

[FR Doc. 88-10884 Filed 5-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25677; File No. SR-NYSE-88-12]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Increase in Specialists' Capital Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the minimum capital requirements for members acting as specialists in stocks listed on the Exchange.

A. 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 Section A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Proposed changes to Exchange Rule 104.20 will raise the minimum capital required of specialists to the greater of $1 million or 25% of trading unit position requirements. The trading unit position requirements will be increased to three times their current levels. For example, where presently a specialist is required to be able to assume a position of 50 trading units (i.e., 5,000 shares) in each common stock in which he is registered, the new requirement will be for assumption of 150 trading units (i.e., 15,000 shares) in each common stock in which he is registered. The same degree of increase will apply to trading unit position requirements in convertible and non-convertible preferred stocks where requirements will be raised to 30 trading units (3,000 shares) in each convertible preferred stock from 10 trading units (1,000 shares), to 1,200 shares in each 100 share trading unit non-convertible preferred from 400 shares and to 300 shares in each 10 share trading unit non-convertible preferred from 100 shares.

A specialist at the inactive Post (the post at which inactive preferred stocks are traded) will be required to have net liquid assets of $150,000 increased from $50,000. The net liquid asset requirement for relief specialists will be raised to $150,000 from $50,000.

The Exchange believes that such increased capital requirements will enhance the liquidity of the specialist system and provide a greater measure of protection against market volatility.

The proposed increases are being undertaken as an interim measure pending completion of an overall review of the adequacy of existing specialist financial responsibility requirements in view of recent market volatility.

Specialists that do not currently meet the new standards will have thirty days form the date of Commission approval to come into compliance with the requirements of the proposed rule.

The proposed rule changes are consistent with the provisions of section 11(b) of the Act in that they prescribe adequate minimum capital requirements in view of the market for securities on the Exchange. They are also consistent with the provisions of section 11A(a)(1) in that they promote the public interest and the goals of protection of investors and maintenance of fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File SR-NYSE-88-12 and should be submitted by June 6, 1988.

IV. Commission Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 11(b) which permits national securities exchanges to promulgate rules regulating the activities of specialists as necessary or appropriate in the public interest, for the protection of investors, and to maintain fair and orderly markets, and section 6(b)(5) which directs that the rules of a national securities exchange be designed to facilitate transactions in securities and to protect investors and the public interest.

The Commission believes that, in view of the market volatility encountered during and in the period since the October 1987 market break, it is appropriate to approve the proposed increases in capital requirements and trading unit position requirements for NYSE specialists. The Commission staff study on the October 1987 market break found that while specialist capital appears sufficient during normal trading situations, it will not be sufficient if

markets continue at present volatility levels.[1] The report also stated that additional specialist capital might ensure that in any future down market specialists do not reach the limit of their buying power or become in jeopardy of failing. The Commission believes that the proposed rule change will provide an increased level of protection against market volatility for specialists, and ensure that specialists' [2] buying power is not jeopardized.

The Commission believes that the thirty day period provided by the Exchange for those specialist units not already meeting the requirements of the proposed rule to come into compliance is reasonable and that conformity with these standards will not be unduly burdensome on NYSE specialist units. In this regard, the NYSE has stated that the vast majority of its specialist units are already in compliance with the requirements of the proposed rule. Finally, we note that this is an interim measure by the NYSE to ensure the adequacy of spcialist financial responsibility requirements in light of market conditions. We would anticipate additional changes to specialist capital requirements to be proposed as NYSE continues to study this issue.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Exchange may impose increased capital requirements and trading unit position requirements on specialists as in interim measure to help ensure greater specialist liquidity as a response to recent market volatility. It is important that the Exchange be assured immediately of the adequacy of its specialists' financial capacity in light of increased market volatility.

It is therfore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 6, 1988.

[FR Doc. 88-10885 Filed 5-13-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The October 1987 Market Break, a Report by the Dvision of Market Regulation, U.S. Securities and Exchange Commission, February 1988, at p. xviii.

[2] According to the Exchange, as of April 28, 1988, only one specialist or specialist unit was below the standards in the proposed rule. Telephone conversation between Donald Seimer, Director, Rule and Interpretive Service, NYSE, and Robert Sevigny, Attorney, Division of Market Regulation, on May 3, 1988.

[Release No. 34-25681; File No. SR-NYSE-87-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc.

I. Introduction

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on July 29, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to commence a two year pilot program to test revisions to NYSE Rule 103A ("Rule"), the Exchange's Specialist Performance Evaluation and Improvement Process. Several important features of the revised Rule include, among other things, the incorporation of newly developed objective performance measures into the Ruel 103A process, the adoption of minimum standards for acceptable performance, the codification of reallocation procedures, and the broadening of the Rule's performance improvement action procedures for below standard performance.

Notice of the proposal together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 24919, September 15, 1987) and by publication in the **Federal Register** (52 FR 35821, September 23, 1987). No comments were received concerning the proposal.

II. Background

NYSE Rule 103A contains standards for evaluating specialist performance and authorizes the Exchange's Market Performance Committee ("MPC") to reallocate one or more securities assigned to a specialist unit whose performance is consistently found to be substandard as determined by the Rule.

Presently, the Exchange's primary mechanism to measure specialist performance is its Specialist Performance Evaluation Questionnaire ("SPEQ").[1] The SPEQ, which was revised last in 1986, is a quarterly survey on specialist performance completed by floor brokers. The SPEQ requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.[2] Failure by a specialist unit to achieve a specific score on the questionnaire as a whole or on one or more specific questions for one or more quarters constitutes unacceptable performance.[3] If a specialist unit's SPEQ score, for example, falls below the minimum standard of acceptable performance provided in the Rule for a single quarter, the unit's performance is deemed to be substandard, and, as a result, the specialist unit is required to meet informally with the MPC to discuss its performance.[4] These informal meetings between the MPC and the underperforming specialist units are generally regarded as counseling sessions and are largely designed to identify areas in which a specialist unit's performance is weak as well as develop strategies to improve the unit's performance in subsequent quarters.

Under current Rule 103A procedures, if a specialist unit's performance is found to be substandard for two consecutive quarters as determined by the Rule, the MPC would issue a Supplemental Questionnaire to floor brokers to identify specific securities in which the specialist unit's performance is unsatisfactory. The results of the Supplemental Questionnaire would be utilized by the MPC to determine whether to initiate reallocation proceedings and to determine which stock(s) assigned to the unit would be suitable for reallocation to another

[1] The SPEQ currently consists of 28 questions covering five specific areas of specialist responsibility—the dealer, agency, communication and administrative functions and maintenance of the auction market. Each of these questions is rated by a floor broker on a 5 point scale, ranging from poor to very good. An additional question solicits general comments from the evaluating floor broker regarding specific aspects of the specialist unit's performance such as the unit's ability to attract order flow to the Exchange and retain it. In addition, the question asks the floor broker to recommend specific steps a unit could undertake to improve its performance and receive better ratings in the following quarter. Specialist units are ranked in descending order according to their overall SPEQ scores.

[2] All eligible floor brokers (*e.g.*, those floor brokers with a minimum of one year's experience) participate in the survey process. Floor brokers participating in the survey rate the specialist unit(s) with whom they have the most contact with, as identified by audit trial data.

[3] *But see* note 4, *infra*.

[4] Due to recent 1985 revisions to the SPEQ, which changed the scoring method, the former numerical standard of acceptable performance contained in the Rule is no longer applicable. Further, the Exchange determined not to revise the standard for acceptable performance on the revised SPEQ unitl it had developed additional performance measures to supplement the existing SPEQ and revised other aspects of the specialist performance evaluation and improvement process. Accordingly, since the implementation of the new SPEQ, results of the SPEQ have not been used as the basis for reallocations. The SPEQ is, however, used as a basis for informal counseling of specialist units and for making allocation decisions for new listings. The prohibition on reallocations under Rule 103A, which has been in effect for nearly two years and is still effective, will be terminated by the proposed revisions to Rule 103A contained herein. *See* Securities Exchange Act Rel. Nos. 22036 (May 14, 1985), 50 FR 21007 and 23747 (October 23, 1986), 51 FR 40550.

specialist unit.[5] If the MPC determines that the results of the Supplemental Questionnaire warrant action, it may commence reallocation proceedings.

Under existing Rule 103A, reallocation proceedings would consist primarily of a hearing in which the MPC considers all materials relevant to the specialist unit's performance, including evidence offered by the unit to support a claim that its unsatisfactory performance is attributable to extenuating or mitigating circumstances. Following the hearing, the MPC may either cancel the specialist unit's registration in a particular stock(s), or due to a showing of extenuating or mitigating circumstances, establish a specific time frame within which the specialist unit must improve its performance. If the specialist unit's performance has not improved sufficiently by the end of the extended time period, the specialist unit would again be subject to reallocation proceedings, in which case one or more of its assigned stocks may be reallocated to another specialist unit. A specialist unit would have a right to appeal any adverse MPC decision to the NYSE Board of Governors pursuant to Article IV, section 14 of the NYSE Constitution.[6]

III. Description of the Proposal

The NYSE's proposal to revise Rule 103A incorporates a number of recommendations provided by the MPC's Subcommittee on Performance Measures and Procedures ("Subcommittee"), which conducted a thorough examination of the Exchange's specialist performance evaluation and improvement process. The revised Rule, among other things, broadens the scope of performance improvement actions as well as incorporates newly developed objective performance measures into the specialist evaluation process. In addition, the revised Rule establishes minimum standards of acceptable performance. Specialist units who fall below these minimum standards are subject to a performance improvement action, and, potentially, reallocation proceedings. Further, the revised Rule codifies existing reallocation procedures as well as adopts several new provisions in connection with the Rule 103A process.

A. Performance Improvement Action Criteria

Under revised Rule 103A, a specialist's performance is measured by a combination of SPEQ scores and newly developed objective standards of performance. The new standards will measure specialist performance concerning stock openings, both regular and delayed, OARS (Opening Automatic Report Service), DOT Turnaround (Designated Order Turnaround System), status requests, and market share. Below standard performance on any one measure will, independently, result in a performance improvement action. As described below, such as action could result in a reallocation of a specialist's securities.[7]

1. The SPEQ

The proposed revisions to the Rule would not alter the existing SPEQ in any substantive fashion; rather, the proposed revisions would establish acceptable performance levels for ratings received under the Questionnaire. Under the proposal, a specialist unit would be subject to a performance improvement action in any case where (1) its overall median score on the SPEQ is below "adequate" in any one quarter (a total numerial score of 117 of 225 possible points is deemed adequate); (2) its SPEQ score in the same function is below "adequate" for two consecutive quarters (24 of a total of 45 possible points in each function is deemed adequate); or (3) its SPEQ score in any two of five functions is below "adequate" for two consecutive quarters.[8]

2. Openings (Regular and Delayed)

The NYSE is proposing to measure specialist performance at the opening in two ways. First, this performance measure would evaluate the timeliness of a specialist unit's openings for both its common and non-convertible perferred stock relative to the Exchange's 9:30 a.m. opening. A specialist unit would be deemed to have performed unsatisfactorily in this measure if, for two consecutive quaters, it did not open, at least 90% of the time, one or more of its common or non-convertible preferred stocks by means of an opening trade or a quotation by 9:45 a.m.[9] The Exchange indicated that it views timely openings as facilitating transactions in securities and as contributing to the maintenance of fair and orderly markets in accordance with its obligations under the Act.

Second, the NYSE would rate whether a unit's request for a non-regulatory delayed opening was made to a Floor Official on a timely basis, based on evaluations by Floor Officials as noted on a Delayed Opening/Halt In Trading Form.[10] Under proposed Rule 103A, a performance improvement action would be triggered whenever a specialist unit receives unfavorable Floor Official evaluations in 15% of its registered common stocks, or in a mimimum of 7 stocks, whichever is greater, in any one quarter.[11] The timeliness of the request would be evaluated by a Floor Official involved and noted on a Delayed Opening/Halt in Trading Form. According to the Exchange, the timely request for the assistance of a Floor Official in arranging an opening contributes to the proper functioning and overall orderliness of exchange markets and may, in some instances, eliminate the need to call a delayed opening.

3. OARS, DOT Turnaround Performance and Status Requests

The Exchange is also proposing to add several other specialist performance standards. These standards will

[5] Alternatively, the MPC may elect to proceed directly to a reallocation proceeding without the issuance of a Supplemental Questionnaire if the unit previously has had a Supplemental Questionnaire issued on its behalf as a result of subpar performance.

[6] As noted above, the SPEQ serves an additional important function. Historically, SPEQ scores have been the principal criteria considered by the Exchange's Allocation Committee in allocating newly-listed securities to specialist units. Accordingly, specialist units with superior SPEQ ratings (and, consequently, higher SPEQ ranks) are supposed to receive allocation awards of new listings, particularly the more lucrative, highly sought after listings.

[7] *See* discussion on performance improvement actions in Part B, *infra*.

[8] For example, if a specialist unit receives a score below 24 in both the dealer and agency functions in one quarter and receives a score below 24 in both the communication and administrative functions in the next quarter, the unit would be subject to a performance improvement action.

[9] In calculating specialist performance in this measure, the NYSE would exclude regulatory delayed opening and those post-9:45 a.m. delayed openings that are certified in writing by a floor official as being justified by market conditions in the particular stock. We note the NYSE has developed a "Floor Official" Exemption Form that will be used to determine which post-9:45 a.m. openings will be excluded in measuring timely opening performance. The NYSE has agreed to require on this form that the Floor Official provide a brief explanation of why the post 9:45 a.m. opening is justified. (*See* letter from Santo Famularo, Vice President, NYSE to Sharon Lawson, Branch Chief, Division of Market Regulation, dated April 22, 1988 ("NYSE April 22 Letter").

[10] Non-regulatory delayed openings generally occur due to an order imbalance in a stock. We note that the Floor Official must indicate on the Form whether a unit's request for the delayed opening was made in a timely manner.

[11] For example, a unit with 100 registered common stocks would be deemed to have performed unsatisfactorily and, hence, subject to a performance improvement action, it it received 15 unfavorable Floor Official evaluations concerning openings in any one quater. Similarly, a unit with only 5 registered common stocks would have to receive 7 unfavorable Floor Official evaluations concerning its openings in any one quarter to be subject to a performance improvement action.

measure the timeliness of inputting OARS price cards, DOT turnaround performance and a unit's timely response to status requests. The Exchange believes that these three measures are intended to foster the efficient processing of information in regard to securities transactions. In terms of OARS price reports, the revised Rule would provide that substandard performance for this measure would occur in any case where, for two quarters during a rolling four quarter period, a specialist unit fails to transmit or input 90% of its OARS price reports within 10 minutes of the opening of the stock on the Exchange.

The DOT turnaround performance measures a unit's ability to execute and report post-opening market orders up to 2,099 shares through SuperDOT on a timely basis. A unit would be deemed to have performed unsatisfactorily in this measure if it does not turn around 90% of its DOT orders in two minutes during any two quarters in a rolling four quarter period.[12]

Finally, with regard to status requests, this measure would assess the timeliness of a unit's response to a member firm's inquiry as to the status of an order from the time the specialist unit received the request through the SuperDot system. A unit would perform unsatisfactorily in this measure in any case where the unit does not respond to 75% of its administrative messages received through the SuperDot system in 30 minutes during any two of four rolling quarters.

4. Market Share

The final measure concerns market share. A specialist unit would be subject to a performance improvement action in any case where the market share in any stock has declined significantly for two consecutive quarters if the MPC determined that the decline is attributable to factors within the control of the specialist unit.[13] The determination of a significant decline under this measure would be based on the specialist unit's overall percentage of the total share volume on the Consolidated Transaction Reporting Service.[14] The Exchange indicates that this measure is designed to maintain and strengthen its competitive position relative to other market centers.

B. The Performance Improvement Action Process

Under the revised Rule, a performance improvement action would be triggered, with certain exceptions,[15] whenever a specialist unit's performance falls below any performance standards provided in the Rule. The Exchange indicates that the principal purpose of a performance improvement action is to provide assistance and guidance to underperforming specialist units that will enable these units to improve their performance.

Once a performance improvement action is initiated the MPC will develop measurable performance improvement goals that the unit will be expected to achieve to improve its performance. The MPC will then notify the identified unit in writing of (1) the results of the quarterly evaluations indicating that the unit's performance is unsatisfactory and needs to be improved; and (2) the performance improvement goals that the unit is expected to achieve to improve its performance. In addition, the MPC will invite the unit to meet with it to discuss its performance and the goals assigned to the unit.

After the performance improvement goals have been identified, the MPC will select and assign a performance improvement monitoring team to each unit involved in a performance improvement action.[16] According to the Exchange, the monitoring teams will generally provide the MPC with objective assessments of the progress their assigned units have made in meeting their performance goals throughout the performance improvement period. In addition, the monitoring teams will be available to assist each unit in developing strategies to achieve its designated performance goals.

The MPC will establish a time in which each specialist unit must develop a performance improvement plan to identify strategies to meet the MPC's performance goals. The unit may devise its own strategies or, as noted above, develop its strategies with the assistance of its monitoring team. The MPC will review the unit's plan and either approve the plan or modify it.[17] Further, the MPC will determine a reasonable time frame (the "performance improvement period") within which each unit subject to a performance improvement action is expected to accomplish its performance improvement goals and within which the monitoring team must submit its final report to the MPC on the results.[18] The MPC also will retain the right to impose an allocation freeze at any time during the performance improvement period to encourage the unit to achieve its goals.

During the performance improvement period, each monitoring team will be required to monitor the performance of its assigned unit to assess the unit's progress in meeting its performance goals. At anytime during a unit's performance improvement period, the unit's monitoring team will be permitted to submit an interim report, at its discretion, to the MPC notifying the MPC of the unit's progress in meeting it performance goals. In the interim report, the monitoring team may recommend

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[12] When a performance improvement action is commenced as a result of substandard DOT performance, the MPC, in establishing specific improvement goals, and the monitoring team assisting in the development of an improvement plan, will be required to consider the unit's DOT order flow per panel; the severity of DOT system malfunctions, if any; whether the unit is equipped with Electronic Display Books; and the assigned post space available to the unit.

[13] In this connection, the Exchange has identified a number of factors which it believes are within the control of a specialist unit. They are (1) a unit's commission rates; (2) whether a unit takes advantage of available automated systems; (3) whether a unit is overly aggressive in breakups of block crosses; and (4) overall specialist performance. By contrast, the Exchange also has identified several factors which it views as not generally being within the control of a specialist unit such as the proprietary interests of some member firm order suppliers with market-marketing operations at other market centers.

[14] The rule does not contain specific standards for what percentage decline in a stock would be viewed as significant under this aspect of the rule. The Commission believes development of such standards are important and expects the NYSE to futher define what consitutes a "significant decline" in market share of a stock during the pilot program for Rule 103A.

[15] Performance improvement actions would not be commenced if a specialist unit's unsatisfactory performance is directly attributable to highly unusual or extenuating circumstances, involving factors beyond the control of the unit, as determined by a majority vote of the MPC on a case-by-case basis. For example, failure of an Exchange system that disrupts floor-wide trading and, consequently, contributes to a unit's poor showing in a performance measure may be considered a highly unusual or extenuating circumstance. Accordingly, any unit whose performance was directly affected by the system failure may not be subject to a performance improvement action (Of course, this assumes that the unit is rated satisfactorily in other performance measures).

[16] Performance improvement monitoring teams are composed of four non-MPC members, of which two are specialists and two are non-specialists. Each member will be randomly selected from a pool of individuals nominated by a variety of Exchange organizations and approved by the MPC to counsel specialist units in need of performance improvement actions. When appropriate, the MPC can select the non-specialist members of the monitoring team based upon the needs of the particular unit subject to the performance improvement action.

[17] Performance improvement periods generally will be determined on a case-by-case basis depending largely upon the nature and degree of a specialist unit's performnace improvement needs. According to the Exchange, it determined not to establish a uniform time period because the improvement needs of individual specialist units vary considerably.

[18] All modifications recommended by the MPC to a unit's performance improvement plan will be binding upon the unit.

that the performance improvement action be concluded if the unit's performance so warrants; recommend that the unit's performance improvement plan be altered, including extending the performance improvement period; or, recommend the imposition of an allocation freeze designed to encourage improved specialist performance. The MPC will review the interim report, consider its recommendations, and adopt any recommendation it considers appropriate.

At the conclusion of the performance improvement action, a specialist unit's monitoring team will iissue a final report to the MPC.[19] The final report will contain the monitoring team's assessment of the unit's performance, including a description of the measures taken by the unit to improve its performance and areas of continued weak performance. In addition, the monitoring team may recommend the reallocation of particular stock or stocks should it determine that a unit has failed to accomplish the performance improvement goals established by the MPC. Alternatively, the monitoring team may recommend that a unit's performance improvement action be extended, for a period no longer than one quarter, if it believes that a unit's is likely to attain its performance improvement goals during the extended period.[20]

Following the monitoring team's submission of a final report to the MPC, the MPC, the MPC will review the report (including any recommendations contained therein), the specialist unit's performance improvement plan, and the specific steps taken by the unit to improve its performance with the overall results, to determine whether to conclude the performance improvement action process. If the MPC determines that the unit has met its performance improvement goals, it will terminate the unit's performance improvement action. On the other hand, if the MPC determines that a unit has failed to attain its performance improvement goals, the MPC will be required to initiate reallocation proceedings or extend the performance improvement period, for one quarter only, to provide additional time for a unit to achieve its performance improvement goals.

C. Reallocation Proceedings

The proposed revisions to the Rule set forth the specific procedures to be followed in reallocating stocks due to poor performance. Reallocation proceedings would be commenced in those instances in which a unit's performance improvement action has concluded and the MPC determines that the unit has failed to achieve its performance improvement goals. The MPC will then determine which stocks will be reallocated by considering specific performance data that may indicate particular stocks in which the unit's performance was deficient.[21] In this regard, the MPC will review some of the objective measures incorporated into the Rule 103A process, such as OARS and DOT turnaround performance, to identify stocks for reallocation. Further, the Exchange indicates that responses to a question on the revised SPEQ, which solicits the broker's comments in connection with the unit's handling of particular stocks, will aid the MPC in selecting suitable stocks for reallocation.

Proposed Rule 103A also provides for the initiation of reallocations in emergency situations. Under the rule, in any instance where a specialist unit's performance is so egregious as to call into question the integrity or reputation of NYSE's markets, the MPC will be permitted to proceed directly to a reallocation proceeding without intiating a performance improvement action.

The Exchange maintains that the revised Rule will continue to provide procedural safeguards for specialist units involved in performance improvement actions and/or subject to reallocation proceedings. In this regard, any specialist unit subject to a reallocation proceeding will be notified in writing of the basis for the MPC's decision to initiate reallocation proceedings. Further, a written record of all MPC deliberations will be maintained. All written documents that will be considered by the MPC in the proceedings, including the monitoring team's report, will be provided to the specialist unit. In addition, specialist units will be afforded the opportunity to appear before the MPC. The specialist unit will also be able to present its case as to why the selected stocks should not be reallocated and may request the MPC to consider reallocation of alternate stocks. Finally, a unit would have the right to appeal any adverse MPC decision to the Exchange's Board of Governors pursuant to the Exchange's Constitution.[22] According to the Exchange, these procedures will ensure that specialist units that are subject to performance improvement and reallocation proceedings receive adequate due process protections.[23]

D. Additional Provisions

Another provision contained in the Rule addresses potential conflict of interests in the event of a reallocation under the revised Rule 103A. Member organizations directly or indirectly associated with MPC members and members of the monitoring team appointed to assist a specific unit would be prohibited from applying for any stock to be reallocated from the unit under the Rule.

Finally, the revised Rule would authorize the MPC to review any performance related data pertaining to any unit. Pursuant to this review, the MPC would be permitted, at its discretion, to provide educational counseling to a unit even though the unit has not fallen below the acceptable levels of performance, described above, where appropriate

As noted, the NYSE is requesting approval for a two year pilot basis. The Exchange indicates that if its proposal is approved by the Commission, it intends to notify its membership of the substance of its proposal at least one quarter prior to implementation of the two year pilot program.[24] Further, the Exchange maintains that the pilot program is intended to permit the Exchange to monitor the operation of the revised Rule and its associated processes under actual conditions and to make any modifications or amendments to the Rule as it deems

[19] Of course, a final report will not be issued for those units whose performance improvement actions were terminated during the performance improvement period as a result of recommendations made by their monitoring teams in interim reports submitted to the MPC.

[20] The monitoring team only may make this recommendation if specific performance date generated during the unit's performance improvement period indicates that the unit has made significant progress in reaching its performance improvement goals, but nevertheless needs additional time to fully attain those goals.

[21] The MPC will no longer issue a Supplemental Questionnaire to determine which stocks are suitable for reallocations.

[22] This right would extend to allocation freezes imposed by the MPC during a performance improvement action. *See* NYSE April 22 Letter.

[23] The due process procedures also apply to persons subject to reallocation proceedings because of an egregious situation. *See* discussion, *infra*.

[24] On April 4, 1988, the NYSE notified members that, subject to Commission approval, the new evaluation program would commence the following quarter on July 1, 1988. *See* NYSE Information Memorandum from Donald J. Solodar, Senior Vice President, Market Surveillance, to NYSE Specialists, dated April 4, 1988. In the NYSE April 22 Letter, the Exchange notes that only the SPEQ and DOT turnaround performance measures will be implemented for the July 1, 1988 quarter. OARS reporting requirements and Openings Standards will not be implemented until the fourth quarter of 1988, while the performance measures involving status requests and market share will not be implemented until the first or second quarter of 1989.

appropriate.[25] After the evaluation period, the Exchange states that it intends to submit the proposed revisions to Rule 103A to the Commission for permanent approval.

IV. Discussion

The Commission believes that the proposed revisions to the Rule are appropriate and should provide the Exchange with a viable means to monitor specialist performance and to address continued weak performance by a specialist unit. Further, the Commission strongly supports and encourages the Exchange's efforts to improve specialist performance and market quality through its specialist performance evaluation and improvement process, particularly in light of increasingly volatile market conditions. We have reviewed the proposed revisions to the Rule and generally believe that the revised Rule will accomplish the underlying objective of the program to improve specialist performance and market quality. In this connection, we note that the revised Rule differs significantly, in several critical respects, from the current Rule. The Commission believes that the modifications will improve the NYSE's specialist evaluation process and should prove beneficial to the Exchange, its specialist community, and the investing public.

First, with the incorporation of objective measures into the specialist evaluation process, the quarterly SPEQ will no longer serve as the principal tool employed to measure and evaluate specialst performance. Although the SPEQ is an adequate devise to monitor specialist performance, the Commission has long favored the incorporation of objective measurements into the Rule 103A program as a supplemental performance measure to the floor broker evaluations.[26] The objective measures to be incorporated into the Rule 103A program, when combined with the ratings on the SPEQ, should enable the MPC to assess specialist performance in a more precise and comprehensive fashion and make it easier for the Exchange to identify units with poor performance. In addition, although the overall evaluation process is conducted quarterly, the objective measures should allow the MPC to continuously monitor specialist performance and to initiate remedial action, such as educational counseling, on an ad hoc basis in appropriate cases.[27]

The development of standards of minimally acceptable performance is also an important step in increasing the effectiveness of the NYSE's evaluation program. As described above, the NYSE has been unable to initiate reallocation proceedings under the revised SPEQ that has been in effect since 1986 because it did not establish a numerical standard for minimum levels of acceptable performance based on the scoring system in the new SPEQ. The establishment of minimum acceptable levels of performance for the SPEQ and the new objective criteria will aid the NYSE in identifying poor performance and reallocating stocks where necessary.

Despite the improvements in this area, the Commission is still concerned about the lack of relative performance standards. The Commission prevously has urged the NYSE to adopt relative performance measures so that specialists who were regularly among the lowest ranked specialists would be subject to performance reviews, regardless of whether their performance met a predetermined level of unacceptable performance. As discussed in the Division of Market Regulation report, The October 1987 Market Break, and in the report by the Presidential Task Force,[28] specialist performance during the October 1987 Market Break varied widely. This disparity underscores the need for the adoption of relative standards of performance. We re-emphasize that the NYSE should give specific attention to developing relative standards for their new evaluation program.

Another important modification concerns the Supplemental Questionnaire. The Commission views the elimination of the Supplemental Questionnaire as a crucial refinement to the Rule 103A pilot. In particular, the Commission believes that the Supplemental Questionnaire, which is designed to identify appropriate stocks to reallocate following a specified period of substandard performance on the SPEQ, can unnecessarily protract a Rule 103A proceeding.[29] Under the new rules, the MPC can use objective data and responses on the SPEQ to determine which stocks are appropriate to reallocate. With the elimination of the Supplemental Questionnaire, the MPC can commence reallocation proceedings expeditiously without encountering any unnecessary delays.

Significant modifications also have been made in the performance improvement action process. Among other things, the MPC will establish performance improvement goals tailored to specific areas of weakness for each unit subject to a performance improvement action. The Commission believes that the MPC will be in the best position to establish such goals inasmuch as it reviews performance data for all specialist units and will be able to formulate appropriate goals for each unit based upon its perception of outstanding specialist performance. Further, the Exchange will allow specialist units involved in performance improvement actions to participate in the process by allowing them to establish strategies, with the assistance of their monitoring teams, if needed, to meet their assigned performance goals. The MPC will, however, retain final authority in approving or modifying the proposed strategies of each unit.

The Commission also believes that the proposal adequately provides due process protection to specialists subject to a performance improvement action

[25] Any such changes would have to be submitted to Commission for review pursuant to section 19(b) of the Act prior to implementation.

[26] *See, e.g.*, letter from Douglas Scarff, Director, Division, to John J. Phelan, Jr., President, NYSE, dated November 10, 1981 ("NYSE November 10, 1981 letter") and letter from Richard Ketchum, Director, Division, to Henry Poole, General Counsel, NYSE dated August 1, 1986 ("NYSE August 1, 1986 letter"). *See also* Report by the Division of Market Regulation, United States Securities and Exchange Commission, *The October 1987 Market Break* (1988) pg. XVII ("Division Report"); Securities and Exchange Commission Recommendations Regarding the October 1987 Market Break, Before the United States Senate Committee on Banking, Housing, and Urban Affairs, February 3, 1988 (Testimony of Davis S. Ruder, Chairman, Securities and Exchange Commission); Securities Exchange Act Release No. 22577 (October 28, 1985) 50 FR 45695, (Commission order approving proposed rule change by the Midwest Stock Exchange, Inc. adopting guidelines for the mandatory posting and reassignment of securities from specialists and co-specialists due to substandard performance as measured by objective market share data.)

[27] Although the Commission commends the NYSE's efforts to incorporate objective measures into the Rule 103A pilot, the Commission nonetheless recommends that the NYSE incorporate objective market making measures into the program. The Commission believes that minimally acceptable levels of market making activity, such as depth, continuity, and stabilization rates reflecting the characteristics of each security can be established. *See* NYSE August 1, 1986 letter. The Commission notes that similar individualized standards have been developed by the NYSE for surveillance purposes. During the new 103A pilot period, the Exchange should examine how to devise market making objective standards for inclusion into the program. The Commission also believes that the Exchange should incorporate ITS turnaround and trade-through criteria into its specialist performance standards because of the importance performance as relating to ITS has to intermarket access.

[28] *See* Division Report at 4–28 and 4–29, and Report of the Presidential Task Force on Market Mechanisms, January 1988, at 49–50 and Study VI.

[29] The Commission has on prior occasions recommended the elimination of the Supplemental Questionnaire from the Rule 103A pilot program. *See* NYSE November 10, 1981 letter. *See also* Securities Exchange Act Release No. 19664 (April 8, 1983), 48 FR 16155.

and/or reallocation. As noted above, a written record of all proceedings will be maintained. Moreover, units subject to the initiation of a reallocation proceeding will be given an opportunity to appear before the MPC to present their case,[30] and any decision by the MPC to reallocate a unit's stocks would be appealable to the NYSE's Board of Directors.[31] Finally, MPC members, and members of the monitoring team assigned to a unit, are prohibited from applying for a unit's stock(s) reallocated under the Rule. These procedures should adequately safeguard the rights of specialists subject to an action for substandard performance under Rule 103A.

Finally, because results from the evaluation process will continue to be used as a basis for granting new allocations, the Commission believes that the revised Rule will be helpful to specialists by providing them with concrete guidelines to continuously measure and assess their own performance to determine whether they should take action to improve their performance.[32]

V. Conclusion

The Commission, in approving the proposed rule change, recognizes the increasingly significant role played by the NYSE specialist in providing stability, liquidity, and order to exchange markets, particularly in light of the recent volatility encountered by the securities markets following the events of the October Market Break. Accordingly, a primary concern of the Commission in assessing the proposed rule change has been to ensure that the revised rule serve as a meaningful and effective vehicle to encourage improved specialist performance—both under normal and unusual market conditions. Further, given the events that occurred during the market break and thereafter, the Commission believes that the proposed rule's objective measurements of specialist performance should be closely monitored to determine their effectiveness in evaluating specialist performance under all market conditions and to determine whether additional measures are necessary to provide an accurate and more comprehensive assessment of specialist performance. As noted above, although the proposed objective criteria provides a useful supplement to the existing evaluation process utilizing SPEQ ratings, we believe the NYSE should develop additional standards that would more directly measure specialist market making performance.

In addition, the selected standards of minimally acceptable performance must be monitored to determine whether the thresholds that trigger performance improvement actions are adequate.[33] Thus, the Commission has determined to approve the proposed rule change as requested by the Exchange with the stipulation that the Exchange must submit to the Commission, one year from the date of approval of the proposed rule change, a report containing its assessment of the implementation of the revised Rule, any problems associated with its implementation, any proposed modifications and the reasons therefore.[34]

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change significantly enhances the Exchange's specialist evaluation process and that the proposal is likely to encourage improved specialist performance consistent with the protection of investors and the public interest. Moreover, to the extent a unit subject to a performance improvement action does not improve, the MPC will, under the new Rule, have the ability to reallocate the stock to another unit, which will benefit all market participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 9, 1988.

[FR Doc. 88-10886 Filed 5-13-88; 8:45 am]

BILLING CODE 8010-01-M

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[30] Units would also be entitled to appear before the MPC at the initiation of a performance improvement action.

[31] We continue to believe, as the Commission previously has determined, that the reallocation of securities for unsatisfactory performance under NYSE rules would not constitute a disciplinary action or prohibition or limitation of access to services offered by a self-regulatory organization reviewable by the Commission pursuant to section 19(d)(2) of the Act. *See* Securities Exchange Act Release No. 15827 (May 15, 1979), 44 FR 29778.

[32] The Commission continues to believe that the key criteria for allocating stocks to specialist units should be specialist performance as evidenced by the results of the Rule 103A evaluation process. This will not only help ensure that stocks are allocated to the top specialists who will make the best markets, but should also provide an incentive for improved specialist performance.

[33] As noted above, the Commission believes relative performance standards could be more meaningful than absolute standards. The NYSE should give prompt attention to developing relative performance standards, that would, for example, subject those units in the bottom 10% for two consecutive quarters to a performance improvement action.

[34] The report should contain data for each quarter, on (1) the number of specialists that fell below acceptable levels of performance for each category (2) the number of performance improvement actions commenced (3) the number of units subjected to informal counseling to improve performance, and (4) a list of stocks reallocated due to substandard performance under the Rule and the particular unit involved. We would also expect to receive the same information for the second year of the pilot prior to its expiration.

[Release No. 34-25680; File No. SR-Phlx-88-5]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Denial of and Conditions to Membership.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 25, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" 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

The Exchange pursuant to Rule 19b-4, hereby proposes the following rule change: (Arrows indicate additions).

►Denial of and Conditions of Membership

Rule 901. (a). The Exchange may deny membership to any registered broker or dealer or person associated with a registered broker or dealer and deny from becoming associated with a member organization any person who is subject to a statutory disqualification, as that term is defined in the Securities Exchange Act of 1934, as amended.

(b). The Exchange may deny membership to, or condition the membership of a registered broker or dealer if the broker or dealer: (1) is unable satisfactorily to demonstrate its present capacity to adhere to applicable provisions of (i) Sections 15 and 17 of the Securities Exchange Act of 1934, as

amended, and all rules and regulations promulgated thereunder or (ii) Exchange rules relating to the maintenance of books and records; or (2) has previously been found to have violated and there is a reasonable likelihood the broker or dealer will again engage in acts or practices violative of (i) Sections 15 and 17 of the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder, or (ii) rules relating to the maintenance of books and records of the Exchange or other self-regulatory organizations of which the broker or dealer is or was a member.

(c). The Exhange may deny membership to, or condition the membership of a registered broker or dealer, and may bar a person from becoming a member or associated with a member, or condition the membership of a person or association of a person with a member organization if such broker or dealer or person: (1) does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for; (2) does not meet such other standards of training, experience, and competence as may be established by the Exchange; (3) cannot demonstrate a capacity to adhere to all applicable policies, rules and regulations of the Exchange or any other self-regulatory organization, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission contract market designated pursuant to Section 5 of the Commodity Exchange Act or futures association registered under Section 17 of such Act; (4) has been the subject of findings of fact rendered by any of the above mentioned entities such that the broker or dealer or person has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood the person will do so again; or (5)(i) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which remain outstanding (ii) has been or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years (iii) has been and/or remains associated as a general partner, principal, officer, director, stockholder, or PHLX registered trader for a member organization which has been subject to any unsatisified liens, judgments or unsubordinated creditor claims of a material nature (iv) has engaged in a pattern of failure to pay just debts (v) would bring the Exchange into disrepute or (vi) for such other cause the Committee on Admissions reasonably may decide.

(d). The Committee may, in exceptional cases and where good cause is shown, waive such proficiency examinations as are required by the Exchange upon written request of the applicant, and accept other standards as evidence of an applicant's qualifications. Advanced age, physical infirmity or experience in fields ancillary to the securities business will not individually of themselves constitute sufficient grounds to waive a proficiency examination.◄

Existing rules 901 through 904 are to be renumbered accordingly 902 through 905.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to formally codify and incorporate previous existing Exchange policies concerning denial or conditions for membership into the rules and to adopt new provisions to provide the Exchange with flexibility concerning such matters. The proposed rule change clarifies the basis upon which the PHLX may deny or condition membership by stating the Exchange could deny or condition membership for the same reasons that the Commission can deny or revoke a broker/dealer registration or a membership under the Act. In addition, the proposed would allow Phlx to deny membership if the applicant has failed required membership examinations; if the applicant has a pattern of failure to pay just debts; if the applicant cannot demonstrate a capacity to adhere to all applicable PHLX, SEC, OCC, and Federal Reserve Board or other appropriate policies rules and regulations; if the applicant would bring the Exchange into disrepute or for such other cause as the Committee on Admissions reasonably may decide. The proposed rule change will enable the PHLX to reflect more accurately its Exchange policies regarding admission of new members and associated persons, providing notice to potential applicants of PHLX criteria for admission to membership. The proposed rule change is largely a codification in a single rule of the policies and various criteria the Exchange's Admissions Committee now employs in considering new applicants. For example, the Exchange's Admissions Committee may waive proficiency examinations for applicants who have successfully completed comparable examinations administered by an SRO or a reapplication within two years by a former member or participant. These policies have functioned well in the past and should allow the PHLX to continue to deny membership to those individuals and organizations that have not demonstrated the ability to comply with the significant economic and regulatory responsibilities attendant to Exchange membership.

The provisions of the proposed rule change allowing denial of membership if the applicant would bring the Exchange into disrepute or for "such other cause as the Committee on Admissions reasonably may decide" is new and is designed to cover important legal and ethical reasons for denial not covered by the other provisions but which should be available to the Exchange in its attempts to limit membership to individuals and firms of integrity and trustworthiness. The overall objective of these provisions, which the Exchange expects judiciously and carefully to apply, is to assure that public confidence in the integrity of the Exchange and the securities markets is not impaired. The waiver provision in proposed paragraph (d) is intended to provide the Admissions Committee authority to excuse applicants from taking proficiency examinations when it can otherwise be determined that an applicant is qualified and where completion of the examination would thus be redundant and needlessly burdensome. A waiver can only be granted under exceptional circumstances where good cause can be demonstrated.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange will promote just and equitable principles of trade and protect

investors and promote the public interest by allowing only those individuals and firms that have demonstrated the requisite ability to comply with the significant economic and regulatory responsibilities attendant to Exchange membership. The proposed rule change also is consistent with section 6(c)(3) of the Act, which sets forth bases upon which a national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer, or may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member of the Exchange.

B. Self-Regulatory Organizations Statement on Burden on Competition

For the most part, the PHLX does not believe that the proposed rule change will impose any burden on competition. To the extent the rule has the effect of restricting entry of firms as member organizations, or the association of persons with member organizations, the Exchange believes that result is warranted to protect investors and the public interest, and to promote public confidence in the integrity of the securities markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent 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 Phlx. All submissions should refer to File No. SR-Phlx-88-5 and should be submitted by June 6, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 9, 1988.

[FR Doc. 88-10887 Filed 5-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16393; File No. 811-5313]

Application; Connecticut Mutual Life Insurance Co.; The Composer Separate Account

Date: May 9, 1988.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of application pursuant to section 8(f) of the Investment Company Act of 1940 ("1940 Act").

Applicant: The Composer Separate Account ("Applicant").

Relevant 1940 Act Sections: Deregistration order requested under section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on March 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on June 3, 1988. Request a hearing in writing, giving the nature of your interest and the reason for your request. Serve the Applicant, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney at law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549; Connecticut Mutual Life Insurance Company—The Composer Separate Account, 140 Garden Street, Hartford, Connecticut 06154.

For Further Information Contact: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management, 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 SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Composer Separate Account was established under Connecticut law as a separate account of Connecticut Mutual Life Insurance Company. A Form N-8A Notification of Registration was filed under section 8(a) of the Investment Company Act of 1940 on November 6, 1987, but no registration statement was filed pursuant to section 8(b) of the Act.

2. Applicant represents that it has never held assets, incurred liabilities of any kind, and is not a party to any litigation or administrative proceeding.

3. Applicant further represents that it has never made a public offering of its securities, and does not propose to make a public offering or engage in business of any kind.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10883 Filed 5-13-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council; Public Meeting; Indiana

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Indianapolis, Indiana, will hold a public meeting, at 9:30 a.m. EST, on Wednesday, June 1, 1988, at the North Meridian Inn, 1530 North Meridian, Indianapois, Indiana, to discuss such matters as may be presented by members, staff of the U.S. Small

Business Admisistration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46204–1584, (317) 269–7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88–10930 Filed 5–13–88; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Meeting; Public Meeting; New Jersey

The U.S. Small Business Administration, Region II Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting, at 8:30 a.m., on Friday, June 3, 1988, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mount Pleasant Avenue, Livingston, New Jersey to discuss such matters as may be presented by members, and the staff of the U.S. Small Business Administration, or others present.

For further information write or call Stanley H. Salt, District Director U.S. Small Business Administration, 60 Park Place, Newark, New Jersey, 07102, (201)645–3580.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88–10931 Filed 5–13–88; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting; North Carolina

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Charlotte, North Carolina, will hold a public meeting, at 10:30 a.m., on Tuesday, May 24, 1988, at the Charlotte Chamber of Commerce, 129 West Trade Street, Charlotte, North Carolina 28202, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, Room 222, South Church Street, Suite 300, Charlotte, North Carolina 28202, (704) 371–6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88–10867 Filed 5–13–88; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting; Texas

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting, at 12:00 noon, on Wednesday, June 8, 1988, in the conference room of the SBA Houston District Office, located at 2525 Murworth, Suite, 112, Houston, Texas 77054, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney Martin, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, (713) 660–4409.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 88–10932 Filed 5–13–88; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting; Washington

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting, at 9:30 a.m., on Thursday, May 19, 1988, in Room 485 U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. Wiebe, Acting District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, P.O. Box 2167, Spokane Washington 99210, (509) 456–3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 11, 1988.

[FR Doc. 10868 Filed 5–13–88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05–0209]

Raffensperger Hughes Venture Corp.; Issuance of a Small Business Investment Company License

On February 3, 1988, a notice was published in the **Federal Register** (Vol. 53, No. 22) stating that an application has been filed by Raffensperger Hughes Venture Corp., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business March 4, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0209 on May 5, 1988, to Reffensperger Hughes Venture Corp. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: May 10, 1988.

[FR Doc. 88–10866 Filed 5–13–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Supbart Q during the Week Ended May 6, 1988

The following applications for certifications of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by enpedited procedures. Such procedures may consist of the

adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45611

Date Filed: May 3, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 31, 1988.

Description: Application of United Parcel Service Co., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity to engage in scheduled foreign air transportation of cargo, property and mail.

Docket No. 45617

Date Filed: May 6, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 3, 1988.

Description: Applications of Trans Continental Airlines, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity for foreign all-cargo charter air transportation be amended to authorize foreign charter air transportation of property and mail between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and any point outside thereof, on the other hand.

Docket No. 45340

Date Filed: May 4, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 1, 1988.

Description: Amendment No. 1 to the Application of Traslados, S.A. for a foreign air carrier permit, so as to limit its request for authority to engage in the following services: Nonscheduled and charter foreign air transportation of property and mail between a point or points in Guatemala, intermediate points San Salvador, El Salvador, Belize City, Belize, and San Pedro Sula, Honduras, and intermediate and co-terminal points Miami, Ft. Lauderdale, and Tampa, Florida, New Orleans, Louisana, and Houston and Brownsville, Texas.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88-10850 Filed 5-13-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Cir.; Public Debt Series No. 13-88]

Treasury Bonds of 2018

Washington, May 5, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Bonds of 2018 (CUSIP No. 921810 EA 2), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated May 15, 1988, and issued May 16, 1988. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from May 15, 1988, to May 16, 1988. Interest on the Bonds is payable on a semiannual basis on November 15, 1988, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 2018, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, May 12, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 11, 1988, and received no later than Monday, May 16, 1988.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an

agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500.

That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from May 15, 1988, to May 16, 1988. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Bonds alloted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday May 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 12, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, May 16, 1988. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: Each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the

interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiple of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers on book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Components and Interest Components of Treasury Bonds of May 15, 2018, CUSIP No. 912810 EA 2

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2018 due May 15, 2018, CUSIP No. 912803 AN 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
Nov. 15, 1988	EM 8
May 15, 1989	EN 6
Nov. 15, 1989	EP 1
May 15, 1990	EQ 9
Nov. 15, 1990	ER 7
May 15, 1991	ES 5

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
Nov. 15, 1991	ET 3
May 15, 1992	EU 0
Nov. 15, 1992	EV 8
May 15, 1993	EW 6
Nov. 15, 1993	EX 4
May 15, 1994	EY 2
Nov. 15, 1994	EZ 9
May 15, 1995	FA 3
Nov. 15, 1995	FB 1
May 15, 1996	FC 9
Nov. 15, 1996	FD 7
May 15, 1997	FE 5
Nov. 15, 1997	FF 2
May 15, 1998	FG 0
Nov. 15, 1998	FH 8
May 15, 1999	FJ 4
Nov. 15, 1999	FK 1
May 15, 2000	FL 9
Nov. 15, 2000	FM 7
May 15, 2001	FN 5
Nov. 15, 2001	FP 0
May 15, 2002	FQ 8
Nov. 15, 2002	FR 6
May 15, 2003	FS 4
Nov. 15, 2003	FT 2
May 15, 2004	FU 9
Nov. 15, 2004	FV 7
May 15, 2005	FW 5
Nov. 15, 2005	FX 3
May 15, 2006	FY 1
Nov. 15, 2006	FZ 8
May 15, 2007	GA 2
Nov. 15, 2007	GB 0
May 15, 2008	GC 8
Nov. 15, 2008	GD 6
May 15, 2009	GE 4
Nov. 15, 2009	GF 1
May 15, 2010	JU 5
Nov. 15, 2010	JV 3
May 15, 2011	JW 1
Nov. 15, 2011	JX 9
May 15, 2012	JY 7
Nov. 15, 2012	JZ 4
May 15, 2013	KA 7
Nov. 15, 2013	KB 5
May 15, 2014	KC 3
Nov. 15, 2014	KD 1
May 15, 2015	KE 9
Nov. 15, 2015	KF 6
May 15, 2016	KH 2
Nov. 15, 2016	KK 5
May 15, 2017	KM 1
Nov. 15, 2017	KP 4
May 15, 2018	KR 0

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	11000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 88–10898 Filed 5–11–88; 3:44 pm]

BILLING CODE 4810-40-C

[Dept. Cir.; Public Debt Series No. 12-88]

Treasury Notes of May 15, 1998; Series B-1998

Washington, May 5, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated Treasury Notes of May 15, 1998, Series B-1998 (CUSIP No. 912827 WE 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1988, and issued May 16, 1988. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from May 15, 1988, to May 16, 1988. Interest on the Notes is payable on a semiannual basis on November 15, 1988, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 11, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 10, 1988, and received no later than Monday, May 16, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places

on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from May 15, 1988, to May 16, 1988. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, May 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tenders was submitted, which must be received from institutional investors no later than Thursday, May 12, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, May 16, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest of Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public

announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF TREASURY NOTES OF MAY 15, 1998, SERIES B-1998 CUSIP NO. 912827 WE 8

[The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series B-1998 due May 15, 1998, CUSIP No. 912820 AN 7.]

Interest Components	
Designation	Cusip Number 912833
Treasury Interest (TINT) due:	
Nov. 15, 1988	EM 8
May 15, 1989	EN 6
Nov. 15, 1989	EP 1
May 15, 1990	EQ 9
Nov. 15, 1990	ER 7
May 15, 1991	ES 5
Nov. 15, 1991	ET 3
May 15, 1992	EU 0
Nov. 15, 1992	EV 8
May 15, 1993	EW 6
Nov. 15, 1993	EX 4
May 15, 1994	EY 2
Nov. 15, 1994	EZ 9
May 15, 1995	FA 3
Nov. 15, 1995	FB 1
May 15, 1996	FC 9
Nov. 15, 1996	FD 7
May 15, 1997	FE 5
Nov. 15, 1997	FF 2
May 15, 1998	FG 0

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 88–10899 Filed 5–11–88; 3:44 pm]

BILLING CODE 4810–40–C

[Dept. Circ.; Public Debt Series No. 11-88]

Treasury Notes of May 15, 1991; Series S-1991

Washington, May 5, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated Treasury Notes of May 15, 1991, Series S-1991 (CUSIP No. 912827 WD O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States notes, and the terms and conditions of such outstanding issue are otherwise identical to the terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securities and this circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular.

2. Description of Securities

2.1. The Notes will be dated May 16, 1988, and will accrue interest from that date, payable on a semiannual basis on November 15, 1988, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, May 10, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 9, 1988, and received no later than Monday, May 16, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government

accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, May 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 12, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, May 16, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-10900 Filed 5-11-88; 3:44 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 94
Monday, May 16, 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. 88, Page 16339, May 6, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: Wednesday, May 11, 1988.

CHANGES: The following item was added to the agenda.

Closed to the Public

*Enforcement Matter OS #5629.

The Staff will brief the Commission on issues related to enforcement matter OS #5629

*The Commission decided that agency business required adding this item without the usual advance notice.

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, 301–492–69800.

Sheldon D. Butts,

Deputy Secretary.

May 11, 1988.

[FR Doc. 88–10991 Filed 5–12–88; 1:30 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 17, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westband Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *FY90 Priorities Projects.*

The Commission will consider priority projects for fiscal year 1990.

2. *Lawn Darts: Option.*

The Commission will consider an additional regulatory option for lawn darts. The option would involve prohibiting the sale of lawn darts that did not meet certain specified criteria.

Closed to the public.

3. *Special Order/Subpoena.*

The Commission will consider issues related to a Special Order/Subpoena in enforcement matters OS #5780.

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.

May 11, 1988.

[FR Doc. 88–10992 Filed 5–12–88; 1:30 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 open meeting held at 2:00 p.m. on Wednesday, May 11, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. Williams 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, or the application of Dean Co-operative Bank, an operating non-FDIC-insured co-operative bank located at 21 Main Street, Franklin, Massachusetts, for Federal deposit insurance.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: May 12, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–10998 Filed 5–12–88; 1:31 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Wednesday, May 11, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Resolutions expressing the Board's appreciation to certain officers and/or directors of Capital Bank & Trust Co., National Association, Baton Ruge, Louisiana, the FDIC's first "bridge bank."

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,091

The Bowery Savings Bank, New York City (Manhattan), New York.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 12, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–10999 Filed 5–12–88; 1:31 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, May 20, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11023 Filed 5-12-88; 3:41 pm]

BILLING CODE 6210-01-M

TENNESSEE VALLEY AUTHORITY (Meeting No. 1402)

TIME AND DATE: 10 a.m. (EDT), Wednesday, May 18, 1988.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 20, 1988.

Action Items

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1988 Series B Power Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers to Take Further Action Relating to Issuance and Sale of 1988 Series B Power Bonds.

A3. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—(1) Dry Fly Ash Collection Facility and Dry Stacking Site at Colbert Fossil Plant; (2) TVA/MCI Communications Corporation Fiber Optics Project; and (3) Grassland, Tennessee, 161-kV Substation—Provide New-Delivery Point.

B—Purchase Awards

B1. Invitation KA-454882—Indefinite Quantity Term Agreement for Ash-Disposal Parts for Any TVA Fossil Plant.

C—Power Items

C1. Additional Service Schedule under TVA's Interconnection Agreement with Central Illinois Public Service Company, Illinois Power Company, and Union Electric Company to Provide for Term Energy Transactions between TVA and the Companies.

C2. Schedule for Wholesale Standby Power and Clarification of Certain Provisions of TVA's Dispersed Power Production Guidelines.

C3. Revised Form Agreement to Cover Continued Participation of Distributors in TVA's Electrical Development Program.

C4. New Power Contract with Saturn Corporation, Spring Hill, Tennessee.

C5. Renewal Power Contract with Bolivar, Tennessee.

C6. Agreement Between the Institute of International Education and TVA whereby TVA will Conduct an Energy Conservation Seminar for Approximately 30 Program Participants from Underdeveloped Countries.

E—Real Property Transactions

E1. Filing of Condemnation Cases.

E2. Real Property Transactions Relating to TVA Reservoir Land—(1) Sale at Public Auction of Approximately 58.9 Acres of Wheeler Reservoir land, located in Morgan County, Alabama, for Industrial Purposes; (2) Abandonment of Flowage Easement Rights to Tammy Development Company, Affecting Approximately 2.57 Acres Along Nickajack Reservoir in Hamilton County, Tennessee; and (3) Grant of Permanent Easement to the State of Georgia, Department of Transportation, Affecting Approximately 0.693 Acre of Chatuge Reservoir Land in Towns County, Georgia.

F—Unclassified

F1. Supplement to Contract TV-67206A between TVA and Tennessee-Tombigbee Waterway Development Council for Cooperation in a Project to further Economic and Industrial Development in the Region.

F2. Memorandum of Agreement between TVA and the U.S. Army Engineer District, Little Rock whereby TVA will provide Technical, Engineering, and Construction Management Support Services for a Chemical Production Facility at the U.S. Army Pine Bluff Arsenal, Arkansas.

F3. Revised Bulletin Relating to the Organization of the Tennessee Valley Authority.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 11, 1988.

W.F. Willis,

General Manager.

[FR Doc. 88-10966 Filed 5-12-88; 11:28 am]

BILLING CODE 8120-01-M

federal register

Monday
May 16, 1988

Part II

Department of Agriculture

Forest Service

36 CFR Parts 211, 217, 228, and 251
Appeal of Decisions Concerning the National Forest System; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 211, 217, 228, and 251

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service is proposing to replace its current administrative appeal regulations at 36 CFR 211.18 with two distinct processes for obtaining administrative review of decisions related to National Forest System management. One rule, to be codified at 36 CFR Part 251, Subpart C, would be limited to appeal of decisions arising from the issuance, approval, or administration of written instruments authorizing occupancy and use of National Forest System lands, except contracts subject to the Contract Disputes Act, and would be available only to certain applicants for and holders of such authorizations. The second rule would be codified at 36 CFR Part 217 and would offer any citizen or organization a simplified, informal process for obtaining review of decisions relating to land and resource management planning, projects, and activities. These proposals result from review of the current rule as required by E.O. 12291 and seek to respond to the findings of that review; namely, that the agency needs to streamline, simplify, and expedite the appeals process and to eliminate the longstanding confusion of purpose and procedures contained in the current appeal regulation. The agency invites interested persons to comment on the proposals.

DATE: Comments must be received in writing by July 15, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rulemaking in the Office of the Staff Assistant for Operations, National Forest System, Room 4211, South Building, 12th and Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Hill, Staff Assistant for Operations, National Forest System, (202) 382-9349, or Kathryn Hauser, WO Appeals and Litigation Coordinator, National Forest System, (202) 382-9346.

SUPPLEMENTARY INFORMATION:

History of Forest Service Appeals Process

The Forest Service is charged with managing the lands and resources of the National Forest System, which today includes 156 National Forests, 19 National Grasslands and other miscellaneous land holdings totalling 191 million acres of lands in 42 States, the Virgin Islands, and Puerto Rico. Under the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), these lands are managed for a variety of uses on a sustained basis to ensure a continued supply of goods and services to the American people in perpetuity.

Management decisions made by Forest Service officials in carrying out the statutory mission of the National Forest System have always been subject to a certain level of controversy and dispute depending on the type of decision made, the resources affected, and the extent to which persons believe they are affected by a decision.

For example, from the establishment of the very first national forest until the present, persons have been authorized to occupy and use the lands and resources of the National Forest System subject to the approval and oversight of Forest Service managers. The uses range from grazing livestock to conducting mining operations, from providing outfitter and guide services to National Forest visitors to obtaining ingress and egress across National Forest lands to privately owned inholdings. To obtain approval for these uses of public lands, persons have to apply for and receive written authorization or approval from the Forest Service and agree to any terms and conditions the agency feels are necessary. These authorizations sometimes give rise to disagreements between "permittees" and other authorized users and the Forest Service.

The Forest Service also issues contracts for the sale of timber from the National Forests as well as for other services. The award and administration of such contracts inevitably produces disagreements with some purchasers and contractors over contract performance.

Broader issues of National Forest resource allocation and Forest Service resource management practices also have always been a facet of National Forest management and a source of some degree of public controversy. Citizens interested in these larger issues do not share a business or legal relationship with the Forest Service as do authorized occupants, users, or contractors, but the agency has long recognized the need for citizens to have a means of questioning and objecting to agency decisions concerning National Forest management by means other than seeking remedy through the Federal courts.

There is no statutory requirement that the Forest Service provide a grievance or appeal procedure. Rather, at its own discretion and initiative, the agency, since 1906, has provided some kind of process by which grievances related to contracts and authorized uses could be heard and settled and by which the general public could challenge decisions of forest officers. In fact, for many years, the appeals process was the principal mechanism the general public had to challenge forest officer's management decisions; until passage of environmental statutes in the 1960's, citizens generally had a very limited opportunity to use the Federal courts to challenge broad public land and resource management decisions.

Appeals procedures were initially set forth in Forest Service directives to its field officers through the old "use" books and later agency manuals. In 1936, the first codified Forest Service appeal regulation was promulgated (1 FR 1092; August 15, 1936). The process was very simple and allowed any one to appeal an administrative decision of a forest officer to a superior officer. The procedures applied to those who received written authorizations to occupy and use National Forest lands or who had contracts with the agency as well as to those who had a general interest in National Forest management. In the 50 plus years since that first regulation, the Forest Service has periodically revised the appeal regulations in response to changing law and policy and to its own administrative experience under the procedures existing at the time. At various times, the agency has limited appeals to those decisions involving contractors and holders of written instruments only to later revise its rules to allow appeals by anyone. The rules have provided alternatively for wholly internal administrative review and for review and adjudication by independent boards.

For example, from 1965 to 1974, rules at 36 CFR 211.20 *et seq.* (1965) provided a grievance procedure administered by a Board of Forest Appeals, an adjudicatory body separate and independent from the Forest Service. The Board reviewed appeals through several levels and with certain interaction at times with agency decisionmakers. Appellants had ultimate resort to the Secretary for a

final administrative determination. The kinds of grievances covered by these rules largely concerned contractual issues raised by parties holding a permit or other written instrument with the Forest Service. Provision was made for review by Forest Service line officers of a certain type of appeal that did not involve an appellant's contractual relationship with the agency (class three), but decisions in this category made by Forest Supervisors of District Rangers were not subject to review under the rules.

Since 1965, the appeal regulation has been revised three times. Contractual appeals are now handled pursuant to the Contract Disputes Act of 1978 by an independent Department-wide Board of Contract Appeals (7 CFR Part 24). Revisions since 1965 also reflect the significant changes in environmental law that have emerged with the attendant expansion of citizens' rights to participate in Federal decisionmaking. Of special significance was passage of the National Environmental Policy Act which required agencies to consider and document the environmental impacts and consequences of proposed actions and to involve the public in its analysis and consideration of those impacts. Passage of the comprehensive National Forest Management Act in 1976 and implementation of its land management planning requirements have further increased public participation in agency decisionmaking and strengthened public awareness of the agency's activities. In response, there has been a steady increase in the number of appeals and expansion of the types of forest officers' decisions that are appealed.

The latest revision was in 1982 after the agency conducted a major review of its regulation at 36 CFR 211.19 (1977) in compliance with Executive Order 12044, the first executive order to require review of existing regulations on a 5-year cycle. As a result of that review, the agency issued a revised appeal procedure at § 211.18 (48 FR 13425, March 31, 1983), which is the current rule.

Review of the history and development of Forest Service appeal procedures reveals certain constants:

1. From its infancy, the agency has felt the need to offer some kind of process to review decisions and has perceived such reviews as beneficial and necessary for carrying out its mission of managing the National Forest System.

2. There has always been a tension about the kinds of decisions that should be appealable, especially between the procedures that are appropriate for appealing decisions affecting persons who have a business or legal relationship with the Forest Service and procedures by which the general public could appeal forest management decisions. Despite occasional changes in the rules to limit the types of decisions that can be appealed, the net effect of rule changes over time has been a steady expansion in the types of decisions that can be appealed.

3. The agency has steadfastly sought to provide an informal, simple process but has found itself establishing increasingly complex and legalistic procedures with corresponding increases in the length of time it takes to complete an appeal.

4. The agency has alternated its appeal review approach between independent boards and internal administrative review but has always found that it was more administratively confortable with managing the review process internally.

5. As the number of appeals has steadily increased over the years, the agency's need to efficiently manage the appeals process has become an increasing challenge and concern.

Finally, review of the history shows a consistent recognition by the agency that its appeal and review procedures must be periodically revised based on both public and agency experience as well as in response to changing law and circumstance.

Review of Current Appeal Process

The current regulation, 36 CFR 211.18, provides a two-level appeal process to review decisions of forest officers concerning the National Forest System. (See side-by-side comparison, Appendix A, for additional features). Some matters are excluded from appeal. Notice of decisions which are appealable is given in writing or may be provided through publication in a newspaper of general circulation depending upon the nature of the decision and who is affected by it. The rule establishes certain requirements that parties to an appeal must meet during the course of an appeal. Included are: filing procedures and related timelines; provisions for the time extensions; instructions about the preparation, content, and timing of various documents prepared during an appeal; procedures for filing and responding to stay requests; provisions for intervention by interested parties, and use of comments from other persons or organizations; procedures for oral presentations; provisions for appealing procedural matters such as stays or dismissals; and a description of the appeal record and the nature of decisions the Reviewing Officer may make. Applying timelines available under the rule, an appeal through one level of review takes about 160 days, assuming no time extensions are granted. The second level adds another 145 days, for a total of 305 days. Seldom, however, are appeals completed within these timelines.

There have been two technical amendments to the rule in the past year: one clarifying the use of postmarks to determine timely filing and one clarifying how stay requests are processed.

In accordance with USDA Department Regulation 1512-1 and E.O. 12291, the Forest Service has undertaken a review of its current appeal regulation. The review was announced in the Semi-Annual Regulatory Agenda, published April 27, 1987 (52 FR 14144).

In undertaking the review of 36 CFR 211.18, the agency did not assume that "something was broken that needed to be fixed." Instead, the agency tried to approach the review from the standpoint of objectively assessing what works well, what problems exist, and what changes, if any, could be made to maintain and strengthen the appeal process.

A team composed of Forest Service line and staff personnel from National Forests, Regional Offices, and the Washington Office was assembled to organize and conduct a Service-wide review. Specific objectives of the review were to: (1) Identify specific agency successes and problems in managing and administering the rule; (2) identify administrative impacts, including costs, of the existing rule; (3) assess how the existing rule is or is not meeting public and agency needs; (4) determine future needs for an appeals process and ways to manage it; and (5) propose solutions to problems identified.

Review Methodology

Information was sought from a broad spectrum of sources within and outside the Forest Service; special focus was given to agency performance under the existing rule. On May 20, 1987 the Forest Service issued a press release announcing the impending review and informed the public that their comments would be solicited. Additionally, a **Federal Register** notice (52 FR 22348; June 11, 1987) was published seeking public input about how well the process meets current needs and is likely to meet future needs and what people like and dislike about it. The Forest Service also issued 928 letters inviting comments to general users of the appeals process across the country including attorneys, individual citizens, environmental groups, other government agencies, Indian tribes, industry groups, and forest

land users. The letter asked for their thoughts on three questions: (1) What do you perceive to be the need for an appeal process of a forest officer's decision? (2) How well does the process work for you? (3) If the process does not meet your needs, what changes do you recommend? Two hundred and thirteen responses to either the press release, **Federal Register** notice, or letter were received and analyzed.

To obtain information and suggestions from within the agency, two-person teams visited three Forest Service Regions: The Pacific Northwest Region (R-6), the Southwest Region (R-3), and the Northern Region (R-1). In addition, individual appeal review team members interviewed various employees in their home Regions. Approximately 160 Forest Service employees were interviewed in person at all levels of the Agency, including Regional Foresters, Forest Supervisors, District Rangers, Regional and Forest staff specialists, Washington Office and Regional Office appeal coordinators, and attorneys from the Office of General Counsel in the Washington Office and Regional Offices. Eight National Forests were formally visited by team members: Flathead NF (Montana), Beaverhead NF (Montana), Coconino NF (Arizona), Kaibab NF (Arizona), Santa Fe NF (New Mexico), Deschutes NF (Oregon), Willamette NF (Oregon), and the Mt. Hood NF (Oregon). Additionally, written comments and statistical information were sought and received from each Forest Service Region.

In the interviews, agency employees were asked to respond to a series of questions: (1) What do you want the appeal process to accomplish for the Forest Service? (2) How is your unit organized to manage appeals? (3) What are the positive or negative impacts of the appeals process on your work? Are you a better manager because of the appeals process? (4) What impediments do you see in, or as a result of, the process? (5) Do you see a difference in how appeals are processed and managed by either functional area or administrative level within the agency?

All of the internal and external comments were analyzed by the team, a summary of which is available for public inspection in the office of the Staff Assistant for Operations, National Forest System, 14th and Independence Streets SW (Room 4211), Washington, DC. The comments fell into two major categories: Those related to management concerns (how the agency manages the process) and those proposing changes in the current rule.

Review Findings and Conclusions

Finding 1—Need for an Appeals Process. The Public generally believes there is a need for an appeals process which gives an opportunity to challenge decisions that affect individuals, organizations, and communities. Furthermore, they prefer the relatively easy accessibility to decisionmakers without legal counsel afforded by the current appeal process over recourse through judicial proceedings. Nevertheless, many members of the public believe that the appeals process is cumbersome, inconvenient, expensive, too technical, and too legalistic.

Forest Service managers also believe that there is a need for an appeals process. Generally, they view it as a useful mechanism which permits line officers to review decisions that members of the public find objectionable or that they may misunderstand. In many respects, Forest Service managers' views parallel the public sentiments that the appeals process has become too complicated.

Finding 2—Objectives of the Appeals Process. The current appeals process is a "hybrid" that mixes appeals by those having grievances arising from decisions affecting business or legal relationships with appeals by others who do not have such a relationship.

An appeals process, in its most traditional sense, is adjudicatory, providing a process by which a party who has a business or legal relationship with the agency can address grievances arising from that relationship. Whether in a judicial or administrative context, a traditional appeals process provides a means for looking at what happened, judging the merits of the situation (within the defined limits of a standard of review), and prescribing a remedy.

By and large, the Forest Service appeals process has always been broader in scope than a traditional adjudicatory procedure. Increasingly, it has become a managerial tool for testing the soundness of day-to-day decisionmaking and for testing current policy and the attendant exercise of agency discretion. For the majority of appellants, the current process is more akin to a public involvement process than to an adjudicatory process, because it permits anyone dissatisfied with a decision of a forest officer an opportunity to have that decision reviewed.

While the detail and requirements of 36 CFR 211.18 have some characteristics of adjudicatory processes, it is used less as a grievance process than as a review-of-operations process. If the appeals process is to remain the latter, it need not have the formalities of a traditional adjudicatory procedure; only 15 percent of the appeals workload involves grievances arising from a business or legal relationship with the Forest Service. If the appeals process is to be an adjudicatory process, it can be limited to those with a permit or other authorization to occupy and use National Forest lands, since the agency provides the general public other forums for influencing agency decisionmaking.

Finding 3—Workload and Associated Impacts. Actual time and resources devoted to appeals have increased dramatically in the past few years. Costs of managing the appeals process are growing rapidly each year. As land management planning and project implementation proceed, this trend is definitely on the upswing as shown in the following table.

TABLE 1.—NUMBER OF APPEALS

Fiscal year	Washington office	Servicewide
1980	225	(1)
1981	139	(1)
1982	303	(1)
1983	310	584
1984	147	439
1985	247	581
1986	413	1081
1987	335	874
1988 (midyear)	234	847

[1] No record.

While it is apparent that the number of appeals has fluctuated quite a bit, the workload has steadily increased. The fluctuating patterns result from controversial activities undertaken Servicewide in a given year or the previous one. In 1979 and 1980, for instance, it was the second Roadless Area Review and Evaluation; in 1982 and 1983, it was the Small Business Timber Sale Set Aside program; in 1985, it was the setting of fees for recreational residence permits; and in 1986 it was the beginning of approval of Forest plans mandated by the National Forest Management Act of 1976. Fewer Forest plans were approved during FY 1987 accounting, in part, for fewer appeals this past year than in FY 1986. Appeals doubled between 1985 and 1986, and about half of the increase resulted from appeals of decisions to approve Forest plans.

The process is costly as shown in the following data in Table 2:

TABLE 2.—COST SUMMARIES BY FISCAL YEAR, BY ADMINISTRATIVE LEVELS

Fiscal Year	Grand total	Administrative levels			Washington Office [1]
		Ranger District	Supervisor's Office	Regional Office	
1984	$2,791,229	$472,323	$701,524	$1,211,316	$406,066 (LMP $80,726)
1985	2,633,995	482,284	703,434	974,435	473,842 (LMP $161,451)
1986	5,298,320	706,480	2,034,208	1,907,530	650,102 (LMP $161,451)
1987 [2]	5,311,585	466,117	2,056,035	1,843,757	945,676 (LMP $511,262)
Total	16,035,129	2,127,204	5,495,201	5,937,038	2,475,686 (LMP $914,890)

[1] Figures in parentheses are the share of total Washington Office costs attributable to Land and Resource Management Plan appeals (LMP). Similar breakdowns were not available from Regional or Forest levels.
[2] Data as of 7/1/87, projected through 9/30/87.

The total $16 million dollar price tag to administer appeals (1984–1987) are direct costs only that are attributable to agency staff work.

The process is also time-consuming for all concerned. The current rule provides a duration of about 160 days to decide an appeal through one level of review (assuming there are no time extensions and/or intervention requests granted, and there are no procedural appeals), and 305 days if taken through the second level. On the average, it has taken 225 days, or 7.5 months to decide an appeal at the first level.

Finding 4—Redundancy. A case can be made that some of the reasons for having an appeals process have been legislated into obsolescence by such statutes as the National Environmental Policy Act and National Forest Management Act. Decisions that have been thoroughly analyzed, documented, and subjected to public participation under provisions of these statutes are habitually recycled through the appeals process, giving the public, as it were, redundant opportunities to object to a single decision. The issue is "how many hurdles must be cleared before management decisions may be implemented?"

Sixty percent of all appellants have been involved in some aspect of predecisional public involvement activities; and 60 percent of the time, the issues under appeal involve processes carried out pursuant to the National Environmental Policy Act and the National Forest Management Act.

Finding 5—Communications. Many appeals result from misunderstandings and communication failures between Deciding Officers and affected groups or individuals. There is a general reluctance for the parties to try to resolve problems before an appeal is filed.

Finding 6—Impacts on Projects. The agency's ability to design and implement resource management projects and activities is hampered when agency resources are siphoned from resource management to process management. For example, an appellant can, at minimal cost, increase the cost (and sometimes substantially diminish the feasibility) of a project through the time it takes the agency to complete an appeal, even though the original decision might ultimately be upheld. Where the agency has solicited bids or proposals for special uses on National Forest System lands, such as for winter sports areas, applicants can spend substantial amounts of money responding to the proposals only to incur greater expense, because of the time involved to process the appeal. The process can also be abused by using appeals of procedural rulings as a delay strategy.

Twenty-two percent of the appellants who appeal decisions to adopt Forest plans also appeal later decisions by forest officers to implement project activities permitted under these same plans. More often than not requests for stays accompany appeals of project decisions.

Finding 7—Process Management. Among the many concerns with proper functioning of the current appeals system are that the agency itself does not follow its own rules with respect to time periods and that there is too much paperwork. While supporting the need for an appeal process, the public wants one that is easier to use. Additionally, most believe the current process is biased, because it is an internal review, and that there is a double standard where timelines are concerned.

While the Forest Service does not agree that there is a serious bias problem, it recognizes that, by virtue of its being an internal review process, some citizens will always perceive bias and will further infer bias from appeal decision history. Reviewing Officers affirm about 70 percent of all appeal decisions, and reverse or remand (return to the lower level for specific action, upon which a new appeal could be based) only about 15 percent; and either dismiss (for procedural inadequacies) or close the other 15 percent when the appeal is withdrawn by the appellant, or the initial decision is withdrawn by the forest officer.

Appellants are also quick to point out that while the agency insists that appellants observe rule timelines, it does not consistently do so itself: The average time for forest officers to complete certain tasks (responsive statements, intervention and stay rulings, and final ruling on the merits) is typically longer than permitted under the rule, especially for complex appeals involving land management plans.

Summary of Review Findings

The often-voiced ideal of the appeals process has been to give the public an informal avenue for review and resolution of disputed agency decisions without the necessity of litigation. The process has served the agency and the public with varying degrees of success for many years. But viability of the appeals process has suffered as multiple use management of the National Forests continues to grow in complexity, and the magnitude and intensity of issues expands.

The process, as it has evolved over the last few years, is not the simple, quick, informal process that the agency originally intended it to be. In fact, the appeals process has become a significant generator of paperwork and a time-consuming, costly effort, trading off resources and energies that might otherwise be directed to substantive on-

the-ground land and resource management activities.

The Forest Service "appeals" process needs adjustment to better serve the public and the agency and to be compatible with the agency's public-oriented vision statement of "caring for the land and serving people." Practice under the current rule does neither as well as it might.

Options Considered

In considering the findings of the review, the Forest Service formulated a number of alternatives:

1. Retain the current appeal regulation without change.

2. Revise the current regulation to address some of the major problems discovered in the review process, such as removing delays inherent in handling procedural matters; modifying time periods; streamlining the overall process.

3. Devise a new appeal process that imposes few procedural requirements, is informal, limits paperwork only to existing documents and appellant's notice of appeal, limits participation to appellants, and requires a Deciding Officer to meet with appellants to discuss and resolve concerns.

4. Adopt a highly legalistic process compared to that of the current rule. This option, a grievance style procedure, would, for example, require appellants to meet standing requirements and post bonds to protect the public interest from nuisance-type appeals, allow no extensions of time for the agency or appellants, and require appellants to pay agency costs if appellants do not prevail.

5. Provide a two-track appeal procedure; an adjudicatory one for appeals involving written instruments, and a simplified procedure for decisions that involve agency discretion.

6. Establish an external, independent review board, members of which would be appointed by the Secretary to deal with all appealable decisions or certain classes of decisions.

7. Eliminate the appeal process altogether.

Each option was analyzed in terms of the findings of the review and the agency's objectives in having an appeal process. The conclusions were as follows:

1. While agency personnel and appellants are knowledgeable of the current rule and thus have a certain "comfort level" with its procedures, retaining the current rule without change would ignore the review findings.

2. Trying to fix the current rule would not be sufficient to address the findings and would further "hybridize" the appeals process, continuing the "split personality" of the current rule which blurs a grievance type appeal process with more a discretionary type review process.

3. A rule with few procedural requirements saves effort expended by the agency in time-consuming procedural matters. Savings in time and dollar costs to manage the appeals process could be applied to on-the-ground management of land and resources. However, those appellants who have a legal relationship with the Forest Service through a written instrument or authorization would be short-changed by a new appeal process that provides few procedural or "due process" requirements.

4. Adopting more legalistic procedures similar to those in judicial proceedings is less likely to serve the interests of appellants and the Agency. However, requiring appellants to pay a filing fee may have merit. Such suggestions have been rejected in previous appeal regulations. Filing fees are not included in the proposed rules, but are a recurring topic, so the Agency invites public comment on whether a reasonable minimum filing fee should be required.

5. On the surface, establishing an independent board to hear and rule on appeals might appear to be attractive from the standpoint of obtaining more objective, unbiased decisions. However, the history and nature of such boards is that they require highly structured, formalized rules of procedure which complicate, rather than simplify, an appeals process. Such complexity is not in the best interest of those appellants who lack the resources to hire legal representation. Moreover, such formalized processes may intensify adversarial relationships with the agency whose decisions are being reviewed and ruled on. Such a relationship is counter to the Forest Service commitment and desire to increase communication and cooperation with the public. In addition, an external board could erode the agency's statutory authority to administer its programs and to supervise, correct, or redirect operations.

6. The option of eliminating the current rule and not offering any kind of appeal process ignores the finding that the public and the agency want a process that allows for review of decisions. The agency values an administrative process, because it requires the agency to continue to work with and hear what appellants are saying and objecting to. This active listening, which is quite different from the adversarial relationships of judicial proceedings, allows the agency to correct improper decisions and operational problems. It offers the public a chance to get decisions reversed without the expense of a legal proceeding. Moreover, even though the agency provides an appeal process at its own discretion, because a process has been offered for so long, the public would likely view its elimination as a serious loss.

Based on analysis and consideration of the findings resulting from review of the current appeals process, the Forest Service concludes that the time has come to propose a significant redefinition and redirection of the appeal process. The alternative that appeared to have the most merit was that of developing a two track system (No. 5)—one for appeal of written instruments and one for review of land and resource management planning and project implementation decisions, in which the agency has substantial discretion. This approach would allow adoption of procedures appropriate to review of each type of decision and would eliminate the confusion of purpose and procedure endemic to the current rule. Moreover, this approach allows for responding to the other findings of the review related to simplifying and streamlining the process.

Proposal

The current approach of treating all decisions alike and subjecting appeals and reviews of all decisions to the same procedural requirements under 36 CFR 211.18 confuses the need to provide a grievance procedure with both the agency's need to review its own decisionmaking conduct and the agency's desire to provide full opportunity for the public to participate in and affect Forest Service planning decisions. It is clear that the agency needs to separate those purposes and devise decision review procedures that are appropriate to each. Accordingly, the agency is proposing to replace the current appeal rules with two rules, each being a separate and distinct process for challenging and obtaining review of Forest Service decisions. The distinction is based on the types of decisions at issue and the degree of agency discretion in making the decision. These factors, in turn, determine who is affected by a decision, the type of relationship that exists between the agency and appellants, and the procedures that are appropriate for obtaining review of a decision.

One rule would be limited to appeal of written decisions arising from issuance,

approval, and administration of written instruments authorizing occupancy and use of National Forest System lands. This rule would be codified at 36 CFR Part 251—Land Uses as Subpart C. Appeals under these rules would be limited to holders of and certain applicants for authorizations who enjoy a business or legal relationship with the Forest Service based on the agency granting a privilege authorized by statute to use and occupy National Forest System lands. This process is somewhat adjudicatory in nature, as the remedy for the dispute resides within or may be interpreted from the written instrument itself or an authorizing statute or regulation. As previously noted, contractual disputes would not be subject to this rule. Those kinds of disputes would continue to be handled by the Department's Board of Contract Appeals pursuant to the Contract Disputes Act and 7 CFR Part 24.

This written instrument rule would retain many of the features of the current rule (§ 211.18) and seek to offer a fair and deliberate process for appealing and obtaining administrative review. In short, it would provide the elements of due process that are fundamental to resolving issues that arise from a business or legal relationship between the Forest Service and the appellant.

In contrast to the structured, grievance-oriented rules for decisions related to written instruments, the agency is proposing a more informal review process, to be codified at 36 CFR Part 217, for National Forest System land and resource management plan and project decisions. These proposed rules would offer anyone who objects to such decisions, a streamlined, one-level review by an officer at the next administrative level. The decisions reviewable under Part 217 arise from compliance with the National Environmental Policy Act, the National Forest Management Act, implementing regulations, policies, and procedures and represent the public's last administrative opportunity to influence the outcome of National Forest System planning and decisionmaking.

The procedures set forth in each rule have been drafted to conform to and reflect other findings of the review, namely (1) to simplify the process to make it less costly to administer and easier to use; and (2) to give greater emphasis to discussions between the Forest Service Deciding Officer and potential appellants to avoid appeals and to work cooperatively to resolve issues where possible. Accordingly, many of the feature in one rule are included in the other, where not inconsistent with the basic purpose of each rule.

It should be noted that regardless of the nature and degree of any changes to the appeals process through rulemaking, the agency recognizes that it must improve its internal management of the process itself. This will require strengthening the management review of appeals and monitoring of the process Servicewide. If these proposals are adopted, special emphasis will be given to monitoring how well Deciding Officers and Reviewing Officers meet deadlines under the new rules, and prompt action will be taken to remedy excessive delays in Forest Service processing of appeals.

Features of Proposed Rules

Part 251, Subpart C—Appeal of Decisions Related to Occupancy and Use of National Forest System Lands

The rules establishing procedures for appealing decisions related to written instruments issued or approved by the Forest Service would be codified at Part 251—Land Uses. This placement strengthens the logical tie between the primary rules that govern land use authorizations and the procedures for challenging Forest Service decisions about authorizations.

The principal features of the proposed rule keyed to the CFR section number are summarized here.

Section 251.80 Purpose and scope. This section asserts that the purpose is to provide a fair and deliberate process for appealing and reviewing written decisions arising from the issuance, approval, and administration of written instruments that authorize the occupancy and use of National Forest System lands.

Section 251.81 Applicability and effective date. Unless those who can appeal under these rules elect to have a decision reviewed under 36 CFR Part 217, the rules at 36 CFR Part 251, Subpart C, would govern all appeals related to authorized uses of National Forest System lands. This section would allow for the continuance of appeals related to written instruments that have already been brought under the current rule 36 CFR 211.18.

Section 251.83 Parties eligible to participate. There would be only three types of parties participating under this subpart: Appellants, intervenors, and the Deciding Officer who made the decision being appealed. Appellants would be limited to a holder of a written instrument or authorization or to applicants who are applying for an authorization in response to a solicitation by the Forest Service and who either are denied the authorization or object to terms and conditions being offered. The persons allowed to intervene would be other applicants for the same authorization or holders of similar authorizations who have a direct interest and could be directly impacted by the appeal decision.

The limitations on who can appeal and intervene are essential to this proposed rule, because it is designed only to resolve issues arising from a decision to issue or approve, to deny issuance or approval, or to administer an authorization. These persons have a business or legal relationship with the Forest Service by virtue of the application for or acceptance of a written instrument and because of that relationship must have a procedure for bringing and resolving grievances.

Those who object to the use of the lands or resources to be covered by the issuance of an authorization could request review of the basic decision on the management and allocation of the area under the new procedures at 36 CFR Part 217 at the time the basic land management allocation, prescription, or project decision was made. For example, if the Forest Service wants to consider developing a winter sports site on a National Forest, that allocation must be subjected to analysis in accordance with the National Environmental Policy Act and implementing regulations, policies, and procedures in both the land and resource management plan and a later site-specific project proposal. In both circumstances, the results of that analysis would be documented in either an environmental assessment, or, more likely, an environmental impact statement, and the decision would be made and documented in a Decision Notice or a Record of Decision. It is at these points that interested persons could object to the decision under 36 CFR Part 217. If the Deciding Officer decided to establish and develop a winter sports site and the period for requesting review of that decision expired, or the decision was upheld by a Reviewing Officer, the Deciding Officer would solicit applicants to develop the site. When the Deciding Officer chose the best applicant and offered a permit, a business or legal relationship would then exist, which would not be subject to intervention by the general public through 36 CFR Part 217 or Part 251.

This distinction between the public's opportunity to object to a basic allocation decision or site-specific project implementation decision and the right of an applicant or permit holder to enter into a business or legal relationship with the Forest Service is

fundamental to the construction of the two rule process.

Section 251.84 Appealable decisions. This section lists the written decisions arising from specific types of permitted uses of National Forest System lands that can be appealed. The decisions range from approval of grazing of livestock to approvals of special use permits. The approval of plans of mining operations pursuant to 36 CFR Part 228 and 36 CFR 292.17 and 292.18 would be added to the list of appealable decisions, ending the separate abbreviated appeal procedures of 36 CFR 228.14. The new procedures to be established in Part 251 Subpart C are so similar to those now offered under § 228.14 that the agency finds it would be redundant and inefficient to retain a separate procedure for appeal decisions related to mining operating plans.

Paragraph (b) clarifies that decisions made by a forest officer who is not a line officer are considered to be decisions of the line officers. Questions on this have arisen from time to time under the existing rule and have confused some Forest Service officers and appellants as to where an appeal should be filed. This paragraph would eliminate that confusion especially in conjunction with the requirements of paragraph (c) regarding giving notice of a decision.

Paragraph (c) of this section would continue the requirement that the Deciding Officer give applicants and holders written notice of a decision; in most cases, this is a letter. The proposed rule would add a new requirement that the notice specify the name of the officer to whom an appeal may be filed and the deadline and address for filing. Equally important, the rule would require a Deciding Officer to include a statement that the Officer is willing to meet with the applicant or holder to hear and discuss any concerns or issues related to the decision. This requirement reflects the agency's desire to strengthen direct communication between forest officers and users and, in so doing, to foster a climate in which issues can be resolved without leading to an appeal. Such a statement has not been required in previous appeal rules and is proposed to emphasize and signal to Forest Service employees the importance of talking and meeting with National Forest users rather than relying principally on written communication.

Section 251.85 Decisions not appealable under this subpart. This section excludes from appeal the same decisions that are currently excluded under 36 CFR 211.18. In addition, it updates the list of excluded decisions to reflect the enforcement of Uniform Rules for Protection of Archaeological Resources at 36 CFR Part 296, which requires imposing civil penalties for violations covered by those rules, and to reflect enforcement of prohibitions and orders related to National Forest System administration at 36 CFR Part 261. In addition, as a result of the agency's experience with the devastating forest fire season of 1987, the rule would now exclude decisions related to rehabilitation of National Forest System lands resulting from natural catastrophes, if the Regional Forester or Chief finds and gives notice in the **Federal Register** that good cause exists for excluding such decisions from appeal. Also excluded from review under this rule would be decisions only reviewable under the new process proposed for 36 CFR Part 217.

Section 251.86 Election of appropriate review procedure. Because the agency is also proposing another decision review process at Part 217, it is possible that a decision might occasionally be appealable under Subpart C of Part 251 as well as reviewable under Part 217. For administrative efficiency, in such cases, the same appellant would not be allowed to pursue review of a decision simultaneously, or sequentially, under both processes. This section, therefore, covers that possibility, by requiring the appellant to choose the appropriate review process, and further advises that an appellant thereby forfeits all right to use the other process for that same decision. It should be noted that only a permit holder or applicant is ever faced with this choice. The need to choose the appropriate review procedure would arise only when a decision documented in a Decision Memo, Decision Notice, or Record of Decision affected an appellant's business or legal relationship with the agency.

Section 251.87 Levels of review available. This section would entitle appellants to only one level of review for decisions made by field officers in contrast to the two levels of review currently provided in 36 CFR 211.18. Limiting review to only one level responds to the findings and conclusions that the current process takes too long. The agency believes that the nature of decisions relating to written instruments are of such specificity and detail and so constrained by authorizing statute or regulation that two levels of review is normally excessive. However, the rule would permit discretionary review of appeal decisions by the next higher officer. It would require each Reviewing Officer to immediately forward an appeal decision letter to the higher officer so that officer could decide whether or not to review the lower level appeal decision. This discretion provides an internal control mechanism over appeal decisions.

As in the current rule, initial decisions by the Chief of the Forest Service would be subject to discretionary review by the Secretary of Agriculture, but a holder or applicant is not entitled to this review. This longstanding difference in treatment of appeal of initial decisions by the Chief reflects the differing scope and nature of decisions made by an Agency head. It also reflects the practical reality that automatic review of all decisions by the Chief is inconsistent with the scope of work and responsibility assigned to the Secretary of Agriculture.

Section 251.88 Filing procedures and timeliness. The procedures in this section are the same as in the current rule, except for two differences. Under the current rule, the notice of appeal is filed with the Deciding Officer. Under the proposed rule, an appellant would file an appeal with the Reviewing Officer. The filing period would remain 45 days, but the language of the proposed rule is clarified to specify that the period would end 45 days from the date *on* the written notice of the decision. The rule would make clear that it is the responsibility of the appellant to file the notice properly and by the end of the filing period. The rule would retain legible postmarks as evidence of timely filing in event of question.

Section 251.89 Extension of time. Except for time to file a notice of appeal and for discretionary reviews of appeal decisions, a Reviewing Officer has the discretion to extend the time periods under the rule at the request of appellants, intervenors, and the Deciding Officer, or to extend the time for issuing the appeal decision. These procedures are the same as in the current rule. While the agency seeks to be responsive to concerns about the length of time appeals take, it is impractical not to allow extensions of time where needed. Through strengthened management of the appeals process, the agency intends to give renewed emphasis to meeting deadlines in the rule and to avoiding extensions of time as much as possible.

Section 251.90 Notice of appeal content. In contrast to the current rule, the requirements for notice of appeal content in the proposed rule are very specific. The detailed list of information that is to be provided is necessary to inform appellants of the evidence and argument they must present in order for the Reviewing Officer to review the appealed decision. In fact, the proposed

rule makes clear that appellants bear the burden of proving in their notice of appeal why a decision should be changed.

Section 251.91 Responsive statement. It is fundamental to due process that all parties be apprised of information submitted to the record and provided an opportunity to reply to the information. Therefore, the proposed rule retains the features of the current rule with regard to responsive statements.

The proposed rule requires a Deciding Officer to prepare, within 30 days of receipt of the notice of appeal, a statement responding to the facts, or issues of law or regulation alleged by an appellant. A copy must also be sent to the appellant and any intervenors, and they, in turn, may submit a reply to the responsive statement to the Reviewing Officer.

Section 251.92 Implementation and request for stay of implementation. Like the current rule, the proposed rule would allow implementation of a decision under appeal unless a stay is requested and granted. The proposed rule would permit an appellant or intervenor to request a stay at any time if the harmful effects could occur during pendency of the appeal.

This section incorporates most of the content requirements of paragraph (h) of the existing rule for requesting a stay. The proposed rule permits other parties to the appeal to reply to a stay request and requires that if they do so, they must send copies to all other parties to the appeal.

This section departs from the existing stay procedures of 36 CFR 211.18 by requiring a stay to remain in effect for the 15 days past the period for deciding whether to conduct a discretionary review of the appeal decision, unless changed or lifted by the first-level Reviewing Officer. The rule would also allow the Reviewing Officer at the discretionary level on his or her own initiative to extend a stay in whole or in part and to change or lift a stay, as well as to accept petitions to change or lift a stay. This approach is consistent with the objective of streamlining the appeals process at the discretionary level which was discussed under the comments on § 251.87.

Section 251.93 Ruling on stay requests. Under the proposed rule, the Reviewing Officer would have to rule on a stay request within 10 calendar days from receipt; the current rule § 211.18(h)(4) allows 21 days. This reduction in the time for ruling on stays is responsive to the findings of the review of the current rule that the current appeals process takes too long. The criteria the Reviewing Officer shall consider in ruling on a stay request are the same in the proposed rule as in § 211.18(h)(5), except that the additional criterion has been added to consider any information provided by the Deciding Officer or other parties to the appeal in response to the stay request. As in the current rule, the proposed rule requires the Reviewing Officer to issue a written decision on a stay request and specifies the content of the stay decision letter, depending on the decision.

Section 251.94 Duration of and changes to stay decisions. The rules in this section are basically the same as paragraph (i) of the current rule except that—consistent with the desire to streamline and expedite appeals and with a one level of appeal process—decisions to grant, deny, lift, or otherwise change a stay are not subject to further appeal and review.

Section 251.95 Intervention. Because the proposed rule is limited to those persons who have a business or business or legal relationship with the Forest Service, it is appropriate and necessary to limit the basis for intervention in an appeal under the proposed rule. Therefore, under the proposed rule, interventions would be limited to applicants for or holders of a written instrument of the same or a similar type that is the subject of the appeal and who have an interest that could be directly affected by an appeal decision. For example, where a grazing permittee appeals a decision arising from administration of a grazing permit, a holder of a grazing permit on a neighboring allotment might also be affected by the appeal decision and wish to intervene in the appeal to protect his or her interests.

Those requesting intervention would have to make written petition to intervene and bear the burden of showing in the petition how a decision on the appeal would directly affect the petitioner's interests. The Reviewing Officer would determine if a person qualified to intervene and that decision would not be subject to further appeal.

The rule would require appellants and intervenors to furnish copies of all submissions to each other and the Deciding Officer.

In contrast to the current rule, intervenors would not be able to continue an appeal if the appellant withdraws the appeal. The failure to provide such a control in the current rule has led to many cases where the intervenors get an appeal decision after an appellant withdraws. Since the intervenor would not be a party to an appeal unless the appellant had appealed, it is only logical that there be no further standing for an intervenor on issues mooted by withdrawals.

Section 251.96 Oral presentations. In contrast to the current rule, this proposed rule would clarify that the purpose of oral presentations is to restate, emphasize, or clarify information related to an appeal. The rule would also clarify that these presentations, which can be meetings in person or by phone, are informal affairs. Rules of procedure and conduct applicable to a judicial proceeding, such as rules of evidence or cross-examination of participants, are inappropriate.

Consistent with the effort to streamline and simplify the appeals process and with the basic concept of this proposed rule, only appellants could request oral presentations, However, intervenors and the Deciding Officer would be entitled to participate, and the presentation could be open to public attendance, but not participation.

A request for an oral presentation at the time of filing an appeal would automatically be granted. Requests for oral presentation later in the appeal would be considered, but the Reviewing Officer would have discretion to grant or deny the request, and that decision would be final and not subject to further appeal.

The rule would make clear that appellants and intervenors must bear any expense in attending an oral presentation.

Section 251.97 Authority of reviewing officer in conduct of appeal. This section would authorize the Reviewing Officer to establish whatever procedures are necessary to ensure orderly, expeditious, and fair conduct of an appeal. Such procedural matters would not be subject to appeal and further review. This section retains the provision of the current rule allowing a Reviewing Officer to consolidate appeals of the same decision or similar decision involving common issues of fact or law and to issue an appeal decision covering these appeals. The Reviewing Officer must give notice to all parties of a decision to consolidate multiple appeals.

The proposed rule also makes clear that the Reviewing Officer at the first level may ask for additional information from any party to an appeal, but all parties must be notified of the request and receive copies of any information supplied.

Finally, in contrast to the current rule, this section would make clear that an appeal of an initial decision by the Chief conducted by the Secretary would be subject to the same rules and

procedures applicable to all other first level appeals. This section also addresses procedures applicable to conduct of discretionary reviews.

Section 251.98 Appeal record. This section defines what constitutes the appeal record at both the first level of review and at the discretionary levels of review. In contrast to the existing rule at § 211.18, the responsibility for assembling and maintaining the appeal record would reside with the Reviewing Officer. This eliminates an occasionally expressed concern of appellants that it appears to be a conflict of interest for the Deciding Officer to maintain the record.

In the interest of expediting and streamlining the appeal process, a Reviewing Officer, who exercises the discretion to review a lower-level Reviewing Officer's appeal decision, would be limited to the record assembled at the first level and the appeal decision letter of the lower level Reviewing Officer. The rule expressly prohibits reopening the record at this discretionary review level. This prohibition does not apply to review by the Secretary of initial decisions of the Chief, since the Secretary's review would be the first and only level of review of those decisions.

Section 251.99 Appeal decision. This section of the proposed rule provides greater specificity to Reviewing Officers than the current rule on the nature of the decision to be rendered and continues the 30-day timeframe from closure of the appeal record for rendering appeal decisions. This section also would clarify that unless an appeal decision is reviewed at the next level, the Reviewing Officer's decision stands as the final administrative decision of the Department of Agriculture on the matter.

This section also includes a new provision aimed at reducing the time it takes to complete appeals and ending the uncertainty of the status of appeals when a decision is not rendered within 30 days by a Reviewing Officer at the discretionary level of review. Under the proposal, when a discretionary review of an appeal decision is not completed by the end of the 30-day period, the discretionary review is automatically terminated and the appeal decision of the lower level reviewing officer stands as the final administrative decision of the Department. The rule would also require notice to appellants in this event, bringing a much-needed management control to the appeals process. This 30-day limit on discretionary review responds directly to the public criticism that emerged during review of the existing rule; namely, that the Forest Service holds appellants and intervenors to strict compliance with timeframes but often does not itself comply with the timeframes established in the rule. A survey of appeals case workloads shows that second-level reviews (including discretionary reviews) result in the longest delays in rendering appeal decisions. Thus, this proposal to tighten the time period for issuance of discretionary appeal decisions should be an effective remedy. Since oral presentations, intervention, and reopening of the record will not be features of discretionary reviews, the 30-day period should be sufficient for completing reviews.

Section 251.100 Dismissal without decision. This section makes more explicit the various circumstances that will result in the dismissal of an appeal without a decision on the merits. There are several changes from the current dismissal rules under 36 CFR 211.18, namely:

1. The rule would now explicitly require the Reviewing Officer to give written notice of dismissal and include an explanation of why the appeal is dismissed. While this has been a standard Forest Service practice, the requirement is not in the current rule.

2. Dismissal for the reasons cited in this section is now mandatory; the discretion previously granted to the Reviewing Officer is removed. A uniform approach is required to ensure consistent rulings Servicewide by Reviewing Officers.

3. A decision to dismiss for any of the reasons cited would not be subject to further appeal or review. This limitation is consistent with the single level of review provided by the rules and also consistent with the overall objective of simplifying the procedural complexity of the appeals process where possible.

4. Withdrawal of a decision by a Deciding Officer would result in automatic dismissal of an appeal because such action moots the appeal.

Section 251.101 Resolution of issues by means other than appeal. This section states a new requirement that, whenever practicable and consistent with the public interest, Deciding Officers shall consult and meet, preferably in person, with holders of written instruments prior to issuing written decisions. The agency believes that direct communication can lead to better working relationships with holders and that, where the holders and Deciding Officer meet and discuss the issues arising from administration of the written instrument, may appeal situations can be avoided altogether.

This prior communication requirement would not apply to applicants eligible to appeal under this subpart because of the competitive nature of such applications and the possible appearance of improper conduct by the Deciding Officer, if he or she were to discuss an application with only some applicants.

The rule clarifies a point of some confusion under the existing rule, namely that the Deciding Officer has authority to discuss the appeal with the appellant(s) and intervenor(s) together or separately to narrow issues, agree in facts, and explore opportunites for resolving the issue by means other than appeal. Again the emphasis is on direct communication between agency personnel and holders and on arriving at mutual agreements rather than emphasizing the adversarial approach of an appeals process.

Finally, this section retains the provision of the current rule that a Deciding Officer may withdraw a decision, in whole or in part. The ability to modify a decision is essential to the concept and emphasis in the proposed rule of trying to resolve issues even while an appeal is underway.

Section 251.102 Judicial proceedings. This section would declare and give notice to appellants of the longstanding policy that, in any filing for judicial review and relief from a decision appealable under this subpart, the Department of Agriculture will argue that such an action is premature and inappropriate unless the appellant has first sought to resolve the dispute by invoking and exhausting the appeal procedures.

Part 217—Requesting Review of National Forest Planning and Project Decisions

The rules establishing procedures for requesting review of plan and project decisions on National Forests would be codified at 36 CFR Part 217. This placement creates a logical tie between the public participation opportunities provided in Part 216, which set forth procedures for involving the public in formulation of agency directives, and Part 219, which governs land and resource management planning.

Reviewers will note that the rules proposed for Part 217 use different terminology than that in the proposed rule for written instruments. Under Part 217, there are no "appeals," "appellants," or "appeal records"; instead there are "requests for review," "requesters," and "review files." The differing terms are a conscious effort to reflect the more informal review process under Part 217 and to emphasize the fundamental distinctions between appeals under 36 CFR Part 251, Subpart

C and requests to review decisions under Part 217. The proposed written instrument rule is built on the fact that there is a business or legal relationship with the Forest Service and there needs to be a procedure to decide disputes that arise from that relationship. The review process envisioned in Part 217 recognizes that requesters do not have a direct business or legal interest but are concerned with broader issues of how the Forest Service exercises its discretion in managing the National Forest System.

As previously noted, the agency views the decision review process proposed for Part 217 as the public's last administrative opportunity to influence the outcome of National Forest System planning and decisionmaking. In offering this review process, however, the Forest Service wants to make clear that it believes better resource decisions and fewer challenges of those decisions will result, if interested citizens and organizations become involved early in the planning and decisionmaking process. Therefore, the agency encourages those interested in National Forest System Management to take advantage of the opportunity to "get in on the ground floor" of planning.

Despite increased emphasis on informing the public of prospective activities and decisions, local forest officers cannot possibly know and identify all the persons or organizations that might have an interest in a particular activity or class of activity. Therefore, of necessity, those interested in National Forest management need to take some responsibility for keeping themselves informed, if they want to have a meaningful opportunity to participate in the decisionmaking process at the earliest stages. For example, all National Forests keep some kind of schedule of planned activities, and many of those schedules are published in local newspapers. Moreover, any citizen or organization can call or write a District Ranger or Forest Supervisor to inquire about upcoming activities and decisions and to request that they be notified when the scoping on the proposed project or activity begins.

The Forest Service is committed to fostering a public participation climate that allows for the open expression of ideas and that encourages the public to join with the agency in identifying and analyzing natural resource management alternatives that balance present and future resource needs and objectives. The agency believes the public interest is far better served by mutual effort to resolve differences *during* the decisionmaking process than by trying to resolve those differences *after* a decision is made.

The informal review process proposed for Part 217 reponds to the majority of those who provided comments during the review of 36 CFR 211.18, who said they wanted a process that is easier to use, takes less time, and is readily available. Therefore, exchange of documents among participants, intervention, oral presentations, and other "legalistic" features of the current rule are not proposed as a part of the Part 217 review process.

Other principal features of the proposed rule keyed to the CFR section number are summarized here.

Section 217.1 Purpose and scope. This section asserts that the purpose of the rule is to provide an informal review process for persons interested in National Forest management to challenge certain planned or proposed actions and to have the challenge reviewed quickly by an official at the next level. The rule further asserts that the process is not adjudicatory and, therefore, establishes a minimum of procedures to guide the review process.

Section 217.2 Applicability and effective date. Unless those who can also appeal under 36 CFR Part 251, Subpart C, elect to appeal a decision under 36 CFR Part 251, Subpart C, the rules at 36 CFR Part 217 would govern all reviews related to planning and project decisions on National Forest System lands. This section would allow for the continuance of appeals that have already been brought under the current rule 36 CFR 211.18.

Section 217.3 Definitions. It should be noted that a new type of decision document, a "Decision Memo," is defined in this proposed rule. A "Decision Memo" is a concise memorandum to the files signed by the Deciding Officer that records a decision to implement an action that has been excluded from documenttion in an environmental assessment or environmental impact statement. Separate notice on this new term and procedures governing preparation and giving notice of such decisions will be published in the **Federal Register** soon as part of a larger revision of policies and procedures for compliance with the National Environmental Policy Act.

Section 217.4 Eligible participants. The current appeal rule at 36 CFR 211.18 provides for three kinds of participation: By appellants, by intevenors, and by other persons or organizaitons who submit written comments. Current requirements for appellants and intervenors are similar. However, an invervenor may enter the appeal process at any time and thus delay the process while appellants have an opportunity to review and comment on intervenors' submissions. Appellants must enter an appeal within 45 days of the date of the decision being appealed. Their material is shared with subsequent intervenors who have an opportunity to comment.

In contrast, the proposed rule makes no distinction between an appellant or an intervenor. The rule treats all interested persons or organizations equally and allows for accepting comments from others who do not wish to formally participate in the review. Forest Service employees are expressly excluded as participants, because the agency provides internal mechanisms to address employee concerns. Federal organizations are also excluded because procedures are available under 40 CFR Parts 1500–1508 for interagency resolution of issues.

Section 217.5 Obtaining notice of decisions. This section would establish a new requirement that responsible field officials publish legal notice of decisions subject to review under Part 217 in a newspaper of general circulation, except for Records of Decision, notice of which is published in the **Federal Register.** Notice of all initial decisions by the Chief would be published in the **Federal Register.** This requirement addresses a continuing problem under the current rules and complies with the intent of the National Environmental Policy Act (NEPA), the National Forest Management Act, and implementing regulations, policies, and procedures that the public is entitled to receive notice and to have an opprotunity to comment.

Section 217.6 Decisions subject to review. Nearly all agency decisionmaking concerning planning and mangement of National Forest System lands and resources is subject to the provisions of NEPA and/or the National Forest Management Act, implementing regulations, policies, and procedures. As a consequence, forest officers document their decisions in "Records of Decisions," "Decision Notices," or "Decision Memos." It is these types of decisions, and no others, that are reviewable under this subpart.

As in the proposed written instrument appeal rule, paragraph (c) clarifies that decisions signed by a forest officer who is an acting line officer or decisions made by a forest staff acting within delegated authority are considered to be decisions of the line officers. Questions on this have arisen from time to time under the existing rule and have confused some Forest Service officers

and appellants as to where an appeal should be filed.

Section 217.7 Decisions not subject to review. This section retains as excludable from review the same decisions that are currently excluded from appeal in 36 CFR 211.18. In addition, it updates the list of excluded decsions to reflect the enforcement of Uniform Rules for Protection of Archaeological Resources at 36 CFR Part 296, which requires imposing civil penalties for violations covered by those rules and to reflect enforcement of prohibitions and orders related to National Forest System administration at 36 CFR Part 261. In addition, reflecting the agency's experience with the devastating forest fire season of 1987, the rule would now exclude decisions related to rehabilitation of National Forest System lands resulting from natural catastrophes if the Regional Forester or Chief finds and gives notice in the **Federal Register** that good cause exists for excluding such decisions from review. Also excluded from review under this rule would be policies and procedures issued through regulation or the Forest Service directive system, participation in which is covered by the Adminsitrative Procedures Act and 36 CFR Part 216, respectively. This section also contains a conforming amendment excluding decisions applicable only to a holder or applicant of a written instument and thus appealable only under the new process proposed for 36 CFR Part 251, Subpart C.

Paragraph (b) would clarify that when initial project decisions are subject to review under Part 217, subsequent decisions related to implementation of the decision will not be reviewable, unless those subsequent decisions are preceded by a separate decision document. For example, a decision to offer a timber sale cannot subsequently be challenged again at the time a sale is advertised or awarded. This provision applies only to projects and activities as defined at § 217.6(b)(3). This limitation is needed to bring closure to administrative decision reviews. It also responds directly to the finding during review of the current rule that many decisions are effectively appealed several times because there is currently no limitation on appealing implementation actions. This recycling of appeals has led to long delays and interruptions in some national forest programs and has offered an opportunity for abuse of the process that was never intended.

Section 217.8 Levels of review available. This section would entitle requesters to only one level of review for decisions made by field officers, in contrast to the two levels of review curently provided in 36 CFR 211.18. Limiting review to only one level of review responds to the findings and conclusions that the current process takes too long. However, with one exception, the rule would permit discretionary review of appeal decisions by the next higher officer and would require each Reviewing Officer to immediately forward an appeal decision letter to the higher officer to enable that officer to decide whether to exercise the discretion to review the Reviewing Officer's decision. As with 36 CFR Part 251, Subpart C, it is felt that providing for discretionary review retains an important internal management control over review decisions.

The exception is that decisions to reoffer returned or defaulted timber sales made after October 30, 1986, would not be subject to discretionary review. This exception is mandated by section 320 of the appropriations act for Fiscal Year 1987 (Pub. L. 99–591) which specified that only one level of appeal be offered for these decisions.

One of the findings of the agency's review of the current rule was that the process was costly to the taxpayers. Over a 4-year period, $16 million could be attributed to agency staff work to administer the process. Reducing the appeal/review process from two levels to a one-level appeal/review, with discretion at the next level, has the potential to save at an average, a million dollars a year, as can be seen in the following chart:

TABLE 3.—WORKLOAD AND COSTS ATTRIBUTABLE TO SECOND LEVEL OF APPEAL UNDER 36 CFR 211.18

Level	Total number of all appeals	Total costs (dollars)	Percent workload 2d level appeals	Costs attributable to 2d level appeals
Fiscal year 1986				
SO	539	$2,034,208	4	$79,254
RO	735	1,907,530	17	324,409
WO	335	650,102	31	201,822
Total		4,591,840	[1] (13)	[2] 605,485
Fiscal year 1987				
SO	668	2,056,035	8	163,128
RO	799	1,843,757	42	777,654
WO	413	945,676	69	650,295
Total		4,845,468	[1] (33)	[2] 1,591,077

[1] Weighted average.
[2] Reducing the appeal/review process from two levels to a one-level appeal/review, with discretion at next level, has the potential to save these costs, average for past two fiscal years = $1,098,281.
SO—Forest Supervison Offices, RO—Regional Offices, WO—Washington Office.

As in the current rule and the proposed rule for appeal of written instruments, initial decisions by the Chief of the Forest Service would be subject to discretionary review by the Secretary of Agriculture, but a requester is not entitled to this level of review. As noted under the discussion of Part 251, this difference in treatment of appeal of initial decisions reflects the differing scope and nature of decisions made by an Agency head and also reflects the practical reality that automatic review of all decisions by the Chief is inconsistent with the scope of work and responsibility assigned to a cabinet officer.

Section 217.9 Filing procedures and timelines. The procedures in this section are the same as in the current rule, except that the request would be filed

with the Reviewing Officer, not the Deciding Officer, and the 45-day period for filing would be computed from the date of publication of notice of the written decision. The rule would make clear that it is the responsibility of the appellant to file the notice properly and by the end of the filing period. The rule would retain legible postmarks as evidence of timely filing in event of question.

Section 217.10 Extension of time. Except for time to file a request for review and for discretionary review of lower level review decisions, a Reviewing Officer has the discretion to extend the time periods under the rule at the request of requesters, and the Deciding Officer, or to extend the time for issuing the appeal decision. These procedures are the same as in the current rule.

Section 217.11 Content of a request for review. In contrast to the current rule, the requirements for the contents of a request for review in the proposed rule are very specific. The detailed list of information that is to be provided is necessary to inform requesters of the evidence and argument they must present in order for the Reviewing Officer to review the challenged decision. As in the proposed written instrument rule, the proposed rule makes clear that requesters bear the burden of showing in a request for review why the decision should be changed.

Section 217.12 Requests to delay implementation of a decision. In contrast to the current rule, the proposed rule specifies that implementation of land and resource management plans (forest plans) prepared pursuant to 36 CFR Part 219 will not be delayed. This limitation is appropriate because the concept of a stay is inconsistent with the nature of plans, which are guiding documents for subsequent activities and developments. There are no actions in a forest plan per se that would be immediately implementable and thus there are no actions to be stayed. The proposed rule would permit a requester to request delay of implementation when a project or activity would be implemented during the pendency of a review. In such cases, the request would be granted unless the Reviewing Officer determines there is an urgent and compelling need to proceed with the activity.

The proposed rule departs from the current rule in that the time to rule on a delay request would be 10 days instead of 21, and the decision is not subject to further review or appeal. Additionally, the proposed rule does not contain the stringent requirements of the current rule as to the information a stay request must contain. All of these proposed changes are consistent with the intent of simplifying the process to make it less costly to administer, easier to use, and not as lengthy.

This section also adds a new provision that requires delays to remain in effect for the 15-day period for deciding whether to conduct a discretionary review of the lower level review decision and automatically extends the stay during pendency of the discretionary review. This provision thus preserves the interests of requester(s) during the additional review period.

Section 217.13 Review file. This section defines what constitutes the review file at both the first level of review and at the discretionary level of review. In contrast to the existing rule at 36 CFR 211.18, the responsibility for assembling and maintaining the review file would reside with the Reviewing Officer. This eliminates an occasionally expressed concern of appellants that it appears to be a conflict of interest for the Deciding Officer to maintain the record. In the interest of expediting and streamlining the appeal process at the discretionary review level, the second-level Reviewing Officer would be limited to the record assembled at the first level and the review decision letter of the lower level reviewing officer. The rule would expressly prohibit reopening the record at the second level.

This section also specifies how much time the Deciding Officer would have to assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer.

In contrast to the existing rule and the proposed written instrument rule, the Deciding Officer would not be required to prepare a Responsive Statement. Instead, the rule would allow the Deciding Officer, in transmitting the decision documentation, to respond briefly to issues raised in the request for review. Since review of the decision is to be based on documents prepared in the decisionmaking process, the decision should be adequately addressed in that documentation and there should be no need for long rebuttals from Deciding Officers. As part of its strengthened management of the decision review and appeal processes, the Forest Service plans to monitor Deciding Officer performance carefully on this point and to take prompt corrective action should this provision begin to result in delays because Deciding Officers are preparing lengthy responses to issues raised by requesters.

Section 217.14 Authority of reviewing officer in conduct of a review. This section would authorize the Reviewing Officer to establish whatever procedures are necessary to ensure orderly and expeditious conduct of a review. Such procedural matters would not be subject to appeal and further review. This section retains the provision of the current rule allowing a Reviewing Officer to consolidate reviews of the same decision or similar decision involving common issues of fact or law and to issue an review decision covering these reviews. The Reviewing Officer must give notice to all parties of a decision to consolidate multiple reviews.

In keeping with the informal nature of the decision review process, the rule would permit a Reviewing Officer, except at the discretionary review level, to request additional information from the requester, the Deciding Officer, or anyone who has submitted written comments. The Reviewing Officer would also have authority to discuss issues related to the review with requesters, the Deciding Officer, or those who submit comments.

As in the written instruments proposed rule, this section would make clear that, when the Secretary elects to review an initial decision of the Chief, all the rules and procedures applicable to other first-level reviews would apply to the Secretary's review.

Section 217.15 Review decision. As in the proposed written instrument rule, this section of the proposed rule provides greater specificity to Reviewing Officers than the current rule on the nature of the decision to be rendered and continues the 30-day time from closure of the review file for rendering appeal decisions, except for decisions involving review of land and resource management plan approval, amendment, or revision when the time is extended to 90 days. This section also would clarify that unless a review decision is reviewed at the next level, that decision stands as the final administrative decision of the Department of Agriculture on the matter.

In an effort to reduce the time it would take to complete a review and to end the uncertainty of the status of a review when a decision is not rendered within 30 days by a Reviewing Officer at the discretionary level of review, the rule proposes the same approach as that in the proposed written instruments rule. Under the proposal, when a discretionary review of an Reviewing Officer's decision is not completed by the end of the 30-day period, the discretionary review would automatically terminate and the decision of the lower level Reviewing

Officer stands as the final administrative decision of the Department. The rule would also require notice to requesters in this event, bringing a much-needed management control to the process. As noted in the discussion of this feature of the written instruments proposed rule, this 30-day limit on discretionary review responds directly to the public criticism that emerged during review of the existing rule; namely, that the Forest Service holds appellants and intervenors to strict compliance with timeframes but often does not itself comply with the timeframes established in the rule. A survey of appeals case workloads shows that second-level reviews (including discretionary reviews) result in the longest delays in rendering appeal decisions. Thus, this proposal to tighten the time period for issuance of discretionary decisions should be an effective remedy.

Section 217.16 Dismissal without review and decision. This section is virtually identical to that in the proposed written instrument rule. It would made more explicit the various circumstances that will result in the dismissal of a request for review without a decision on the merits. Refer to the prior discussion of dismissal under § 251.100 for the list of changes from the current dismissal rules under 36 CFR 211.18.

Section 217.17 Resolutions of issues during review. In keeping with the stated objective of giving greater emphasis to discussions between the Forest Service Deciding Officer and persons interested in National Forest management to work cooperatively to resolve issues where possible, this section in the proposed rule authorizes the Deciding Officer to discuss the issues and try to resolve them, if possible, even during the review process. As in the written instrument proposal, the emphasis in on improving direct communication between the agency and the public on working together toward mutual agreement rather than emphasing the adversarial approach of an appeals process.

Finally, this section retains the provision of the current rule that a Deciding Officer may withdraw a decision, in whole or in part, during the review.

Section 217.18 Policy in event of judicial proceedings. This section is identifical to that in the proposed written instrument rule.

Conforming Amendments

This rulemaking also proposes several conforming amendments to rules in other parts of Chapter II affected by the procedures proposed for Parts 217 and 251. First, the current appeal regulations at 36 CFR 211.17 and 211.18 would be amended to allow for continuation of appeals brought under those rules prior to the effective date of the final rule and to exclude from appeal under those rules, new appeals of any decision issued after the effective date of the final rules. The rules at 36 CFR Part 228, Subpart A—Locatable Minerals, which have provided a separate appeal procedure for mining operating plans, would be amended to provide for appeal under 36 CFR Part 251, Subpart C, the new written instruments appeal rule.

Public Comment

The Forest Service is interested in hearing from individuals, organizations, and other public agencies about these proposed rules. To aid in analysis of comments, it would be helpful if reviewers would key their comments to specific sections. Respondents should also be aware that, in analyzing and considering comments in promulgation of the final rule, the Forest Service will give more weight to substantive comments than to simple "yes," "no," or "check-off" responses to form letter/questionnaire-type submissions. To assist reviewers in commenting on this proposed rulemaking, an abbreviated side-by-side comparison of the current rule and the two proposals is provided in Appendix A as a reference tool.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities

Environmental Impact

Based on both experience and environmental analysis, this proposed rule would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public.

List of Subjects

36 CFR Part 211

Administrative practice and procedure, National forests.

36 CFR Part 228

Environmental protection, Mines, National forests, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Wilderness.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth above, it is proposed to amend Title 36 of the Code of Federal Regulations as follows:

PART 211—ADMINISTRATION

1. The authority citation for Part 211 would continue to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—Appeal of Decisions Concerning the National Forest System

2. Add a new paragraph (o) to § 211.17 to read as follows:

§ 211.17 Appeal of decisions to reoffer returned or defaulted timber sales on National Forests.

* * * * *

(o) *Continuance of appeals.* Appeals filed under this section prior to [*Insert effective date of final rule.*] shall continue to be processed under the procedures of this section. Any decision to reoffer returned or defaulted timber sales made after [*Insert effective date of final rule.*], shall be subject to the review procedures of Part 217 of this chapter.

3. Amend paragraph (s) of § 211.18 by adding a sentence to the end of the paragraph as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(s) * * * The procedures of this section shall not apply to any request to appeal or review a decision filed after [*Insert effective date of final rule.*]

4. Add a new Part 217 to read as follows:

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

Sec.
217.1 Purpose and scope.
217.2 Applicability and effective date.
217.3 Definitions and terminology.
217.4 Eligible participants.
217.5 Obtaining notice of decisions.
217.6 Decisions subject to review.
217.7 Decisions not subject to review.
217.8 Levels of review available.
217.9 Filing procedures and timeliness.
217.10 Extension of time.
217.11 Content of a request for review.
217.12 Requests to delay implementation of a decision.
217.13 Review file.
217.14 Authority of reviewing officer in conduct of review.
217.15 Review decision.
217.16 Dismissal without review and decision.
217.17 Resolution of issues during review.
217.18 Policy in event of judicial proceedings.

Authority: 16 U.S.C. 551, 472.

§ 217.1 Purpose and scope.

(a) This subpart provides a process by which a person or organization interested in the management of the National Forest System may challenge certain planned actions prior to implementation and obtain review of the intended action by a higher level official. These rules establish who may request review of planned actions, the kind of decisions that may be challenged, the responsibilities of the participants in a decision review, and the procedures that apply.

(b) The process established in this part constitutes the final administrative opportunity for the public to influence National Forest System decisionmaking prior to implementation of various decisions. The rules are not intended to provide an adjudication process. Accordingly, these rules establish a minimum or procedures to guide the review process. The intent of the part is to provide an expeditious, uncomplicated review of decisions by an official at the next administrative level.

§ 217.2 Applicability and effective date.

(a) The review procedures established in this part apply to all disputes of and requests to review decisions filed after [*Insert effective date of this rule.*].

(b) Requests to review decisions filed under 36 CFR 211.17 and 211.18 prior to [*Insert effective date of this rule.*] remain subject to those procedures.

§ 217.3 Definitions and terminology.

For the purposes of this part—

Deciding Officer means the Forest Service line officer who has the delegated authority and responsibility to make the decision being challenged under these rules.

Decision document means a written document that a Deciding Officer signs to execute a decision subject to review under this part. Specifically a Record of Decision, a Decision Notice, or Decision Memo.

Decision documentation refers to the decision document and all relevant environmental and other analysis documentation on which the Deciding Officer based a decision that is at issue under the rules of this part. Decision documentation includes, but is not limited to, a project file for proposed actions categorically excluded from documentation in an environmental assessment or environmental impact statement, environmental assessments, findings of no significant impact, environmental impact statements, land and resource management plans, regional guides, documents incorporated by reference in any of the preceding documents, and drafts of these documents released for public review and comment.

Decision Memo is a concise memorandum to the files signed by a Deciding Officer recording a decision to take or implement an action that has been categorically excluded from documentation in either an environmental assessment or environmental impact statement.

Decision Notice means the written document signed by a Deciding Officer when the decision was preceded either by preparation of an environmental assessment (40 CFR 1508.9) or by a determination of categorical exclusion (40 CFR 1508.4).

Decision review is the term used to refer to the process provided in this part by which a higher level officer reviews a decision of a subordinate officer in response to a request for review.

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Record of Decision is the document signed by a Deciding Officer recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2).

Request for review is the written document filed with a Reviewing Officer by one who objects to a decision covered by this part and who requests review by the next higher line officer.

Requester is the term used to refer to a person or organization (or an authorized agent or representative acting on their behalf) filing a request for review under this part.

Reviewing Officer is the line officer one administrative level higher than the Deciding Officer or, in the case of a discretionary review, one level higher than the line officer who issued a first-level review decision.

§ 217.4 Eligible participants.

(a) Any person, other than a Forest Service employee, or any non-Federal organization or entity may challenge a decision covered by this part and request a review by a Forest Service line officer at the next administrative level.

(b) Any person or organization interested in review of a decision under this part may submit written comments to the Reviewing Officer for inclusion in the review file.

§ 217.5 Obtaining notice of decisions.

For decisions subject to review under this part that are made at the Ranger District, National Forest, and Regional Office levels, the responsible Forest Service official shall publish legal notice of each decision in a newspaper of general circulation, except for decisions documented in Records of Decision, notice of which is published in the **Federal Register.** For decisions that are made by the Chief that are subject to review under this part, notice shall be published in the **Federal Register.**

§ 217.6 Decisions subject to review.

(a) Except as provided in § 217.7 of this part, written decisions governing plans, projects, and activities to be carried out on the National Forest System that result from analysis, documentation, and other requirements of the National Environmental Policy Act, the National Forest Management Act, implementing regulations, policies, and procedures are subject to review under this part.

(1) Only decisions documented in a Decision Memo, Decision Notice, or a Record of Decision are subject to review under this part. Preliminary planning decisions or preliminary decisions as to National Environmental Policy Act processes made prior to release of final plans, guides, and environmental documents are not reviewable until issuance of decision documents.

(2) Forestry research and State and private forestry programs and activity decisions are subject to review under this part, if a specific decision would be carried out directly on National Forest System lands.

(b) Decisions subject to review under this part include, but are not limited to:

(1) Approval, amendment, and revision of a forest land and resource management plan prepared pursuant to 36 CFR Part 219.

(2) Approval, and amendment of a regional guide for forest planning prepared pursuant to 36 CFR 219.8.

(3) Other projects and activities for which decision documents are prepared, such as timber sales, road and facility construction, range management and improvements, wildlife and fisheries habitat improvement measures, forest pest management activities, removal of certain minerals or mineral materials, land exchanges and acquisitions, and establishment or expansion of winter sports or other special recreation sites.

(c) Decisions on any of the matters listed in this section made by an authorized subordinate Forest Service staff officer acting within delegated authority are considered to be decisions of the Forest Service line officer to whom the subordinate employee reports.

§ 217.7 Decisions not subject to review.

(a) The following decisions are not subject to review under this part:

(1) Decisions appealable to the Agriculture Board of Contract Appeals, U.S. Department of Agriculture, under 7 CFR Part 24.

(2) Decisions involving Freedom of Information Act denials under 7 CFR Part 1 or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions for which the jurisdiction of another Government agency or the Comptroller General supercedes that of the Department of Agriculture.

(4) Recommendations of Forest Service line officers to higher ranking Forest Service or Departmental officers or to other entities having final authority to implement the recommendation in question.

(5) Decisions appealable under separate administrative proceedings, including but not limited to, those under 36 CFR 223.117, Administration of Cooperative or Federal Sustained Yield Units; 7 CFR 21.104, Eligibility for Relocation Payment or Amount; and 4 CFR Part 21, Bid Protests.

(6) Decisions pursuant to Office of Management and Budget Circular A–76, Performance of Commercial Activities.

(7) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(8) Decisions covered by the Contract Disputes Act.

(9) Decisions involving Agency personnel matters.

(10) Decisions where relief sought is reformation of a contract or award of monetary damages.

(11) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

(12) Decisions embodied in rulemaking promulgated in accordance with the Administrative Procedures Act (5 U.S.C. 551 *et seq.*) or in policies and procedures issued in the Forest Service Manual and handbooks (36 CFR Parts 200, 216).

(13) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or to issue order or violations of prohibitions and orders under 36 CFR Part 261.

(14) Decisions solely affecting the business relationship between the Forest Service and applicants for or holders of written instruments for occupancy and use of National Forest System lands that arise from issuance, approval, or administration of the authorization, except as provided for at 36 CFR 251.86.

(b) In addition to decisions excluded from review by paragraph (a) of this section, the Forest Service shall dismiss any request to review a subsequent implementing action that results from an initial decision for projects and activities subject to review under this part as defined at § 217.6(b)(3). For example, an initial decision to offer a timber sale is reviewable under this part; subsequent actions to advertise or award that sale are not reviewable under this part. A subsequent implementation decision that is documented in a new decision document would be subject to review under this part.

§ 217.8 Levels of review available.

(a) *Decisions made below the level of the Chief of the Forest Service.*

The rules of this part entitle the public to only one level of administrative review of written decisions by Forest Service line officers below the level of the Chief. The levels of available review are as follows:

(1) If the decision is made by a district Ranger, the request for review is filed with the Forest Supervisor;

(2) If the decision is made by a Forest Supervisor, the request for review is filed with the Regional Forester;

(3) If the decision is made by a Regional Forester, the request for review is filed with the Chief of the Forest Service.

(b) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the request for review is filed with the Secretary of Agriculture. Review by the Secretary is wholly discretionary. Within 15 days of receipt of a request to review, the Secretary shall determine whether or not to review the decision in question. If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified that the Chief's decision is the final administrative decision of the Department of Agriculture. Procedures governing such reviews are set forth at § 217.14 of this part.

(c) *Discretionary review of review decisions.* Except for decisions to reoffer returned or defaulted timber sales made after October 30, 1986, review decisions rendered by Forest Service line officers pursuant to this part are subject to discretionary review by the officer at the next higher level.

(1) The levels of discretionary review are as follows:

(i) If the Reviewing Officer is the Forest Supervisor, the Regional Forester has discretion to review.

(ii) If the Reviewing Officer is the Regional Forester, the Chief of the Forest Service has discretion to review.

(iii) If the Reviewing Officer is Chief, the Secretary of Agriculture has discretion to review.

(2) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review.

(3) Within one day following the date of a review decision rendered by a Forest Service Reviewing Officer, that officer shall forward a copy to the next higher officer, so the superior officer has

full opportunity to exercise the discretion granted in this section.

(4) The higher level officer shall have 15 days from date of receipt to decide whether or not to review, and may call for and use the review file in deciding whether or not to review the decision. If that officer takes no action by the expiration of the 15-day period, the decision of the Reviewing Officer stands as the final administrative decision of the Department of Agriculture. The requester(s) shall be notified whether or not the decision will be reviewed.

§ 217.9 Filing procedures and timeliness.

(a) *Filing procedures.* To request review of a decision under this part, a person or organization must:

(1) File a written request for review in accordance with the provisions of § 217.11 of this part with the next higher line officer;

(2) File the request for review within 45 days of the date notice of the decision was published (§217.5).

(b) *Computation of time periods.* (1) The day after a notice of decision is published (§ 217.5) is the first day of the time period for filing a review request. All other time periods applicable to this part also will be calculated to begin on the first day following an event or action related to the review.

(2) All time periods in this rule are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing a request for review; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(3) Simultaneously send a copy of the request for review to the Deciding Officer.

(c) *Evidence of timely filing.* It is the responsibility of the party requesting review of a decision to file the request by the last day of the filing period. In the event of question, a legible postmark will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely filing of the request. Pursuant to § 217.14 of this part, a Reviewing Officer's decision on timely filing is not subject to review.

§ 217.10 Extension of time.

(a) *Requests for review.* The time period for filing a request for review is not extendable.

(b) *All other time periods.* Requesters, Deciding Officers, and Reviewing Officers shall meet the time periods specified in the rules of this part unless a Reviewing Officer has extended the time as provided in this paragraph. Except as noted in paragraph (a) of this section, a Reviewing Officer at the levels described in § 217.8(a) and (b) of this part may extend all other time periods under this part.

(1) Where good cause exists, a Reviewing Officer may extend the time for the Deciding Officer to assemble and transmit relevant decision documents. In case of extension, the Reviewing Officer shall notify the requester(s) of the extension and the new date.

(2) Except for discretionary reviews conducted pursuant to § 217.8(c) of this part, a Reviewing Officer may extend the time period of issuance of the review decision, including for purposes of allowing additional time for the Deciding Officer to resolve disputed issues pursuant to § 217.17 of this part.

§ 217.11 Content of a request for review.

(a) It is the responsibility of those who request review of a decision under this part to provide a Reviewing Officer sufficient narrative evidence and argument to show why the decision by the lower level officer should be changed or reversed.

(b) At a minimum, a requester must file a written request with the Reviewing Officer that:

(1) Lists the name, address, and telephone number of the requester;

(2) Identifies the decision to which the requester objects;

(3) Identifies the document in which the decision is contained by title and subject, date of the decision, and name and title of the Deciding Officer.

(4) Identifies specifically that portion of the decision or decision document to which the requester objects;

(5) States the reasons for objecting, including issues of fact, law, regulation, or policy, and, if applicable, specifically how the decision violates law, regulation, or policy;

(6) Identifies the specific change(s) in the decision that the requester seeks; and

(7) Identifies whether or not the requester has participated in public participation opportunities offered in the decisionmaking process and, if so, the extent of that participation.

§ 217.12 Requests to delay implementation of a decision.

(a) Requests to delay implementation of land and resource management plans prepared pursuant to 36 CFR Part 219 shall not be granted.

(b) Where a project or activity would be implemented before a review decision could be issued which would moot the review, the Reviewing Officer shall accept and grant written requests to delay implementation of the decision pending completion of the review, unless the Reviewing Officer determines there is an urgent, compelling need to proceed with the project.

(c) The requester must file the request to delay implementation with the Reviewing Officer, and provide a copy to the Deciding Officer.

(d) The Reviewing Officer shall rule on delay requests within 10 days of receipt of a request and shall give notice of the decision to the requester(s) and the Deciding Officer.

(e) A decision may be implemented during a review unless the Reviewing Officer has granted a delay in implementation.

(f) A Reviewing Officer's decision on a request to delay implementation of a project or activity is not subject to review at the next administrative level.

(g) When a delay in implementation is granted, it shall, at a minimum, remain in effect until the end of the 15-day period in which a higher level officer must decide whether or not to review a Reviewing Officer's decision (§ 217.8(c)). If the higher level officer decides to review the Reviewing Officer's decision, implementation shall be delayed until a decision is issued, or until the end of the 30-day review period provided in § 217.15(c), whichever is less.

§ 217.13 Review file.

(a) It is the responsibility of the Reviewing Officer to assemble and maintain in one location a file of documents related to the decision and review.

(b) The review of decisions under this part focuses on the documentation developed by the Deciding Officer in reaching decisions. The records on which the Reviewing Officer shall conduct a decision review consists of the request for review, any written comments submitted by interested parties, the official documentation prepared by the Deciding Officer in the decisionmaking process, the Deciding Officer's letter transmitting those documents to the Reviewing Officer, and any decision-review related correspondence, including additional information requested by the Reviewing Officer pursuant to § 217.14 of this part.

(c) Upon receipt of a copy of the request for review, the Deciding Officer shall assemble the relevant decision documentation (§ 217.3) and pertinent records and transmit them to the Reviewing Officer within 21 days.

(d) In transmitting the decision documentation to the Reviewing Officer, the Deciding Officer shall indicate how and where the documentation addresses

the issues raised in the request for review. The Deciding Officer may also respond briefly to issues raised in the request for review. The Deciding Officer shall provide a copy of the transmittal letter to the requester(s).

(e) Unless the Reviewing Officer has ruled otherwise or has requested additional information pursuant to § 217.14(c) of this subpart, the review file will close upon receipt of the decision documentation from the Deciding Officer.

(f) The decision review file is open to public inspection.

(g) The rules of paragraphs (a) through (e) of this section apply only to the review file at the first level of review (§ 217.8 (a) and (b)). Where an official exercises the discretion in § 217.8(c) of this subpart to review a review decision, the discretionary review shall be made on the existing review file, the Reviewing Officer's review decision, any orders of the Reviewing Officer to extend a delay of implementation, and any petitions to change or lift a delay of implementation. The file shall not be reopened to accept additional submissions from any party to the review or from the Reviewing Officer whose review decision is being reviewed.

§ 217.14 Authority of reviewing officer in conduct of a review.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such determinations and procedural instructions as appropriate to ensure orderly and expeditious conduct of the review.

(1) In case of multiple requests for review of a decision, the Reviewing Officer may prescribe special procedures as necessary to conduct the review.

(2) The requester(s) and Deciding Officer shall receive notice of any procedural instructions or decision governing conduct of a review.

(3) Procedural instructions and decisions are not subject to review by higher level officers.

(b) *Consolidation of multiple requests for review.* The Reviewing Officer shall determine whether to issue one review decision or separate decisions in cases of multiple requests for review of the same decision. In the event of a consolidated decision, the Reviewing Officer shall give advance notice to all who have requested review of the decision.

(1) Decisions to consolidate a review decision are not subject to review by higher level officers.

(2) At the discretion of the Reviewing Officer, the Deciding Officer may consolidate transmittal of decision documentation to the Reviewing Officer and respond to statements in multiple requests for review in one transmittal letter.

(c) *Requests for additional information.* At any time during the review, the Reviewing Officer conducting a review at the levels specified in § 217.8 (a) and (b) of this part may request additional information from a requester, the Deciding Officer, or anyone who has submitted written comments related to the review. At any level of review (§ 217.8), the Reviewing Officer may discuss issues related to review of a decision with the Deciding Officer (or first level Reviewing Officer), requesters or those who comment on a pending review, or their authorized agents or representatives, as needed to clarify information submitted or to seek resolution of the issues in question.

(d) *Conduct of review of decisions made by the Chief.* When the Secretary elects to review an initial decision made by the Chief (§ 217.8(b)), the Secretary shall conduct the review in accordance with all the applicable rules and procedures of this part.

(e) *Conduct of other discretionary reviews.* Where a higher level officer elects to review a decision rendered by a Reviewing Officer (§ 217.8(c)), the rules of this section do not apply, except that, as provided in paragraph (c) of this section, the officer conducting the discretionary review may discuss issues related to the review with the first level Reviewing Officer, the requester(s), or those who submitted comments.

§ 217.15 Review decision.

(a) The Reviewing Officer should issue a final review decision within 30 days of receipt of decision documentation from the Deciding Officer, except that for review of land and resource management plan approval, amendment, or revision decisions, the Reviewing Officer may take 90 days to issue a decision. The Reviewing Officer shall notify the requester(s) and Deciding Officer if more time is needed and the new date. The Reviewing Officer shall send a copy of the decision to any requester, the Deciding Officer, and to others upon request.

(b) The Reviewing Officer's decision shall affirm or reverse the original decision in whole or in part. The Reviewing Officer's decision may include instructions for further action by the Deciding Officer.

(c) A review decision must be consistent with applicable law, regulations, and orders.

(d) Unless a higher level officer exercises the discretion to review a Reviewing Officer's decision as provided at § 217.8, the Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this part.

(1) In the case of a discretionary review pursuant to § 217.8, the second level Reviewing Officer shall conclude the review within 30 days of the date of notice issued to a requester that the lower level decision will be reviewed.

(2) If a discretionary review decision is not issued by the end of the 30-day review period, the review is automatically terminated and the decision of the lower level Reviewing Officer stands as the final administrative decision of the Department. In such case, the requester(s) shall be notified.

§ 217.16 Dismissal without review and decision.

(a) A Reviewing Officer shall dismiss a request for review and close the review file without decision on the merits when:

(1) The request is not received within the time specified in § 217.9 of this part;

(2) The requested relief or change cannot be granted under existing law, fact, or regulation;

(3) The request for review fails to meet the minimum requirements of § 217.11 of this part to such an extent that the Reviewing Officer lacks adequate information on which to base a decision;

(4) The decision at issue is being reviewed under another administrative proceeding;

(5) The decision is excluded from review pursuant to § 217.7 of this part;

(6) The requester(s) withdraws the request for review; or

(7) The Deciding Officer withdraws a decision.

(b) Dismissal decisions are not reviewable by the next higher officer.

§ 217.17 Resolution of issues during review.

(a) At any time during the decision review process, the Deciding Officer may discuss the issues in dispute with the requester(s) and other persons and seek resolution of the issues in dispute. At the request of the Deciding Officer, the Reviewing Officer may extend the time periods for review to allow for conduct of meaningful negotiations.

(b) The Deciding Officer has the authority to withdraw the decision at issue during the review period. If the

Deciding Officer decides to withdraw the decision, both the Reviewing Officer and the requester(s) shall be notified, and the Reviewing Officer shall close the review file and notify the requester(s) that the case is dismissed. A Deciding Officer's subsequent decision to reissue or modify the withdrawn decision constitutes a new decision and is subject to review under this part.

§ 217.18 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plantiff has first sought to invoke and exhaust the procedures available under this part.

PART 228—MINERALS

5. The authority citation for Part 228 continues to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 551), and 94 Stat. 2400.

Subpart A—Locatable Minerals

6. Revise § 228.14 to read as follows:

§ 228.14 Appeals.

Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file an appeal under the provisions of 36 CFR Part 251, Subpart C.

PART 251—LAND USES

7. Add a new Subpart C to Part 251 to read as follows:

Subpart C—Appeals of Decisions Related to Occupancy and Use of National Forest System Lands

Sec.
251.80 Purpose and scope.
251.81 Applicability and effective date.
251.82 Definitions and terminology.
251.83 Parties eligible to participate in appeals.
251.84 Appealable decisions.
251.85 Decisions not appealable under this subpart.
251.86 Election of appeals process or decision review procedures.
251.87 Levels of reviews available.
251.88 Filing procedures and timeliness.
251.89 Extension of time.
251.90 Notice of appeal content.
251.91 Responsive statement.
251.92 Implementation and requests for stay of implementation.
251.93 Ruling on stay requests.
251.94 Duration of and changes to stay decisions.
251.95 Intervention.
251.96 Oral presentations.
251.97 Authority of reviewing officer in conduct of appeals.
251.98 Appeal record.
251.99 Appeal decision.
251.100 Dismissal without decision.
251.101 Resolution of issues by means other than appeal.
251.102 Policy in event of judicial proceedings.

Subpart C—Appeals of Decisions Related to Occupancy and Use of National Forest System Lands

Authority: 16 U.S.C. 551, 472.

§ 251.80 Purpose and scope.

(a) This subpart provides a process by which those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands may appeal a written decision by an authorized Forest Service line officer with regard to issuance, approval, or administration of the written instrument. The rules in the subpart establish who may appeal under these rules, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various procedures and timeframes that will govern the conduct of appeals under this subpart.

(b) The rules in this subpart seek to offer appellants a fair and deliberate process for appealing and obtaining administrative review of issues arising from the issuance, approval, and administration of written instruments that authorize the occupancy and use of National Forest System lands.

§ 251.81 Applicability and effective date.

(a) Except where applicants or holders elect the decision review procedures of Part 217 of this Chapter, all appeals of decisions arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands as defined at § 251.85 of this subpart shall be subject to the provisions of this subpart as of [*Insert date of effective date of this rule*].

(b) Appeals of the type covered by this subpart and filed prior to [*Insert effective date of this rule*] shall continue to be conducted under the provisions of 36 CFR 211.18.

§ 251.82 Definitions and terminology.

For the purposes of this subpart, the following terms are defined:

Administration of a written instrument or authorization to occupy and use National Forest System lands. A broad, all inclusive phrase used throughout this subpart to connote the full range of actions and decisions a forest officer takes to manage authorized uses of National Forest System lands, including, but not limited to, enforcement of terms and conditions included in written authorizations to which a holder has agreed, modification of terms and conditions, and suspension, cancellation, and/or termination of an authorization.

Appeal. A request to a higher ranking officer for relief from a written decision filed under this subpart by an applicant for or a holder of a written instrument issued or approved by a Forest Service line officer.

Appeal decision. The written decision rendered by the Reviewing Officer on an appeal for relief under this subpart. The use of this term is limited to the final decision of a Reviewing Officer and does not refer to decisions to grant, deny, or change a stay or to any other determinations or procedural orders made on the conduct of an appeal (§ 251.97).

Appeal record. The documents submitted to the Reviewing Officer by an appellant, intervenor, or Deciding Officer (§ 251.98).

Appellant. An eligible applicant for or holder of a written instrument issued for the occupancy and use of National Forest System land (or their authorized agent or representative) who files an appeal pursuant to the provisions of this subpart (§ 251.83).

Deciding Officer. The Forest Service line officer who makes a decision related to issuance, approval, or administration of an authorization to occupy and use National Forest System lands that is appealed under this subpart.

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Intervenor. An individual who, or organization that, is an applicant for or holder of the written instrument, or of similar instrument, issued by the Forest Service that is the subject of an appeal, has an interest that could be affected by an appeal, has made a timely request to intervene in that appeal, and has been granted intervenor status by the Reviewing Officer (§ 251.95).

Issuance of a written instrument of authorization. Applies both to decisions to grant and to deny a written instrument or authorization.

Notice of appeal. The document prepared and filed by an appellant to dispute a decision subject to review under this subpart (§ 251.90).

Oral presentation. An informal meeting (in person or by telephone) at which an appellant, intervenor, and/or Deciding Officer may present information related to an appeal to the Reviewing Officer (§ 251.96).

Parties to an appeal. The appellant(s), intervenor(s), and the Deciding Officer.

Responsive statement. A written document prepared by a Deciding Officer that responds to the notice of appeal filed by an appellant.

Reviewing Officer. The officer at the next administrative level above that of the Deciding Officer who conducts appeal proceedings, makes all necessary rulings regarding conduct of an appeal, and issues the appeal decision.

Written instrument or authorization. Any of those documents listed in § 251.84 of this subpart issued or approved by the Forest Service authorizing an individual, organization or other entity to occupy and use National Forest System lands and resources.

§ 251.83 Parties eligible to participate in appeals.

Only the following may participate in the appeals process provided under this subpart:

(a) An applicant who, in response to a prospectus or written solicitation or other notice by the Forest Service, filed a formal written request for a written authorization to occupy and use National Forest System land covered under § 251.84 of this subpart and

(1) Was denied the authorization, or

(2) Was offered an authorization subject to terms and conditions that the applicant finds unreasonable or impracticable.

(b) The signatory(ies) or holder(s) of a written authorization to occupy and use National Forest System land covered under § 251.84 of this subpart who seeks relief from a written decision related to administration of that authorization.

(c) An intervenor as defined in § 251.82 of this subpart.

(d) The Deciding Officer who made the decision being appealed under this subpart.

§ 251.84 Appealable decisions.

(a) The rules of this subpart govern appeal of written decisions of Forest Service line officers regarding issuance or administration of the following written instruments to occupy and use National Forest System lands:

(1) Permits for ingress and egress to intermingled and adjacent private lands across National Forest System lands, 36 CFR 212.8 and 212.10.

(2) Permits and occupancy agreements on National Grasslands and other lands administered under the provisions of Title III of Bankhead-Jones Farm Tenant Act issued under 36 CFR 213.3.

(3) Grazing and livestock use permits issued under 36 CFR Part 222, Subpart A.

(4) Mining plans of operating under 36 CFR Part 228, Subpart A.

(5) Permits and agreements regarding mineral materials (petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinder, clay, and other similar materials) under 36 CFR Part 228, Subpart C.

(6) Permits authorizing exercise of mineral rights reserved in conveyance to the United States issued under 36 CFR Part 251, Subpart A.

(7) Special use authorizations issued under 36 CFR Part 251, Subpart B, except, as provided in § 251.60(g), for suspension or termination of easements issued pursuant to 36 CFR 251.53 (e) and (l).

(8) Land exchange agreements under 36 CFR 254.11 and decisions to proceed with land exchanges.

(9) Mining operating plans for the Sawtooth National Recreation Area issued under 36 CFR 292.17 and 292.18.

(10) Permits for uses in Wilderness Areas issued under 36 CFR 293.3.

(11) Permits to excavate and/or remove archaeological resources issued under the Archaeological Resources Protection Act 1979 and 36 CFR Part 296.

(12) Approval of Surface Use Plans.

(13) Decisions to consent, not to consent, to object, or not to object to the issuance of mineral leases.

(14) Decisions related to the standards for the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area pursuant to 36 CFR Part 292, Subpart C.

(b) Written decisions on any of the matters listed in paragraph (a) of this section issued by a Forest Service staff officer with delegated authority to act for a Forest Service line officer are considered to be decisions of the line officer.

(c) A Deciding Officer shall give written notice of decisions subject to appeal under this subpart to applicants and holders defined in § 251.83 of this subpart and to any holder of like instruments who has made a written request to be notified of a specific decision. The notice shall include a statement of the Deciding Officer's willingness to meet with applicants or holders to hear and discuss any concerns or issues related to the decision (§ 251.101). The notice shall also specify the name of the officer to whom an appeal of the decision may be filed, and the address and deadline for filing an appeal.

§ 251.85 Decisions not appealable under this subpart.

The following decisions are not appealable under this subpart:

(a) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR Part 24.

(b) Decisions involving Freedom of Information Act denials under 7 CFR Part 1 or Privacy Act determinations under 7 CFR 1.118.

(c) Decisions for which the jurisdiction of another Government agency, the Comptroller General, or a court to hear and settle disputes supersedes that of the Department of Agriculture.

(d) Recommendations of Forest Service line officers to higher ranking Forest Service line officers or to other entities having final authority to implement the recommendation in question.

(e) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117 (Administration of Cooperative for Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Recreation Payment of Amount); and 4 CFR Part 21 (Bid Protests).

(f) Decisions pursuant to Office of Management and Budget Circular A–76, Performance of Commercial Activities.

(g) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(h) Decisions covered by the Contract Disputes Act.

(i) Decisions involving Agency personnel matters.

(j) Decisions where relief sought is reformation of a contract or award of monetary damages.

(k) Decisions made during the preliminary planning or the National Environmental Policy Act that precede decisions to implement the proposed action.

(l) Decisions related to National Forest land and resource management plans and projects only reviewable under 36 CFR Part 217.

(m) Decisions related to rehabilitation of National Forest Systems lands and recovery of forest resources resulting from natural disasters or other natural

phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice that good cause exists to exempt such decisions from appeal under this subpart.

(n) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or for violations of prohibitions and orders under 36 CFR Part 261.

(o) Reaffirmation of prior decisions to terminate a special use authorization.

§ 251.86 Election of appeals process or decision review procedures.

(a) No decision can be appealed by the same person under both this subpart and Part 217 of this chapter.

(b) Should a decision be reviewable under this subpart as well as Part 217 of this chapter, a party who qualifies to bring an appeal under this subpart can elect which process to use to request review of a decision, and in so doing, the appellant thereby forfeits all right to appeal that same decision under the other review process.

§ 251.87 Levels of review available.

(a) *Decisions below the level of the Chief of the Forest Service.* The rules of this subpart entitle appellants to only one level of administrative review of written decisions by Forest Service line officers. The levels are as follows:

(1) If the decision is made by a District Ranger, the appeal is to the Forest Supervisor;

(2) If the decision is made by a Forest Supervisor, the appeal is to the Regional Forester;

(3) If the decision is made by a Regional Forester, the appeal is to the Chief of the Forest Service.

(b) *Decisions Made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the appeal is to the Secretary of Agriculture. Review by the Secretary is discretionary. Within 15 calendar days of receipt of a timely notice of appeal, the Secretary shall determine whether or not to review the decision. If the Secretary has not decided whether or not to review the decision by the expiration of the 15-day period, the appellant shall be notified that the Chief's decision is the final administrative decision of the Department of Agriculture.

(c) *Discretionary Review of Appeal Decision.* Appeal decisions rendered by Forest Service Reviewing Officers are subject to discretionary review by the superior officer at the next administrative level.

(1) The levels of discretionary review are as follows:

(i) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review the appeal decision.

(ii) If the Reviewing Officer was a Regional Forester, the Chief has discretion to review the appeal decision.

(iii) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review the appeal decision.

(2) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review.

(3) Within one day following the date an appeal decision by a Forest Service Reviewing Officer is signed, the Reviewing Officer shall forward a copy to the next higher officer so the superior officer has full opportunity to exercise the discretion granted in this section.

(4) The next higher level officer shall have 15 calendar days from date of receipt to decide whether or not to review an appeal decision and may call for or use the appeal record in deciding whether or not to review the appeal decision. If that officer takes no action by the expiration of the discretionary review period, appellants shall be notified that the appeal decision of the Reviewing Officer stands as the final administrative review decision of the Department of Agriculture.

§ 251.88 Filing procedures and timeliness.

(a) *Filing procedures.* In order to appeal a decision under this subpart, an appellant must:

(1) File a notice of appeal in accordance with § 251.90 of this subpart with the next higher line officer as identified in § 251.84(b).

(2) File the notice of appeal within 45 days of the date on the notice of the written decision being appealed (§ 251.84(c)); and

(3) Simultaneously send a copy of the notice of appeal to the Deciding Officer.

(b) *Evidence of timely filing.* It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timeliness of the notice of appeal. A Reviewing Officer's decision on timely receipt is not subject to appeal or review.

(c) *Computation of time period for filing.* (1) The time period for filing a notice of appeal of a decision under this subpart begins on the first day after the Deciding Officer gives written notice of the decision. All other time periods applicable to this subpart also will be computed to begin on the first day following an event or action related to the appeal.

(2) Time periods applicable to this subpart are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday the filing time is extended to the end of the next Federal working day.

§ 251.89 Extension of time.

(a) *Filing of notice of appeal.* Time for filing a notice of appeal is not extendable.

(b) *All other time periods.* Appellants, Intervenors, Deciding Officers, and Reviewing Officers shall meet the time periods specified in the rules of this subpart, unless a Reviewing Officer has extended the time as provided in this paragraph. Except as noted in paragraph (a) of this section, the Reviewing Officer may extend all other time periods under this subpart.

(1) For appeals filed in accordance with § 251.87(a) and (b) of this subpart, a Reviewing Officer, where good cause exists, may grant a written request for extension of time to file a responsive statement or replies thereto. The Reviewing Officer shall rule on requests for extensions within 10 days of receipt of the request and shall provide written notice of the extension ruling to all parties to the appeal.

(2) Except for discretionary reviews of appeal decisions conducted pursuant to § 251.87(c) of this subpart, a Reviewing Officer may extend the time period for issuance of the appeal decision, including for purposes of allowing additional time for the Deciding Officer to resolve disputed issues pursuant to § 251.101 of this subpart.

§ 251.90 Notice of appeal content.

(a) It is the responsibility of an appellant to provide a Reviewing Officer sufficient narrative evidence and argument to show why a decision by a lower level officer should be reversed or changed.

(b) An appellant must include the following information in a notice of appeal:

(1) The appellant's name, mailing address, and daytime telephone number;

(2) The title or type of written instrument involved, the date of application for or issuance of the written instrument, and the name of the responsible Forest Service Officer;

(3) A brief description and the date of the written decision being appealed;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the facts of the dispute and the issue(s) raised by the appeal;

(6) Specific reference to any law, regulation, or policy that the appellant believes to be violated and the reason for such an allegation;

(7) A statement as to whether and how the appellant has tried to resolve the issue(s) being appealed with the Deciding Officer, the date of any discussion, and the outcome of that meeting or contact; and

(8) A statement of the relief the appellant seeks.

(c) An appellant may also include in the notice of appeal a request for oral presentation (§ 251.96) or a request for stay of implementation of the decision pending decision on the appeal (§ 251.93).

§ 251.91 Responsive statement.

(a) *Content.* A responsive statement contains the Deciding Officer's response to the specific facts or issues of law or regulation, and requested relief set forth by the appellant in the notice of appeal.

(b) *Timeframe.* Unless the Reviewing Officer has granted an extension, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of receipt of the notice of appeal.

(c) *Replies.* Within 20 days of the postmarked date of the responsive statement, the appellant(s) and any intervenor(s) may file a written reply to the responsive statement with the Reviewing Officer. Appellants and intervenors must end a copy of any reply to a responsive statement to all parties to the appeal, including the Deciding Officer.

§ 251.92 Implementation and request for stay of implementation.

(a) A decision may be implemented during an appeal unless the Reviewing Officer grants a stay.

(b) An appellant or intervenor may request a stay of a decision at any time while an appeal is pending, if the harmful effects alleged pursuant to paragaph (c)(3) of this section would occur during the pendency of the appeal.

(c) To request a stay of decision, an appellant or inervenor must:

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), to intervenor(s), and to the Deciding Officer

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped; and

(C) How the cited effects and impacts would prevent a meaningful or decision on the merits.

(d) A Deciding Officer and other parties to an appeal may provide the Rewiewing Officer with a written response to a stay request. A copy of any response must be sent to all parties to the appeal.

§ 251.93 Ruling on stay requests.

(a) *Timeframe.* The Reviewing Officer may rule on a stay request at any time but must rule no later than 10 calendar days from receipt.

(b) *Denial where implementation is not imminent.* The Reviewing Officer may deny any request to stay implementation of a decision that is not scheduled to begin during pendency of the appeal.

(c) *Criteria to consider.* In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to § 251.92(c) of this subpart including the validity of any claim of adverse effect on the requester;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(c) *Notice of Decision on a Stay Request.* A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to all parties to the appeal.

§ 251.94 Duration of and changes to stay decisions.

(a) *Duration.* A stay shall remain in effect for the 15-day period for determining discretionary review (§ 251.87(c)), unless changed by the Reviewing Officer in accordance with paragraph (b) of this section. In conducting a discretionary review of an appeal decision pursuant to § 251.87(c) of this subpart, a Reviewing Officer may extend the stay, in whole or in part, during pendency of the discretionary review.

(b) *Change in a Stay.* A Reviewing Officer may change a stay decision in accordance with any terms established in the stay decision itself or at any time during pendency of an appeal that circumstances support a change of stay. In making any changes to a stay decision, the Reviewing Officer must issue a written notice to all parties to the appeal explaining the reason for making the changes and setting forth any terms or conditions that apply to the change.

(c) *Petitions to Change a Stay.* An appellant or intervenor may also petition a Reviewing Officer to change or lift a stay at any time during the pendency of a stay. Such petitions must be in writing, must explain how circumstances have changed since the stay was imposed, and must state why the change in the stay is being requested. The petitioner must send a copy of the petition to all parties to the appeal.

(d) *Appeal of Stay Decision or Changes in Stay.* A Reviewing Officer's decision to grant, deny, lift or otherwise change a stay is not subject to further appeal and review.

§ 251.95 Intervention.

(a) A request to intervene in an appeal may be made at any time prior to the closing of the appeal record at the first level of appeal (§ 251.87(a)). Requests to intervene in an appeal at the discretionary review level (§ 251.87(c)) shall be denied.

(b) To request intervention in an appeal under this subpart, a party, at a minimum, must:

(1) Submit a written petition to intervene to the Reviewing Officer;

(2) Be, as defined at § 251.83 of this subpart, an applicant for or party to a written instrument issued by the Forest Service that is the subject of or affected by the appeal and have an interest that could be directly affected by a decision on the appeal, and

(3) Show in the request for intervention, how the decision on the

appeal would directly affect petitioner's interests.

(c) The Reviewing Officer determines whether a party requesting intervention meets the requirements of paragraph (a) of this section. In granting intervention, the Reviewing Officer must give notice to all other parties to the appeal.

(d) A grant or denial of intervention is not subject to appeal to a higher level.

(e) Appellants and intervenors must concurrently furnish copies of all submissions to each other as well as the Deciding Officer. Failure to provide each other copies may result in removal of a submission from the appeal record. At the discretion of the Reviewing Officer, appellants may be given additional time to review and comment on initial submissions by intervenors.

(f) An intervenor cannot continue an appeal if the appellant withdraws the appeal.

§ 251.96 Oral presentations.

(a) *Purpose.* An oral presentation provides an additional opportunity for an appellant, and other parties to an appeal, to present their viewpoints to the Reviewing Officer. The purpose is to restate, emphasize, and/or clarify information related to an appeal. Oral presentations are to be conducted in an informal manner and shall not be subject to formal rules of procedure such as those applicable to judicial proceedings.

(b) *Requests.* Only an appellant may request and be granted an oral presentation. An appellant may request an oral presentation at any time prior to closing of the appeal record (§ 251.98). A Reviewing Officer shall automatically grant an oral presentation if the appellant requested the presentation as part of the notice of appeal.

(c) *Participation.* At the discretion of the Reviewing Officer, oral presentations may be open to public attendance, but participation is limited to parties to the appeal. The Reviewing Officer shall advise all parties to the appeal, including the Deciding Officer, of the place, time, and date of the conference, and how the conference will be conducted. All parties to an appeal shall be invited to participate. Appellants and intervenors must bear any expense involved in making an oral presentation in person or by telephone.

(d) *Limitation.* Oral presentations shall be held only at the first level of appeal (§ 251.87(b)).

§ 251.97 Authority of reviewing officer in conduct of appeals.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such procedural orders as deemed appropriate to ensure orderly, expeditious, and fair conduct of an appeal.

(1) In appeals involving intervenors, the Reviewing Officer may prescribe special procedures to conduct the appeal.

(2) All parties to an appeal shall receive notice of any orders or decisions on the conduct of the appeal.

(3) Orders and determinations governing the conduct of an appeal are not subject to appeal and further review.

(b) *Consolidation of appeals.* A Reviewing Officer may consolidate multiple appeals of the same decision, or of similar decisions involving common issues of fact or law and issue one appeal decision. In such case, the Reviewing Officer shall give notice to all parties to multiple appeals.

(1) A decision to consolidate appeals is not subject to appeal and further review.

(2) At the discretion of the Reviewing Officer, the Deciding Officer may prepare one responsive statement to multiple appeals.

(c) *Requests for additional information.* Except in discretionary reviews conducted pursuant to § 251.87(c) of this subpart, the Reviewing Officer may ask any party to an appeal for additional information as deemed necessary to decide the appeal. The Reviewing Officer shall notify all parties of the request or information from other sources, provide all parties an opportunity to comment, and extend time periods if necessary.

(d) *Conduct of appeals of decisions made by the Chief.* When the Secretary elects to review an initial decision made by the Chief (§ 251.87(b)), the Secretary shall conduct the review in accordance with all the applicable rules and procedures of this subpart.

(e) *Conduct of other discretionary reviews.* Where a higher level officer elects to review an appeal decision rendered by a Reviewing Officer (§ 251.87(c)), the rules of this section do not apply. Stays may be extended or changed in accordance with the provisions of § 251.94. As provided in § 251.95 and § 251.96 of this subpart, oral presentations and intervention requests at this level of review shall be denied.

§ 251.98 Appeal record.

(a) The following rules apply only to the appeal record for appeals at the first level (§ 251.87 (a), (b) of this subpart):

(1) It is the responsibility of the Reviewing Officer to assemble and maintain in one location the documents related to the appeal.

(2) The record consists of the documents filed with the Reviewing Officer including, but not limited to, the notice of appeal, responsive statement, replies to submissions by various parties to the appeal, orders and determinations made on the conduct of the appeal, and correspondence.

(3) The Reviewing Officer has discretion to remove from the record documents that were not sent to all parties to an appeal.

(4) Unless the Reviewing Officer has ordered otherwise, the appeal record closes with the expiration of the time period for filing of the reply(ies) to the responsive statement, or at the conclusion of an oral presentation, if there is one. The Reviewing Officer shall notify all parties to an appeal of the closure of the record.

(5) The appeal record is open to public inspection.

(b) Where an official exercises the discretion in § 251.87(c) of this subpart to review an appeal decision, the discretionary review shall be made on the existing appeal record, the Reviewing Officer's appeal decision, any orders of the Reviewing Officer to extend a stay, and any petitions to change or lift a stay. The record shall not be reopened to accept additional submissions from any party to the appeal or from the Reviewing Officer whose appeal decision is being reviewed.

§ 251.99 Appeal decision.

(a) The Reviewing Officer shall base the appeal decision on the appeal record and existing law, regulation, orders, policy and procedure.

(b) The Reviewing Officer shall affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer may also include in the appeal decision instructions for further action by the Deciding Officer.

(c) At the first level of review, the Reviewing Officer should make and issue an appeal decision within 30 days of the date the record is closed. The Reviewing Officer must notify the parties to the appeal if more time is needed.

(d) Unless the next higher officer exercises the discretion to review an appeal decision provided in § 251.87 of this subpart, the appeal decision is the final administrative decision of the Department of Agriculture and is not subject to further review under this subpart or Part 217 of this chapter.

(1) In the case of a discretionary review pursuant to this § 251.87, the second level Reviewing Officer shall

conclude the review within 30 days of the date of notice issued to an appellant that the lower level decision will be reviewed.

(2) If a discretionary review decision is not issued by the end of the 30-day review period, the review is automatically terminated and the decision of the lower level Reviewing Officer stands as the final administrative decision of the Department. In such case, appellants, intervenors, and the lower level Reviewing Officer shall be notified.

(e) The Reviewing Officer shall provide a copy of the decision to all appellants, intervenors, the Deciding Officer, and in the case of discretionary review, the lower level Reviewing Officer.

§ 251.100 Dismissal without decision.

(a) The Reviewing Officer shall dismiss an appeal and close the record without a decision on the merits when:

(1) The appellant is not eligible to appeal a decision under this subpart.

(2) Appellant's notice of appeal is not filed within the required time period, or the notice of appeal fails to meet the minimum requirements of § 251.90 of this subpart to such an extent that the Reviewing Officer lacks adequate information on which to base a decision.

(3) In cases where there is only one appellant, the appellant withdraws the appeal.

(4) The requested relief cannot be granted under existing law, fact, or regulation;

(5) The appeal of a decision is excluded from appeal under this subpart;

(6) The Deciding Officer has withdrawn the decision under appeal.

(7) A request for review of the same decision has been filed by the same person under Part 217 of this Chapter.

(b) The Reviewing Officer shall give written notice of dismissal that includes an explanation of why the appeal is dismissed.

(c) A decision to dismiss an appeal is not subject to further appeal and review.

§ 251.101 Resolution of issues by means other than appeal.

(a) Authorized Forest Service officers shall, to the extent practicable and consistent with the public interest, consult and meet in person, or less preferably by phone, with holders of written instruments prior to issuing written decisions related to administration of a written authorization. The purpose of such meetings is to discuss any issues or concerns related to the authorized use and to reach a common understanding and agreement where possible prior to issuance of a written decision.

(b) When decisions are appealed, the Deciding officer may discuss the appeal with the appellant(s) and intervenors together or separately to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decison on the appeal. At the request of the Deciding Officer, the Reviewing Officer may extend the time periods for review to allow for conduct of meaningful negotiations.

(c) The Deciding Officer has the authority to withdrawn a decision, in whole or in part, during the appeal. Where a Deciding Officer decides to withdraw a decision, all parties to the appeal and the Reviewing Officer must receive written notice.

§ 251.102 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of and relief from a decision appealable under this subpart is premature and inappropriate, unless the appellant has first sought to resolve the dispute by invoking and exhausting the procedures of this subpart.

Date: March 21, 1988.

James C. Overbay,

Deputy Chief.

BILLING CODE 3410-11-M

APPENDIX A
COMPARATIVE REVIEW (BY SECTION)
CURRENT RULE 36 CFR 211.18, AND
PROPOSED RULES 36 CFR 251 SUBPART C AND 36 CFR 217

Note: This appendix is for comparative purposes only. It will not appear in the Code of Federal Regulation.

An appeals process, in its most traditional sense, is adjudicatory, by which a party who has a legal right and who believes the right was violated, chooses a process to address the grievance. During an administrative appeal, the agency looks at what happened and judges the rightness or wrongness and prescribes a remedy.

The Forest Service appeal process has from time-to-time been limited to grievance procedures, but over time the process has become broader in scope. While 36 CFR 211.18 has some trappings of an adjudicatory process, it is used less as a grievance process (15%) than as a review-of-operations process (85%).

The recommendation, therefore, is for a 2-rule dispute resolution process, distinguished by the types of decisions at issue and the degree of agency discretion in making the decision. One rule would be for decisions relating to land and resource management plans, projects, and activities conducted in compliance with the National Environmental Policy Act (36 CFR 217); the other for decisions arising from the issuance or administration of written authorizations for the occupancy and use of National Forest System lands (36 CFR 251, Subpart C).

Basic Principles Underlying 36 CFR Part 251, Subpart C	Basic Principles Underlying 36 CFR, Part 217
Subject matter involves an authorization which conveys or involves a legal relationship between an instrument holder and the Forest Service under a law or statute; origin is in the Constitution or a statute or regulation. Process is somewhat adjudicatory and has procedural guarantees for all parties.	Subject matter involves decisions wholly within the discretion of the agency to make and which do not involve a legal relationship between the agency and the aggrieved party. Process provides a means to protest decision and is informal with minimum of procedural requirements.
	Public has a right to receive notice and to have an opportunity to comment on proposed action.
Dispute is usually about a past action. Facts exist about the authorized occupancy or use at time decision made.	Dispute is about a future action authorized by the decision on which review is requested.
Remedy for dispute resides within or may be interpreted from the written instrument involved, statute, or regulation.	Remedy for dispute is to perform the "action" differently or not at all and lies wholly within the agency's discretion to accomplish.
Since written instrument can already be in effect at time of appeal, stay procedures are essential.	Since action to be taken under the decision is in the future, stay of decision may or may not be essential.

Comparative Analysis of 36 CFR 211.18/ 36 CFR 251, Subpart C/36 CFR 217

Current Rule 36 CFR 211.18	Proposed Process for Appeal of Written Instrument Decisions, 36 CFR Part 251, Subpart C	Proposed Decision Review Process, 36 CFR Part 217
What is Appealable and What are the Exclusions?		
(a) Decisions of Forest Officers unless excluded in (b)(1)-(11)	{**251.84;.85** Decisions affecting a written instrument, including certain applications; basically excludes same decisions as current rule	.{**217.6;.7** Limited to actions arising from NEPA compliance, i.e., decisions recorded in Records of Decision, Decision Notices, Decision Memos; basically excludes same decisions as current rule
Definitions		
None provided	{**251.82** Special terms defined	{**217.3** Special terms defined
Who May Appeal?		
(a)(1-2) Anyone who objects to a forest officer's decision	{**251.83** Holders of written instruments and certain applicants	{**217.4** Any person or organization who objects to a decision, except Forest Service employees or Federal agencies
How is Notice Given?		
(a)(2) Written notice to instrument holders; published notices	{**251.84** Written notice of decisions; notice specifies Reviewing Officer address to which appeal must be filed and date for filing	{**217.5** Notice of decisions published in newspaper or Federal Register
Provision for Conflict Resolution (Negotiation)		
No provision, but alluded to in agency directives (FSM 1571.02 and 1571.03)	{**251.84;.90;.101** Decision notice must include invitation to meet and discuss; notice of appeal should state if appellant has met with Deciding Officer to resolve; Reviewing Officer may stop clock to allow negotiation; Deciding Officer may meet w/parties during appeal	{**217.17** Authorizes Deciding Officer to resolve dispute while review is in progress

Filing an Appeal and Extensions		
(c) (d) File w/i 45 days w/Deciding Officer, supporting documents filing extendable; Reviewing Officer may give extensions except NOA	{**251.88** File Notice of Appeal (NOA) in 45 days w/Reviewing & Deciding Officer; supporting documents filed with NOA; no extensions for filing NOA	{**217.9** Request for decision review must be filed 45 days from date notice of decision is published; supporting documents filed with request; no extensions
Statement of Reasons		
(c) Required w/in 45 days of filing appeal, unless Reviewing Officer extends	{**251.90** No separate statement of reasons required or allowed; all information is in Notice of Appeal	{**217.11** All supporting information is required in the request for review; no separate statement of reasons allowed
Responsive Statement		
(g) Required w/in 30 days after Statement of Reasons received from appellant	{**251.91** Due to Reviewing Officer in 30 days unless extension granted; copy to all parties	{**217.13** None required; Deciding Officer describes how existing documents respond to requester's issues; 21 days to forward; may briefly respond to issues; agency plans to monitor performance closely
Levels of Appeal		
(f) 2 levels on initial decisions; procedural levels cannot exceed levels of review available for appeal of initial decision	{**251.87** 1 level; permits discretionary review by next higher level officer; 15 days to decide; if reviewed, 30-day limit for decision	{ **217.8** 1 level of review; permits discretionary review by next higher level officer; 15 days to decide; if review, 30-day limit for decision
Intervention		
(l) Anyone with an immediate interest; same rights as appellants; may intervene at any time; can carry appeal forward	{**251.95** Limited to like holders or applicants only; cannot continue appeal if appellant withdraws; not available for discretionary level	{**217.4** No intervention; interested persons limited to filing written comments

Stays		
(h) Request any time to Reviewing Officer; Reviewing Officer rules in 21 days; requests are detailed and must be site-specific; Reviewing Officer may change decision; stay decisions appealable; decisions may be implemented immediately if stay not requested/granted	{**251.92;.93;.94** Similar to current rule except must rule in 10 days; not subject to discretionary review by higher level; stay remains in effect through 15-day period for deciding on discretionary review; can be extended or revised if discretionary review undertaken	{**217.12** Called delay of implementation; no delay for forest plans; if project implementation imminent, will be delayed upon request; if project not scheduled to begin until after review is completed, will not be delayed; if granted, remains in effect through 15-day period for deciding on discretionary review and 30-day discretionary review period, if undertaken
Oral Presentations		
(m) Request due 45 days from decision; Reviewing Officer sets procedures; parties can add summary to record afterwards	{**251.96** Only appellant may request; automatic if requested at time of appeal, discretionary if requested later; all appellants, intervenors, and Deciding Officer may participate; appellant(s) & intervenors must bear any expense of participation; not available at discretionary level	Not applicable
Timeliness		
(c) 1st level = 45 days; 2nd level = 30 days; USPS postmark precedential; timeliness decided by Reviewing Officer; timeliness decisions appealable	{**251.88** Appeal must be filed within 45 days; postmark precedential; timeliness decisions not appealable	{**217.9** Similar to appeals of written instruments
Procedural Matters Rulings		
(o) Decisions on stays and dismissals are appealable, if level available	{**251.94;.100** No appeals of procedural rulings (stays or dismissals)	{**217.12;.16** No further review of procedural rulings allowed
Information Gathering by Deciding or Reviewing Officer		
(q) Reviewing Officer may suspend process and request additional information if record considered inadequate to issue a decision	{**251.97;.101** Allows Reviewing Officer to request additional information except at discretionary level; Deciding Officer may discuss appeal with appellants and intervenors--without explicit obligation to document	{**217.14;.17** Allows Reviewing Officer to request additional information except at discretionary level; either Officer may consult jointly or separately w/anyone to gain information or discuss issues during review

20-Day Comment Period on Responsive Statement		
(g) Parties may comment on Deciding Officer's responsive statement; extensions may be granted; filed w/Deciding Officer	{**251.91** Same as current rule except filed w/Reviewing Officer w/copy to Deciding Officer	Not applicable
Deciding Officer Authority		
Implicit in several subsections	{**251.101** More explicit than current rule; permits Deciding Officer to withdraw decision; can discuss appeal w/appellants & intervenors and negotiate	{**217.17** Similar to written instruments
Reviewing Officer Authority in Conduct of Appeal/Review		
Implicit in several subsections	{**251.97** More explicit than current rule; Reviewing Officer may issue procedural orders, stop clock for negotiation, request more information; makes explicit that if the Secretary reviews an initial decision of the Chief, that review will be subject to rules applicable to other first-level appeals; limits authority of Reviewing Officer at the discretionary level	{**217.14;.15** Similar to written instruments
Consolidation of Appeals		
(n) Reviewing Officer may consolidate multiple appeals of same decision and permit Deciding Officer to prepare one responsive statement	{**251.97** Same as current rule	{**217.14** Similar to current rule
Continuations		
(s) Allowed continuation of appeals already begun under former rule	{**251.81** Allows continuation of appeals already begun under current rule	{**217.2** Same as written instruments
Appeal Record		
(p) Defined as to content; requires closure; assembled by Deciding Officer	{**251.98** Similar to current rule; assembled by Reviewing Officer	{**217.13** Called review file; contents simpler because emphasis is on documentation existing at time of initial decision; assembled by Reviewing Officer

Appeal Decision		
(q) Based only on closed record; due in 30 days from closure date; notify parties if more time needed	{**251.99** Similar to current rule; may affirm, reverse or modify the decision; automatic termination of discretionary review if decision not rendered in 30 days	{**217.15** Called "review decision"; 90 days if review is of the approval of a LMP; 30 days on all others; otherwise similar to written instruments; automatic termination of discretionary review if decision not rendered in 30 days
Standard of Review		
No provision but appeals handbook (FSH 1509.12) states "correctness" as standard	{**251.99** No standard; appeal decision must include the reasons for the decision	{**217.15** Same as under appeals of written instruments
Suspensions		
(q) Limits to suspending for further information if record inadequate; FSM 1509.12 limits suspension to acquiring existing information	{**251.97;.101** Reviewing Officer may extend time periods as needed to acquire information or allow for conduct of negotiations at first level only; specific term suspension not utilized	{**217.17** Similar to written instruments

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federal register

Monday
May 16, 1988

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3000 et al.

Oil and Gas Leasing, Geothermal Resources Leasing; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3040, 3100, 3130, 3150, 3160, 3180, 3200, 3210, 3220, 3240, 3250, and 3260

[AA-620-88-4111-01; Circular No. 2606]

Oil and Gas Leasing, Geothermal Resources Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking makes changes to existing regulations that will clarify procedures in the administration of the oil and gas leasing program on which there have been questions since the publication of the revised regulations for 43 CFR Groups 3000 and 3100 in the **Federal Register** of July 22, 1983. This final rulemaking also makes changes in the regulations in 43 CFR Group 3200.

Proposed changes concerning the noncompetitive and competitive leasing provisions in Subparts 3110, 3111, 3112, and 3120 that were published in the **Federal Register** as proposed rulemaking on June 12, 1987 (52 FR 22592) have been removed in their entirety in this final rulemaking. Those proposed changes were made obsolete by the enactment on December 22, 1987, of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, hereinafter referred to as the Reform Act. A proposed rulemaking published on March 21, 1988, in the **Federal Register** (53 FR 9214) to implement the provisions of the Reform Act contains the revisions proposed to these subparts and changes to other subparts, including Subparts 3102, 3103, 3104, 3106, and 3108. Numerous provisions and references in the June 12, 1987, proposed rulemaking concerning Subpart 3112, or sections therein, have been deleted in this final rulemaking because the specific provisions are no longer pertinent. Changes that are made in this final rulemaking include clarification of the definitions of lessee, operating rights owner (sublessee), and operator and the responsibilities of each concerning lease rights, obligations, and operations on leased lands, including bonding obligations and responsibilities. This final rulemaking also clarifies procedures for approval of lease transfers of record title and operating rights (subleases). It specifies that approval by the Bureau of Land Management is for administrative purposes only and does not warrant that either party to the transfer holds legal or equitable title to the lease. This rulemaking has provisions relating to mass transfers, that is, numerous lease transfers from a single entity to another. In addition, the final rulemaking provides that a request for approval of a voluntary termination of a communitization or unit agreement or the expiration of an agreement without satisfaction of a public interest requirement shall cause the agreement to be invalid from the beginning.

EFFECTIVE DATE: June 15, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 653-2190, or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the regulations in 43 CFR Groups 3000, 3100, and 3200 was published in the **Federal Register** on June 12, 1987 (52 FR 22592), with a 60-day comment period. During the comment period, comments were received from 35 sources: 14 from business interests, primarily related to the oil industry; 4 from attorneys; 3 from associations; and 14 from Federal agencies. Generally, the comments expressed the view that the changes made by the proposed rulemaking clarify the existing regulations and will be helpful. In addition, there were comments on many of the sections of the proposed rulemaking, some opposing certain provisions and recommending changes. The comments and the action taken on them are discussed in this preamble.

One comment questioned the need for two different authority provisions in each part of the proposed rulemaking. The regulations of the Office of the Federal Register require that an "authority citation" be included at the beginning of each part. The authority section is included in certain parts because it makes the part complete, and in other parts there are special statutory provisions that need to be fully explained in the authority section. Finally, the comment questioned the need to repeat the full text of the authority citation when there is no change in its language. Again, the regulations of the Office of the Federal Register require that the full text of the authority citation be repeated in both the proposed and final rulemaking, even if there is no change in the text of the citation.

43 CFR Part 3000

Section 3000.0-5 Definitions.

Several comments were submitted on the changes made by the proposed rulemaking in the definitions of the terms "party in interest" and "interest." Two of the comments expressed the view that the proposed changes in the definition of these terms caused confusion. The cross-reference to Subpart 3112 in the definition of "party in interest" has been removed and the language in the definition of "interest" in the proposed rulemaking relating to former Subpart 3112 has been removed because that subpart has been removed, the Reform Act having made obsolete the need to delineate differences in the oil and gas leasing methods used by the Department of the Interior. The amended definition of the term "interest" in the final rulemaking addresses only those aspects that do not relate to former Subpart 3112.

In response to several comments on the proposed rulemaking that expressed concern about the expansion of the definition of the term "interest," the final rulemaking has deleted the phrase "fiduciary obligations, security interests." A review of the definition of this term as it appeared in the proposed rulemaking showed that the language of the proposed rulemaking could be interpreted more broadly than was intended. The objective is to identify those holding and controlling interests in oil and gas leases in order to determine whether the acreage limitations and other requirements of the Mineral Leasing Act are being met. It is not the intent to include in the definition of the term "interest" any debt of an entity that may be satisfied by income received from a lease, if that debt does not involve the potential acquisition of the lease by the lender.

One of the comments raised the issue of publicly traded limited partnerships, suggesting that the final rulemaking revise the definition of the term "interest" specifically to exclude unit holders of such partnerships. The final rulemaking has not adopted this suggested change in § 3000.0-5(l), as discussed under section 3102 below.

One of the comments on § 3000.0-5 expressed concern that the changes made by the proposed rulemaking would return the Bureau of Land Management to the earlier requirement that all "parties in interest" be identified in an over-the-counter offer to lease, as well as in all assignments, transfers, and competitive bids. The comment apparently misunderstood the intent on this issue. There is no intention to

expand the information relating to "interest" presently required in a lease offer or an assignment, transfer, or competitive bid. The information is not needed by the Bureau of Land Management unless its examination of the lease instrument or other lease-related document indicates that there may be a problem. At that point, the Bureau can request any information it needs to ascertain the propriety of the lease action. Where necessary for consistency, the final rulemaking has adopted changes in § 3200.0–5, which are discussed above in the comments on "interest."

Section 3000.8 Management of Federal minerals from reserved mineral estates.

Several comments were received on this section of the proposed rulemaking. Generally, those comments questioned why this section was not limited in its application to oil and gas. The reference to groups 3000 and 3100, groups covering oil and gas activities, limits the application of this section to those minerals. Therefore, the final rulemaking has not adopted a specific reference to oil and gas because it is unnecessary, nor has it adopted a specific reference to geothermal resources in § 3200.2.

Section 3100.0–3 Authority.

Several comments on this section of the proposed rulemaking objected to the prohibition of leasing of National Park System lands on the basis that leases on such lands could contain stipulations that would protect the lands and resources. These comments have not been accepted because it is a policy of the Department of the Interior, and in many cases a matter of law, that mineral leasing will not be allowed on National Park System lands unless there is specific statutory authority for such leasing.

Section 3100.0–5 Definitions.

Several comments were received on the definition of the term "operator" as it appeared in the proposed rulemaking. The comments suggested that the definition needed to be clarified to set forth what constitutes an operator. Some of the comments raised questions about the use of the phrase "designated operator" in the definition in the proposed rulemaking and what appears to be an attempt to distinguish between an operator, a designated operator, or an official Designation of Operator filed with the Bureau of Land Management, and their respective responsibilities if they do not hold operating rights or an interest in a lease. The final rulemaking has revised the definition of the term "operator" to mean any person or entity who states in writing to the Bureau of Land Management that it is responsible under the terms and conditions of the lease for conducting operations on a lease or a portion thereof. It eliminates the definition of and all reference to "designated operator." In addition, the final rulemaking adds a definition of the term "operating rights owner" to clarify the use of this term when such rights are transferred by sublease. For consistency, the final rulemaking has included this change in §§ 3160.0–5, 3200.0–5, and 3260.0–5, as well as in numerous sections throughout Parts 3160 and 3260.

Section 3100.4–3 Option statements.

Two comments were received on the changes made to this section by the proposed rulemaking. One comment objected to the removal of paragraphs (a) through (e) because the information specified in those paragraphs is required by the Mineral Leasing Act of 1920 (30 U.S.C. 184(d)(2)). After reviewing the comments, it was agreed that the final rulemaking needed to be changed to retain language clarifying the information that shall be included in an option statement. The final rulemaking has moved one of the requirements of an option statement to § 3100.4–1 and revised § 3100.4–3 by dividing the opening paragraph into 2 parts and adding a new paragraph (b) requiring that the semiannual statement contain the number of acres covered by each option and the total acreage of all options held in each State, in addition to any changes to the option statements submitted in accordance with § 3100.4–1(b).

Section 3101.1–2 Surface use rights.

Numerous comments were received on this section of the proposed rulemaking, which was intended to clarify the authority of the Bureau of Land Management to use the terms and conditions of the standard lease form to control site-specific environmental impacts on leaseholds, as opposed to lease-specific protective measures addressed in lease stipulations to mitigate impacts to specific resource values identified on the leased lands. The standard lease form authorizes the Bureau to require "reasonable measures" to the extent such measures would be consistent with the lease rights granted a lessee. However, certain measures considered reasonable and consistent with lease rights by the Bureau may not be viewed the same way by a lessee. To resolve the uncertainty which has existed concerning the Bureau's authority within the terms and conditions of the standard lease form to control site-specific environmental impacts, the proposed rulemaking was intended to establish the measures over which the Bureau has clear authority.

Many of the comments on this section of the proposed rulemaking expressed concern over the implications of defining the term "reasonable," indicating that lessees would be deprived of the opportunity to challenge the Bureau of Land Management's requirements. Some of the comments expressed the view that the measures being established by the proposed rulemaking were either greater or less than those provided in existing land management plans and currently used to develop lease stipulations. A few comments were of the view that the way the word "reasonable" was used in the proposed rulemaking would limit the Bureau's ability to prescribe adequate mitigation measures at the time lease operations are proposed because, without lease stipulations, it could be inferred that the Bureau's authority under the standard lease form is limited. Other comments expressed the opinion that it would expand the Bureau's authority to control environmental impacts and allow measures to be imposed on leases without adequate justification. One of the comments on this section strongly supported the change made by the proposed rulemaking. After careful review of the comments, the provision in the final rulemaking has been revised. The regulation does not seek to limit the lessee's opportunity to challenge environmental requirements imposed after lease issuance. However, it is appropriate to establish minimum parameters within which the Bureau can specify site-specific mitigating measures which, by regulation, are consistent with the lease rights granted a lessee. The final rulemaking provides that the Bureau, at a minimum, can require relocation of proposed operations by 200 meters and can prohibit new surface disturbance for a period of 60 days, and that such requirements are consistent with the lease rights granted. The authorized officer may grant a lease suspension in appropriate cases if new surface disturbance is prohibited under this section. Similarly, the authority of the Bureau to prescribe "reasonable," but more stringent, protection measures is not affected by the final rulemaking.

Finally, 2 comments on this section of the proposed rulemaking related to measures imposed by the Bureau of Land Management at the time of operations that might be used to expand the protection already specified for a

resource value in a lease stipulation. For example, such measures might result in an unstipulated additional buffer around an area already stipulated to have a buffer or cause a 180-day delay when a delay of only 120 days is specified by a stipulation. This was not the intent of the proposed rulemaking. Measures imposed by this provision of the rulemaking will not be used to increase the level of protection of resource values that are addressed in lease stipulations.

Section 3101.1–3 Stipulations and information notices.

Section 3101.1–3 of the proposed rulemaking was the focus of numerous comments, most of which were directed to the public review requirement for certain lease stipulations. Because new provisions in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 require public notification of lease offerings and substantial modifications of lease terms, that portion of this section of the proposed rulemaking dealing with public review and waiver of stipulations has been removed from this final rulemaking. This matter is addressed in the separate rulemaking that will implement the new law.

Several of the comments on § 3101.1–3 raised questions about the information notices proposed in this section. The comments urged that a lessee be given pertinent information notices prior to the issuance of a lease. The Bureau of Land Management will inform lessees of all requirements related to a lease. The information notice is a method of informing lessees of requirements that may be imposed by an existing law or regulation, not of imposing new requirements. After careful consideration of the concerns expressed in these comments, the final rulemaking has adopted a change that makes it clear that an information notice has no legal consequences except to give notice of existing requirements.

Several of the comments on this section requested clarification of the provision that a lessee be made aware of or required to indicate acceptance of stipulations. As a result of the comments, the final rulemaking has been amended to state that the filing of a bid constitutes acceptance of the stipulations that are set out at the time the lands are made available for lease under Subpart 3120.

Section 3101.2–3 Excepted acreage.

All comments on this section of the proposed rulemaking supported the change made by the proposed rulemaking clarifying the exclusion from chargeable acreage of offers to lease, overriding royalties, and payments out of production. The final rulemaking has adopted the language of the proposed rulemakings without change.

Section 3102.2 Aliens.

Several comments were offered on this section of the proposed rulemaking. Two comments supported the clarification made by the proposed rulemaking. A third comment strongly opposed the clarification made by the proposed rulemaking of the provision that, in accordance with the Mineral Leasing Act (30 U.S.C. 181), would prohibit aliens from holding, owning, or controlling interests in Federal oil and gas leases through units in a publicly traded limited partnership. The comment expressed the view that the Mineral Leasing Act of 1920 did not prohibit such ownership as long as citizens of countries or foreign entities recognized by the United States are granted reciprocal rights. The comment includes a detailed explanation of its position on this issue. After reviewing the arguments presented in the comment, the final rulemaking has not adopted the suggested change. Section 1 of the Mineral Leasing Act (30 U.S.C. 181) authorizes issuance of leases to "citizens of the United States, associations of such citizens, or to any corporation organized under the laws of the United States." A master limited partnership is an association, and therefore, all of the members in such a publicly traded entity must be citizens of the United States to hold an interest in a Federal oil and gas lease. When the Congress enacted the Act in 1920, the States had laws recognizing corporations and limited partnerships. The Congress, while clearly providing for foreign ownership of stock in domestic corporations, did not provide similar authority for foreign participation in limited partnerships. Limited partnerships and corporate entities are organized under completely different laws and principles. The fact that the Act does not reflect recent investment practices does not provide a basis for an interpretation of the Act that would accord a master limited partnership the same status as a corporation. Therefore, the final rulemaking has adopted this section of the proposed rulemaking without change.

Section 3102.4 Signature.

A number of comments were offered on this section of the proposed rulemaking. Several of them recommended that the final rulemaking simplify the language in paragraph (c) of the section to indicate clearly that a request for approval of a transfer be signed by the transferee and that only one original of such request be required, even though the Mineral Leasing Act of 1920 (30 U.S.C. 187a), requires that 3 copies of the transfer be originally signed and dated by the transferor. One of the comments on this section of the proposed rulemaking pointed out that the request for approval of an assignment does not inure to the benefit of the transferor; rather it is merely the transferee's representation to the Bureau of Land Management that he/she is qualified to hold the interest in the lease that is being transferred. After a thorough review of the comments, the final rulemaking has adopted a change that combines paragraphs (b) and (c) into a single paragraph and revises the provision for clarity.

A final comment on this section of the proposed rulemaking supported the change made by paragraph (e), redesignated paragraph (d) by the final rulemaking, that would not allow reference to a qualification file number. This would eliminate the possibility of referring to a noncurrent qualification statement when the Bureau of Land Management requests information concerning a lessee's qualifications.

Section 3102.5–1 Compliance.

Several comments were received on this section of the proposed rulemaking, with most of those comments pointing out typographical errors, the need to clarify cross-references to other sections of the rulemaking, and other technical problems. The final rulemaking has made these changes. One of the comments suggested that excluding lease assignments or tranfers from compliance with the provisions of section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(2)(A)) is illogical and the position of the Department of the Interior should be reassessed. The Department's Solicitor has considered this question and concluded that section 2(a)(2)(A) prohibits the Secretary of the Interior from issuing leases covered by the requirements of the section, but does not prohibit the approval of an assignment or transfer of a lease to any entity that the section disqualifies from receiving a newly issued lease. (Solicitor's Opinion M–36951, 92 I.D. 537, 556 (1985).) This interpretation allows an entity that is disqualified from receiving a newly issued lease to acquire leases through approval of an assignment or transfer. The final rulemaking, therefore, has not changed this provision.

Section 3102.5–2 Certification of compliance.

Several comments on this section indicated that there was a need to clarify that a separate statement of certifications of compliance is not required when forms approved by the Bureau of Land Management are submitted for leasing actions because the certification is a part of the approved form. After careful review of this issue, the final rulemaking has adopted clarifying language by moving the first sentence of § 3102.5–3 of the proposed rulemaking to the end of this section. In response to a comment, the final rulemaking has adopted an amendment to this sentence to include a reference to the execution of a document as a necessary requirement for certification of compliance.

One of the comments on this section of the proposed rulemaking raised questions concerning the requirement for certification for entities which have constituent members holding, owning, or controlling more than 10 percent of the entity. The final rulemaking has adopted the language of the proposed rulemaking without change. It is the policy of the Department of the Interior to allow corporate entities, as well as publicly traded associations, including publicly traded partnerships, to qualify for Federal oil and gas leases by certifying only as to the citizenship of persons holding or controlling more than 10 percent of the outstanding shares of the entity holding or controlling a Federal oil and gas lease. Such certification is made through execution and submission of Bureau-approved forms. Separate certification of citizenship of such entities and associations is not required by the Bureau.

Section 3102.5–3 Evidence of compliance.

Several comments were received on this section of the proposed rulemaking. Some of the comments concerned the provision requiring the authorized officer to cancel or reject a potential lease action, such as issuance of a lease or approval of a lease transfer, if the information requested is not provided. The comments argued that this penalty was excessive. In recognition of the points raised in the comments, in the final rulemaking the last sentence of this section has been revised to specify that failure to submit the requested information shall result in adjudication of the action based on the incomplete submission. A request by the Bureau of Land Management for additional information will be made to clarify questions concerning a potential lease action. The failure to comply with such a request for information could result in the denial of lease approval or disapproval of the lease action.

One comment expressed the view that the title of this section of the proposed rulemaking needed to be clarified. The final rulemaking has adopted a change to the title of the section, so that it now more accurately describes the purpose of the section.

Section 3103.1–2 Where submitted.

Two comments were received on this section of the proposed rulemaking which sets out the address where annual rental payments are to be sent. One of the comments expressed the view that the final rulemaking needed to clarify paragraph (a)(2) of the section to exclude from its applicability those leases covered by paragraph (b). The final rulemaking adopts the changes suggested by this comment. One comment expressed the view that providing the address of the Minerals Management Service was helpful.

Sections 3103.2–1 and 3103.2–2 Rental requirements and annual rental payments.

One comment was submitted on these two sections of the proposed rulemaking. It expressed the view that the titles improperly differentiated between the advance and annual rental requirements. The comment pointed out that it is common industry understanding that "advance rental" means a year's rental that is paid in advance, i.e., at the beginning of each lease year. In recognition of the use of this term by the industry, the final rulemaking has adopted a change that eliminates the word "advance" from the title of § 3103.2–1. The final rulemaking has not adopted the recommended change in the title of § 3103.2–2 because the title as written properly identifies the content of the section.

Several comments were received on the introductory paragraph of § 3103.2–2 concerning the acceptability of an annual rental payment, required to be made on a day when the Minerals Management Service is closed, that is postmarked on the next day that the designated Minerals Management Service office is open. One of the comments indicated that this change would prevent the inadvertent cancellation of some leases due to confusion between the anniversary date and the date when the rental was actually received, with the date of receipt being controlling when the Service office is closed. Another comment on this specific issue agreed with the interpretation given in the preamble to the proposed rulemaking. Most of the comments on this section strongly opposed the provision contending that it was contrary to the Mineral Leasing Act of 1920 (30 U.S.C. 188(b)) which requires that the rental payment must be made on the anniversary date or, if the office is closed on the anniversary date, the rental must be received on the next day the office is open, but must be made on or before the anniversary date or the lease terminates by operation of law. The final ruelmaking adopts the comments opposed to using the postmark as receipt of payment. The reference to the "postmark" in the proposed rulemaking, as well as the postmark provision that is included in the existing regulations is removed. Accordingly, if the annual rental payment is not received on time in the proper office of the Minerals Management Service, the lease shall terminate automatically by operation of law. However, the final rulemaking includes in § 3108.2–1(a) an additional provision explaining what constitutes reasonable diligence, allowing a lessee to obtain a Class I reinstatement, when the rental is not received on time, under the following circumstances: (1) The rental payment is postmarked on or before the anniversary date; or (2) if the Service office is closed on the anniversary date, the rental payment is postmarked on or before the next day the Service is open to the public. All other requirements of a Class I reinstatement, including receipt of the payment within 20 days of the due date must be met. This change also affects §§ 3108.2–1 and 3108.2–2, and changes to those sections are addressed at the proper point in this preamble.

The preamble to the proposed rulemaking requested the public to comment on a possible change in the rental schedule. Twelve comments were submitted on this subject, with the majority of them being opposed to any rental increase. However, the Reform Act changed the rental rates required for competitive and noncompetitive oil and gas leases. Accordingly, provisions in § 3103.2–2 concerning rental rates are not included in this final rulemaking, but instead are addressed in the separate rulemaking implementing the new law.

Section 3103.3 Royalties.

The proposed rulemaking requested the public to comment on the current competitive lease variable royalty rate schedules, as well as the variable royalty rate schedule attached to 20-year leases at the time they are renewed or exchanged, in terms of efficient

production practice, maximizing resource recovery, collection of maximum royalties, and the administrative burden associated with the schedules contained in the existing regulations. Thirteen comments were submitted in response to the questions raised in the proposed rulemaking.

The majority of the comments indicated that a variable royalty rate may not directly affect the ultimate production from the lease but may influence the decision to drill a well on a lease. From a reservoir management standpoint, factors such as reservoir characteristics and marketing conditions may have a greater influence. Some of the comments, however, were of the view that the current royalty schedules result in incremental distortions of production from some wells. The comments, did not agree on what a new variable rate schedule should be and indicated that a flat rate would be preferable and might increase ultimate production. On the issue of the administrative burden of the current variable royalty rate schedules and whether they could be audited, the comments expressed the view that variable royalty rates complicate the auditing of lease production and add to the administrative burden. Finally, the majority of the comments suggested that successive incremental rates, if continued, be applicable to successive production increments.

Because of the enactment of the Reform Act, the provisions for royalty rates are not addressed further in this final rulemaking. A separate rulemaking to implement the new law addresses the royalty rates provided in §§ 3103.3–1 and 3103.3–2 for the competitive and noncompetitive leasing program in accordance with the new law.

Section 3103.3–3 Limitation of overriding royalties, payments out of production and similar interests and arrangements.

This section of the proposed rulemaking generated a number of comments, with several expressing considerable concern over the inclusion of carried interests and net profit interests because of the difficulty of calculating such interests on a percentage basis. The other comments on this section recommended that the final rulemaking delete the entire section because such overriding royalty interests and other similar agreements are voluntarily entered into by the lessee with other parties. The United States is not required to approve these agreements and, thus, should not become involved, except when a reduction in the Federal rental or royalty rate is requested by the lessee, in which case the effect of outstanding private payments will be considered. Accordingly, at the time of such a request, the authorized officer could require that any excess overriding royalty or similar interest be reduced before consideration will be given to the requested reduction in Federal rental or royalty. Two other comments on this section of the proposed rulemaking pointed out a discrepancy in the next-to-last sentence of the section and the language of § 3103.4–1(c) of the proposed rulemaking. The discrepancy is caused by a difference in the extent of possible reduction of the other interests and the comments recommended that the language of § 3103.4–1 be adopted by the final rulemaking. In response to the comments, § 3103.3–3 has been deleted in its entirety from the final rulemaking.

Section 3103.4–1 Waiver, suspension or reduction of rental, royalty or minimum royalty.

This section of the proposed rulemaking attracted several comments, with one of the comments commending elimination of the requirement that requests be filed in triplicate. All of the comments noted the addition of carried interests and net profit interests or similar arrangements and recommended that these interests be removed by the final rulemaking. The final rulemaking has adopted the recommendations of the comments and removed all reference to these types of interests.

Section 3103.4–2 Suspension of operations and/or production.

Several comments were received on this section of the proposed rulemaking. One of the comments commended the elimination of the requirement to file requests in triplicate. One comment requested that the final rulemaking clarify paragraph (f) concerning the applicability of a suspension of obligations on a Federal lease subject to a unit or cooperative plan with no application of such a suspension to non-Federal leases within a unit. The final rulemaking has adopted this suggestion because the regulations in 43 CFR Group 3100 are applicable only to Federal interests. The non-Federal lands within a unit are governed by the terms of the lease or contract between the non-Federal lessor and its lessee, as well as any requirements of the State where the unit is located.

Most of the comments supported the addition of the *force majeure* provision, with one of the comments recommending that the final rulemaking expand the provision to include lack of market for new production to handle the recent market volatility, while another comment suggested that the language describing this provision is the preamble of the proposed rulemaking be added to this section. *Force majeure* generally includes such events as strikes, acts of God, and unforeseeable administrative delay, but not lack of a market by itself. No changes have been made in the final rulemaking, in order to avoid limiting the discretion of the authorized officer to address unique situations that may occur in lease operations.

A comment on paragraph (d) of this section suggested that the language be clarified to ensure that the requirement for resumption of rental payments on the first day of the month in which a suspension is lifted will not expose a lessee to termination of the lease. The final rulemaking has not adopted a change in this section of the proposed rulemaking. At the time a suspension of operations and production is approved, the advance rental will have already been paid for the full lease year and will continue to be credited for the remainder of a lease year when the suspension is lifted, normally allowing sufficient time for the rental to be paid in advance of the next lease year.

Two comments suggested that the final rulemaking clarify the difference between the three types of suspension that can be approved and suggested that there should be a cross-reference to § 3165.1. In response to these comments, the final rulemaking has adopted a change to clarify the different types of suspension, as well as to include in paragraph (c) a cross-reference to § 3165.1. In addition, the final rulemaking has adopted a clarification as part of paragraph (d) which specifies that a suspension of operations only or suspension of production only does not suspend requirements for payment of rentals and royalties, including minimum royalties.

Section 3104.1 Bond obligations.

As part of the change in the definition of the term "operator" in § 3100.0–5 of the proposed rulemaking to remove all reference to designated operator, the final rulemaking also amends this section of the proposed rulemaking to remove all reference to designated operator, making this section consistent with § 3100.0–5. This change also is being made in the final rulemaking to §§ 3206.1–1, 3206.3–1, 3206.5, and 3206.6 for consistency.

Section 3104.6 Where filed and number of copies.

One comment on this section of the proposed rulemaking suggested that the

reference to § 3104.3 should be changed to § 3104.3(a) to clarify that only statewide bonds or riders, rather than nationwide bonds, are required to be filed in the State office having jurisdiction of the lease, because the next sentence also provides that nationwide bonds can be filed in any State office. The final rulemaking has adopted this suggestion.

The comments suggested the removal of the requirement in the proposed rulemaking that a replacement bond or rider to a nationwide bond be filed in the same State office where the original bond was filed. After reviewing the comments, the final rulemaking, in response to the comments, has removed this requirement.

Section 3104.7 Default.

This section of the proposed rulemaking received two comments. One recommended that paragraph (b) be amended by the final rulemaking to set a time limit for the posting of a new bond or restoration of an existing bond, or the posting of a separate or substitute bond for each lease covered by the deficient bond. In response to this comment, the final rulemaking has combined paragraphs (b) and (c) of the proposed rulemaking and made it clear that the time limit for restoring a bond to its full value or for posting a new bond shall be within 6 months of notice from the authorized officer.

The comments on this section of the proposed rulemaking raised a concern that an operator who is in default could expose the record title holder of the lease to liability even though the lessee is not in default. After careful review of this issue, the final rulemaking has adopted a change to this section that gives the authorized officer the discretionary authority to cancel a lease, rather than continuing the more restrictive language of the proposed rulemaking. An operator on the ground is in the best position to carry out the terms and conditions of a lease and should be responsible for handling the default. However, if all efforts to resolve the default fail, including attaching the bond, the authorized officer may then take the appropriate steps to cancel the lease. In response to these comments, and for consistency, the final rulemaking has clarified the responsibilities of the lessee, operator, and operating rights owner (sublessee) throughout Parts 3160, 3180, 3260, and 3280.

Section 3105.2–3 Requirements.

Numerous comments discussed this section of the proposed rulemaking. One of those comments suggested that the communitization agreement application be considered only after a well has been completed because the effective date of any agreement is the date of the first sale, and the operator would have no incentive to file the agreement application until a well is completed on the lease because the public interest requirement must be met or approval of the agreement becomes invalid. The final rulemaking has not adopted this suggestion because, under the provisions of the proposed rulemaking, the agreement approval would be valid if the public interest requirement is met, and the lease could receive a drilling extension even though no production was established.

Two comments questioned allowing the filing and approval of a communitization agreement after the lease expires. One suggested that if all the lands in the proposed communitized area are Federal lands and the leases have expired, no purpose would be served by approving an agreement since there is no well and drilling could not occur until the lands are again under lease. One comment expressed the view that approval of an agreement after the lease expires has the effect of breathing life back into a lease so long as the lands have not been posted on a list of lands available for leasing. The comment further suggested that this form of a lease extension is not authorized by the Mineral Leasing Act, and that in most instances an action to communitize lands is required prior to the expiration date of any involved lease. One comment requested that paragraphs (c) and (d) be reorganized. The final rulemaking removes paragraphs (b) and (c) of the proposed rulemaking relating to informal agreements and filing of agreements for consideration after the lease expiration date. The final rulemaking reorganizes the section into three paragraphs and requires filing of an agreement for approval prior to lease expiration, thus eliminating the uncertainty as to whether a lease has expired.

The comments on the public interest requirement of this section recognized the abuses of operators who terminated unit or communitization agreements solely to gain automatic extension of a lease when no attempt had been made to drill under the terms of the agreement. A few of the comments suggested that the public interest requirement be limited to those instances where there has been no drilling under the agreement or that the requirement be satisfied by any reasonably prudent activity conducted in a good faith effort to explore for oil or gas. Two comments expressed the view that the public interest requirement was never intended to apply to existing production of commencement/continuance of diligent operations to unitized or communitized zones. Other comments questioned the use of the public interest requirement to limit lease extensions, with one of the comments contending that the Bureau of Land Management does not have the authority to alter the language of the law addressing drilling and elimination/termination. Two of the comments pointed out the proposed rulemaking removes the discretion of the authorized officer to terminate an agreement under appropriate circumstances and recommended that this authority be restored by the final rulemaking.

The standards for the public interest requirement are similar to those established for actual drilling operations, which require industry to operate in a responsible manner if it is to receive the benefits of the law. The provision of the proposed rulemaking is consistent with the law, which requires approval of the agreement to be in the public interest. The provision would render the approval invalid if the public interest requirement is not satisfied. The model unit agreement provided for in section 3186 of the existing regulations contains a provision in section 9 that allows the flexibility to terminate a unit for good cause and requires establishing to the satisfaction of the authorized officer that further drilling would be unwarranted or impracticable. The final rulemaking adopts the language of the model agreement in redesignated § 3105.2–3(c) as an exception to the requirement to drill the well pursuant to communitization agreements.

Five comments on § 3105.2–3(e) of the proposed rulemaking also addressed the same provisions contained in § 3183.4 of the proposed rulemaking. The comments all expressed concern regarding the effect that invalidation of approval of a unit agreement would have on lease segregations and extensions of the segregated leases. One of the comments suggested that this provision of the proposed rulemaking be amended by the final rulemaking so that it affects only the extension of leases occurring when a unit agreement terminates and the segregation process, together with extensions of the segregated leases, would be unaffected. Another comment suggested that lease segregations and resulting extensions would have to be "undone" if the unit approval is declared invalid. One of the comments questioned the effect of this section of the proposed rulemaking on the segregated lease where drilling may have taken place and production

established during the two-year extension period following segregation. Finally, two of the comments questioned whether, under the rulemaking, when multi-well obligations are included in the agreement, all wells under a unit agreement must be drilled to meet the public interest requirement.

The Bureau of Land Management's administrative action in processing lease segregations and extensions of segregated leases may be deferred until the authorized officer has determined that the public interest requirement has been satisfied and that the unit agreement is valid. Until a determination is made that a unit agreement is valid as approved, thereby allowing the segregation and extension of leases beyond their primary term, development activity (approval of an Application for Permit to Drill) on such lands outside of the unit agreement area also may be deferred. Development activities would be allowed to continue on the portion of a lease outside the unit area during the primary term of the lease and, if production is established prior to the end of its primary term and the unit approval is determined to be invalid, such production holds the entire lease because no segregation has taken place. In the case of multi-well obligations under a unit agreement, completion of one well to the unitized formation may, as determined by the authorized officer at the time of approval, satisfy the public interest requirement. The final rulemaking has adopted the language of § 3105.2–3(e) of the proposed rulemaking redesignated as § 3105.2–3(c), with the addition of language providing for a determination by the authorized officer that further drilling would be unwarranted or impracticable. These comments also were directed to § 3183.4 of the proposed rulemaking and the final rulemaking has adopted the language of that section without change.

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

Subpart 3106 of the proposed rulemaking received several comments. One of the comments recommended that what it called "artifical" distinction between the holder of the record title and holder of the operating rights be eliminated and that a transfer of operating rights be recognized as a transfer of the working interest or the execlusive right to explore for minerals in the lands acquired by the lessee with all of the lessee's rights to and obligations for development of the minerals. This comment also recommended that the Bureau of Land Management reinstitute the policy of adjudicating transfers of operating rights and verify that an applicant for an Application for Permit to Drill is either the holder of the operating rights or his/her designee. The comment expressed the view that this change would ensure that the prospective permittee has a right to operate on the lease.

Another comment suggested that the Department of the Interior's decision to discontinue the close examination of subleases will result in increased potential for surface operations to be carried on by one who is not the lessee and it could foster increased litigation over responsibility for violations of the conditions of permits issued to different parties. The comments contended that holding the record title holder liable is insufficient to prevent environmental degradation by a surface operator.

The final rulemaking has not adopted these general suggestions for changes to Subpart 3106 of the proposed rulemaking. The Bureau of Land Management cannot, and should not, undertake the role of attempting to validate privately arranged agreements between any lessee and its sublessee, or of protecting a lessee's rights under a private arrangement to which the Federal Government is not a party. The Bureau does not have the power or authority to warrant title is such circumstances regardless of whatever administrative examinations may be conducted. The Bureau's policy for over two years has been not to adjudicate transfers of operating rights because it is time-consuming and unnecessary unless there is an independent concern about a transferee's qualifications. The Bureau's experience is that this process is working well. The comment regarding eliminating the distinction between the holder of a record title and the holder of operating rights in an oil and gas lease has not been adopted in the final rulemaking because the transfer of operating rights is a sublease or a private subsidiary arrangement between the lessee of record and the operator. As recognized in the statutory language, such an arrangement is in addition to, rather than in place of, the contractual agreement between the lessee of record and the United States.

One comment received on § 3106.1(a) of the proposed rulemaking concerned the requirement that transfers filed more than 90 days following signature by the transferor must provide a statement that the transfer is still in force.

The comment suggested that, in many cases, this is a paper exercise that serves neither the public nor the Bureau of Land Management, because small delays of a few days beyond this time period result in extensions of compliance time to ascertain whether the transfer remains in force or causes disapproval of the transfer followed by a new transfer. In response to this comment, the final rulemaking includes language to change this provision to allow the authorized officer to verify that the transfer is still in force. When factors such as the receipt of any intervening transfer cause the Bureau to question whether the transfer is still valid, at the discretion of the authorized officer, an inquiry would be made to the parties involved prior to approval or disapproval of the transfer.

Section 3106.1(b) of the proposed rulemaking would be revised in the final rulemaking to remove provisions applicable only to leases under Subpart 3112, now made obsolete by enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987.

Several comments were received on § 3106.4–1 of the proposed rulemaking. One of the comments questioned why a $25 filing fee was required to be submitted with each transfer of operating rights when the Bureau of Land Management no longer adjudicates such transfers. The Bureau is authorized by the Federal Land Policy and Management Act of 1976 to recover costs in connection with its administrative activities and to assess charges for benefits granted. The Bureau has determined that the $25 fee is needed to recover its costs for handling transfers to determine compliance with the Mineral Leasing Act. The final rulemaking continues without changing this provision of the proposed rulemaking.

A few comments on this section recommended that the final rulemaking be reworded for clarity. This recommendation has been adopted in the final rulemaking.

Section 3106.4–1 of the proposed rulemaking generated several comments, two of which suggested that documentation of operating rights, in addition to the required transfer from, should be maintained in the case file for the benefit of present or potential lessees or operators who may wish to know more details of the lease interests that have been created in order to make informed decisions on whether or not to acquire a lease interest or to drill on a particular lease. It is not necessary for the Bureau to maintain copies of private agreements between a sublessor and sublessee to approve a transfer of operating rights because most of the information in such documents involves specific terms and agreements between those parties and does not affect the

approval process by the Federal Government. Therefore, the final rulemaking has not adopted this suggested change.

One comment on this section of the proposed rulemaking noted that the rulemaking eliminates the provision in the existing regulations which allows a transferee to make a single request for approval of several transfers filed at the same time. The final rulemaking has adopted the suggested change and restored appropriate language concerning the provision in this section.

Several comments were received on § 3106.4–2 of the proposed rulemaking. Two of the comments suggested that it be made clear that in certain instances a transfer need not be on an officially approved form. This section of the proposed rulemaking included 2 separate paragraphs to distinguish between a transfer in conjunction with a transfer or record title or of operating rights (sublease) and a transfer of interests that is made independent of a transfer of record title or of operating rights (sublease). In the second of these sections are stated the requirements for filing such transfers if the current Bureau form is not used. The final rulemaking adopts this provision of the proposed rulemaking without change. For consistency with the removal in the final rulemaking of § 3103.3–3, the final rulemaking removes from this section the requirement that transfers of overriding royalties and other similar interests contain a statement providing for suspension. The third comment on this section focused on paragraph (b) and suggested eliminating the requirement for an originally executed copy of a transfer in the types of transfers described in this paragraph because the Bureau of Land Management does not approve these kinds of transfers. The final rulemaking has adopted this suggestion and removed the requirement in paragraph (b) for an originally executed copy for this type of transfer when created or reserved in a lease independent of a transfer of record title or of operating rights (sublease).

Section 3106.4–3 of the proposed rulemaking received several comments. Three of the comments expressed strong support for the procedure allowing mass transfers. One comment recommended removal from paragraph (b)(3) of the phrase "and the depths or formations", contending that such information is not needed because the Bureau of Land Management is not adjudicating or abstracting operating rights transfers (subleases). This recommendation has been adopted in the final rulemaking.

One comment was received on § 3106.6–1 of the proposed rulemaking which suggested that the section be amended to provide for those instances when a bond is no longer required. The final rulemaking has adopted the suggested change and also has been revised to adopt the current bond terminology referring to lease bonds, rather than to lessee's general lease or drilling bond and operator's bond. A lease bond may be provided either by a lessee, operating rights owner (sublessee), or operator. For consistency, the final rulemaking has made similar revisions for this terminology in Subparts 3134 and 3206.

The comments on §§ 3106.6–2 and 3106.6–3 of the proposed rulemaking questioned restricting the bond coverage solely to the holder of operating rights and suggested that the sections be amended by the final rulemaking to clarify that the bond may be furnished by any operator. This suggestion has been adopted by the final rulemaking along with a provision that the operator must furnish evidence of the surety's consent under an existing bond to become co-principal. This final rulemaking also redesignates § 3106.6–3 of the proposed rulemaking as § 3106.6–2, and § 3106.6–2 of the proposed rulemaking has been made a part of § 3106.6–1, Lease Bond, in the final rulemaking.

Several comments were directed to § 3106.7–2 of the proposed rulemaking. The comments expressed concern about both the sublessee and the lessee of record having responsibility for all lease obligations. The comments were of the view that the lessee of record should not be fully responsible when it is not the operator on the lease. The final rulemaking has adopted a change which makes the sublessee responsible for all obligations under the rights transferred to the sublessee. This change is consistent with the change made by the final rulemaking in § 3104.7 as discussed earlier in this preamble. This change also is applicable to the bonding and lease transfer provisions in Subpart 3134 and 3135 and the final rulemaking has made the appropriate changes in these subparts. For consistency, the final rulemaking also has made appropriate changes to § 3241.5 and has clarified the responsibilities of the lessee, sublessee, and operator throughout Parts 3160, 3180, 3260 and 3280.

Sections 3106.8–1, 3106.8–2, and 3106.8–3 of the proposed rulemaking generated one comment which raised questions about the requirement for bond coverage under the situation described in these sections because the provisions are not uniform. The final rulemaking makes it clear when a change in bonding coverage may be required.

Section 3107.1 Extension by drilling.

Several comments were made on this section of the proposed rulemaking. All but one of the comments objected to the provision that set forth what constitutes actual drilling operations. One comment suggested that the provision was too narrow, and suggested that the final rulemaking provide that the use of a spudder rig, timely followed by the placement of a rotary rig, which continuously drills to a valid objective would constitute actual drilling operations. Two other comments expressed the view that no purpose is served by the new language in the proposed rulemaking on actual drilling operations, because the current provisions represent a well-established terminology, having been interpreted numerous times by the Department of the Interior Board of Land Appeals, and urged that it be removed in the final rulemaking. Another comment on this point suggested that there is no precedent for the language in the proposed rulemaking requiring penetration of certain horizons and suggested that the model unit agreement allows an operator to cease drilling "at a lesser depth" than that provided in the agreement if unitized substances can be produced in paying quantities. This comment also made the point that there is no requirement that a lessee drill a well on a lease to any particular depth or formation. Another comment objected to any attempt by the proposed rulemaking to impose additional conditions for obtaining an extension of a lease. The comment also stated that the application of unit well standards as a condition for the extension of a lease would result in imposing a burden on an operator who makes a good faith effort to drill, but is unable to drill a well which meets the unit drilling requirements.

The proposed rulemaking did not add any new requirements but incorporated standards established by the Interior Board of Land Appeals as necessary for the Bureau to determine whether a lease is extended. The model unit agreement provides for establishing, to the authorized officer's satisfaction, that further drilling would be unwarranted or impracticable. The same language has been adopted by the final rulemaking for this section as for communitization agreements as discussed under §3105.2–3(e) earlier in this preamble.

Section 3107.3–2 Segregation of leases committed in part.

The final rulemaking makes technical changes in § 3107.3–2 to clarify the period of lease extension for leases segregated in conjunction with a cooperative or unit plan and to specify that no lease operations on the segregated lease will be approved after the primary term of the lease and that no lease extension will be recognized until the public interest requirement for the unit agreement has been satisfied. These changes are added by the final rulemaking to be consistent with the language contained in § 3107.4. Section 9, 18, and 20 of the model unit agreement also have been revised to be consistent with the amendments of §§ 3107.3–2 and 3107.4. These provisions are the correct and consistent interpretation of the Mineral Leasing Act

Section 3107.4 Extension by elimination.

Several of the comments on the public interest requirement contained in the proposed rulemaking also included a discussion of this section. The public interest requirements are discussed in full under § 3105.2–3(e) earlier in this preamble.

Section 3108.1 Relinquishments.

The only comment on this section expressed the view that the provision allowing relinquishment by the record title holder's attorney-in-fact confuses two issues, i.e., who actually relinquishes a lease, and who may execute the relinquishment. The comment stated that the proposed rulemaking could generate unforeseen consequences because the power of attorney may not permit the attorney-in-fact to execute a relinquishment. After careful review of the comment, the final rulemaking has adopted the provision of the proposed rulemaking but has revised the language to refer to a duly authorized agent, the acceptable terminology under general agency law. It is incumbent upon the parties to an attorney-in-fact or agency agreement to ensure its adequacy in actions taken on behalf of the principal.

Sections 3108.2–1 and 3108.2–2 Automatic termination and Reinstatement at existing rental and royalty rates—Class I reinstatements.

These sections of the proposed rulemaking dealt with allowing a rental payment to be considered filed in a timely manner when it is due on a day the Minerals Management Service office is closed, but which is postmarked on the next day the designated Minerals Management Service office is open. This issue, and the comments received, were extensively discussed under § 3103.2–2 earlier in this preamble. This discussion is not repeated here. The final rulemaking has adopted changes to these sections to make them consistent with § 3103.2–2 of the final rulemaking. The final rulemaking also adopts this change in §§ 3205.3–2, 3244.2–1, and 3244.2–2 for consistency.

One of the comments received on § 3108.2–2(a)(3) of the proposed rulemaking questioned the provision concerning payment of accrued royalty if a terminated lease becomes productive prior to its reinstatement. The comment requested that this provision be clarified as to when such payment is due. Three comments recommended that the final rulemaking amend this section to remove the requirement for providing proof to the Bureau of Land Management of payment of royalty to the Minerals Management Service (MMS) as a condition of a Class I reinstatement. The final rulemaking has adopted a change removing all words after the word "Service" in the proposed rulemaking. Payment of accrued royalty is required prior to reinstatement, but would not be required to be paid within the 60-day period required for submission of the petition for reinstatement. The Bureau would verify that such payment had been made to the MMS office

Part 3130—Authority Citation

One comment recommended that the final rulemaking add the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504 *et seq.*) to the authority citation section. The final rulemaking has not adopted this recommendation because that Act does not provide specific authority for leasing in the National Petroleum Reserve—Alaska, which is the subject of this part.

Section 3135.1–1 Transfers and extensions, general.

One comment on paragraph (d) of this section of the proposed rulemaking recommended that the word "assignment" be changed to the word "transfer". The final rulemaking has adopted this recommended change.

Section 3150.0–1 Purpose.

A number of the comments on the geophysical exploration provisions contained in Part 3150 of the proposed rulemaking indicated some confusion regarding to whom, and in what situation, the provisions of this portion of the rulemaking would apply. The confusion seemed to result from the abbreviated language contained in § 3150.0–1 of the proposed rulemaking. To resolve this uncertainty, the final rulemaking revises the language of this section to clearly state which parties must comply, and under what circumstances the regulations apply with respect to authorization from the Bureau of Land Management to conduct geophysical exploration operations. The final rulemaking also clarifies a similar provision in § 3209.0–1 concerning geophysical exploration for geothermal resources for consistency.

Section 3150.0–3 Authority.

One comment noted that 2 citations had been omitted from the authority section of the proposed rulemaking and recommended that the final rulemaking include them. The final rulemaking has adopted the recommendation for inclusion of the citation of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), but has not included the citation of the Act of May 21, 1930 (30 U.S.C. 301–306), because it has no application to geophysical exploration. The final rulemaking also adds the citation for the Naval Petroleum Reserve Production Act of 1976 (42 U.S.C. 6504) to address exploration activities for the National Petroleum Reserve—Alaska. These new citations also are added to the authority citation provision of the final rulemaking.

Section 3150.0–5 Definitions.

One comment on § 3150.0–5(a) of the proposed rulemaking recommended that the final rulemaking remove the last sentence of the definition because it repeats language contained in § 3150.0–1. The final rulemaking has adopted this suggestion.

Several comments on the definition of the term "public lands," appearing in this section of the proposed rulemaking, indicated some confusion with the definition of the term and the applicability of the rulemaking to various types of lands. After careful review, the final rulemaking has removed the term from §§ 3150.0–5 and 3209.0–5 because it is adequately defined in the Federal Land Policy and Management Act.

Section 3150.1 Suspension, revocation, or cancellation.

One comment on this section questioned why the language in the existing regulations was being changed, and suggested that language dealing with compliance with State standards was needed. After careful review, the final rulemaking has restored the language of the existing regulations

because this section is sufficient, with a change in the beginning to clarify that the right to conduct exploration may be suspended, revoked, or canceled.

Section 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

Eight comments were received on this section of the proposed rulemaking. Most of them were supportive of the change made by the proposed rulemaking. However, some of the comments expressed concern that the 5 days allowed for processing a Notice of Intent may not be adequate in all cases. The final rulemaking has revised this section of the proposed rulemaking to reflect the changes made in § 3150.0–1 of the final rulemaking to allow for situations in which additional time is needed to complete the review of the Notice of Intent. The change requires that in those instances when the Notice of Intent cannot be processed in 5 working days of being filed, the authorized officer shall promptly notify the operator of when processing will be completed and state the reason for the delay.

Section 3152.1 Application for oil and gas geophysical exploration permit.

Although no comments were received on this section of the proposed rulemaking, the final rulemaking has adopted a change to make its provisions consistent with changes made by the final rulemaking in § 3150.0–1.

Section 3154.1 Types of bonds.

The only comment on this section questioned the effect of lease terms on a lessee who wishes to conduct geophysical exploration operations on his/her lease. This comment resulted in the word "lease" being removed from both this section of the final rulemaking and § 3154.3 to provide consistency. The word "lease" is not needed because a bond providing exclusive coverage for geophysical exploration operations must fulfill only the requirements contained in the regulations and the Notice of Intent or permit to conduct geophysical exploration operations. If stipulations or other requirements specified at the time of lease issuance are relevant to geophysical exploration operations, such stipulations or requirements also would be included in the Notice of Intent or permit. Further review of this section of the proposed rulemaking revealed that there were two technical flaws. The proposed rulemaking would have required that lessees obtain riders to their lease bonds in order to do geophysical exploration on their own leases. Such a requirement is not necessary because lease bonds already cover all operations by a lessee on his/her leasehold. The final rulemaking has adopted language to resolve this technical problem. The proposed rulemaking also inadvertently removed the provision in the existing regulations that allows the holder of a statewide or nationwide bond to obtain a rider that would allow geophysical exploration to be conducted on lands that the holder did not have under lease. The final rulemaking has retained this provision of the existing regulations.

Section 3154.3 Bond cancellation or termination of liability.

Several comments were received on this section of the proposed rulemaking. All comments were concerned that the 30-day period for inspection of lands subject to geophysical exploration under a Notice of Intent was not adequate. In response to these comments, the final rulemaking retains the 90-day period of the existing regulations.

Section 3160.0–5 Definitions.

Several comments were received on this section of the proposed rulemaking. The final rulemaking, in response to concerns raised in these comments amends the definition of the term "operator" to clarify that there is no distinction between an operator, designated operator, and an official Designation of Operator. The amendment also makes the definition identical to that contained in § 3100.0–5(a) of the final rulemaking. As discussed earlier in the preamble in conjunction with that section, the definition has been revised to mean any person or entity that notifies the Bureau of Land Management that he/she is accepting the responsibilities for conducting operations on a lease or a portion thereof. Under the new definition, any individual or entity that accepts the responsibility for conducting operations on a lease, whether it be the lessee, owner of operating rights (sublessee), or a contractor on behalf of an operator, is responsible for the default that may occur in the conduct of activities in exploration, development, and production under the terms and conditions of the lease. Further, the revisions made by the final rulemaking to the various terms in § 3160.0–5 provide that the individual holding the operating rights to a lease is responsible for all obligations relating to the responsibilities transferred by the lessee of record, including drainage. Accordingly, the final rulemaking also revises the term "lessee" to mean a person or entity holding record title to a lease and adds a definition of "operating rights owner" which conforms to the revised definition of the term "operator." To bring the provisions of Part 3160 into conformance with these definition changes, the final rulemaking has substituted the word "operator" or the term "operating rights owner" for the word "lessee" in numerous sections of the final rulemaking. Finally, this final rulemaking adds definitions of several terms from the final rulemaking to implement the Federal Oil and Gas Royalty Management Act which was published in the **Federal Register** on February 20, 1987 (52 FR 5384).

Section 3162.3–1 Drilling applications and plans.

Three comments received on this section of the proposed rulemaking were a followup to comments made on Subpart 3106 of the proposed rulemaking that objected to the policy of the Bureau of Land Management not to adjudicate transfers of operating rights (subleases). One of the comments suggested that this change was designed to insulate the Bureau from disputes on public lands when an application for development is approved by the authorized officer. The response to these comments has previously been discussed in this preamble under subpart 3106. The final rulemaking has not adopted this suggested change.

Section 3165.1 Relief from operating and producing requirements.

Two comments submitted on the provisions of the proposed rulemaking concerning § 3103.4–2 also recommended that the final rulemaking make revisions in this section of the existing regulations in order to address the provision for a suspension of operations and/or production consistently. The final rulemaking adopts this recommendation and amends § 3165.1 of the existing regulations to be consistent with § 3103.4–2 of the final rulemaking.

Section 3165.4 Appeals.

The final rulemaking clarifies the language in § 3165.4(c) concerning the effect of an appeal on compliance requirements. This change is made to ensure that the provision in this regulation, which made the decision of the authorized officer effective pending an appeal, has the same effect and meaning as it did prior to its amendment on February 20, 1987 (52 FR 5384). The Department of the Interior Board of Land Appeals has suggested that the meaning and effect of this regulation may have been changed by the 1987 amendment (see *Southern Utah*

Wilderness Alliance, 100 IBLA 63 (1987)). No change was ever intended by the amendment and this final rulemaking makes a technical correction to clarify this matter.

Section 3186.1 Model onshore unit agreement for unproven areas.

Changes have been made in sections 9, 13–15, 18, and 20 of the model unit agreement to conform these provisions to the final rulemaking, which defines "operator" and establishes the public interest requirement for unit approval.

Subpart 3200—Geothermal Resources Leasing; General

One general comment on this subpart of the proposed rulemaking recommended that the final rulemaking include language to reflect the statutory mandate in section 115 of the Department of the Interior and Related Agencies Appropriations Act of 1987 (Pub. L. 99–591) for protecting selected thermal features in specific National Park System units. After careful consideration of this comment, the final rulemaking has not adopted the suggestion because the provisions of this Act are very specific. These protective requirements are directly applied to areas affected by the law and are being implemented through interagency agreements and memoranda of agreement.

Section 3200.0–5 Definitions.

Changes made in this section by the final rulemaking have been discussed previously in this preamble under §§ 3100.0–5 and 3160.0–5.

Section 3200.1 Competitive and noncompetitive leasing areas.

Two comments were received on this section of the proposed rulemaking which questioned the use of the phrase "competitive interest" in connection with the classification of known geothermal resource areas. The comments on this issue appeared to misunderstand how "competitive interest" is used in determining whether lands should be classified as known geothermal resource areas. The existence of competitive interest in an area does not automatically compel classification or require that the lands remain classified as a known geothermal resource area. The overriding interest of the Bureau of Land Management is to ensure that lands which have not been subject to geothermal leasing, where there is little or no classification information available, are reviewed for known geothermal resource area classification because of competitive interest. The final rulemaking has adopted this provision of the proposed rulemaking without change.

Section 3210.2–1 Application.

Two comments were received on this section of the proposed rulemaking. One of the comments made the point that the change in the proposed rulemaking to require a different number of copies of an application to lease public domain lands versus the number of copies required for acquired lands was incorrect. This comment has been adopted and the final rulemaking has corrected this section.

The second comment recommended the addition of language similar to that found in § 3111.2–1(d)(2) of the existing regulations with respect to conforming the legal description of an existing lease to a subsequent resurvey or amended protraction survey. For consistency with the existing oil and gas regulations, the final rulemaking has adopted this suggested change.

Section 3220.3 Publication of the notice.

One comment was received on this section of the proposed rulemaking. The comment recommended the deletion of the language requiring the successful bidder to pay a proportionate share of the total cost of the publication of the notice. The final rulemaking has not adopted this recommended change. The policy of the Bureau of Land Management is to defray the costs associated with the programs under its jurisdiction, in accordance with the provisions in the Federal Land Policy and Management Act.

Section 3220.4 Bidding requirements.

Several comments on this section of the proposed rulemaking expressed concern about the deletion from paragraph (a) of the provision allowing the option to pay the balance of the bonus bid, either by a single bid or in two equal annual installments. Three of the comments indicated a preference that the provision of the existing regulations be retained. Two comments recommended that the final rulemaking change the section to allow installment payments based on a high bid threshold. The change made by the proposed rulemaking was designed to reduce lease administration and processing costs, and also to minimize the loss of revenues and interest moneys to the United States by requiring all bonus moneys to be paid prior to lease issuance. The final rulemaking adopts the language of paragraph (a) of the proposed rulemaking without change.

Section 3220.5 Award of lease.

Two comments on paragraph (c) of this section of the proposed rulemaking raised concerns about removal of the 30-day period during which the authorized officer is to accept or reject the highest bid. After careful review of this recommendation, the final rulemaking has adopted language to indicate that if the authorized officer is unable to make a decision within 30 days, the apparent high bidder will be notified and informed of the reason for the delay, and provided an anticipated date when the decision will be made.

Several comments were offered on paragraph (d) of this section of the proposed rulemaking. All objected to the reduction of the period for the successful bidder to execute the lease forms from 30 to 15 days. This change, however, is in response to a report by the General Accounting Office that the United States would benefit from having use of the lease rentals and bonus 15 days earlier. The final rulemaking has adopted the language of paragraph (d) of the proposed rulemaking without change.

Editorial and technical changes, and grammatical corrections, have been made as needed.

The principal authors of this final rulemaking are Gloria Jean Austin, Rob Cervantes, Karl Duscher, Cynthia Embretson, Lois Mason, Judy Reed, and Mona Schermerhorn of the Division of Fluid Mineral Leasing and Sie Ling Chiang of the Division of Fluid Mineral Operations, all of the Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it 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.*).

The final rulemaking will not have an adverse effect on investment, competition, employment, productivity or the ability of U.S. firms to compete with foreign enterprises. These amendments will affect all businesses, large and small, equally. In addition, the changes will simplify and clarify the existing regulations, reducing the regulatory burden on the public.

The information collection requirements contained in this final rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0034, 1004–0067, 1004–0074, 1004–0132, 1004–0134, 1004–0135,

1004-0136, 1004-0137, 1004-0138, and 1004-0145.

List of Subjects

43 CFR Part 3000

Public lands—classification, Public lands—mineral resources.

43 CFR Part 3040

Oil and gas exploration, Public Lands—mineral resources.

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3150

Oil and gas exploration, Public lands—mineral resources.

43 CFR Part 3160

Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3210

Geothermal energy, Public lands—mineral resources.

43 CFR Part 3220

Geothermal energy, Public lands—mineral resources.

43 CFR Part 3240

Geothermal energy, Mineral royalties, Public lands—mineral resources, Water resources.

43 CFR Part 3250

Electric power, Geothermal energy, Public lands—mineral resources.

43 CFR Part 3260

Environmental protection, Geothermal energy, Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Parts 3000 and 3040, Group 3000, Parts 3100, 3130, 3150, 3160, and 3180, Group 3100, and Parts 3200, 3210, 3220, 3240, 3250, and 3260, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, are amended as set forth below.

James E. Cason,

Acting Assistant Secretary of the Interior.

April 20, 1988.

PART 3000—[AMENDED]

1. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3000.0-5 [Amended]

2. Section 3000.0-5 is amended by:

A. Revising paragraph (g) to read:

(g) "Public domain lands" means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws and other lands specifically identified by the Congress as part of the public domain.

B. Revising paragraph (k) to read:

(k) "Party in interest" means a party who is or will be vested with any interest under the lease as defined in paragraph (l) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest;

and

C. Revising paragraph (l) to read:

(l) "Interest" means ownership in a lease or prospective lease of all or a portion of the record title, working interest, operating rights, overriding royalty, payments out of production, carried interests, net profit share or similar instrument for participation in the benefit derived from a lease. An "interest" may be created by direct or indirect ownership, including options. "Interest" does not mean stock ownership, stockholding or stock control in an application, offer, competitive bid or lease, except for purposes of acreage limitations in § 3101.2 of this title and qualifications of lessees in Subpart 3102 of this title.

3. A new § 3000.8 is added to read:

§ 3000.8 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provide that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of the use of such minerals shall be accomplished under the regulations of groups 3000 and 3100 of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

PART 3040—[REMOVED]

4. Part 3040 is removed in its entirety.

PART 3100—[AMENDED]

5. The authority citation for Part 3100 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Act of May 21, 1930 (30 U.S.C. 301-306), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41) and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

§ 3100.0-3 [Amended]

6. Section 3100.0-3 is amended by:

A. Revising paragraph (a)(2)(i) to read:

(i) Units of the National Park System, including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as

provided in paragraph (g)(4) of this section;

B. Revising paragraph (b)(2)(i) to read:

(i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;

and

C. Amending paragraph (e) by inserting after the phrase "excess to" the phrase "or surplus by".

§ 3100.0-5 [Amended]

7. Section 3100.0-5 is amended by:

A. Revising paragraph (a) to read:

(a) "Operator" means any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

B. Amending paragraph (d) by removing the last sentence thereof in its entirety;

C. Revising paragraph (e) to read:

(e) "Transfer" means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: "Assignment" which means a transfer of all or a portion of the lessee's record title interest in a lease; and "sublease" which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

D. Removing paragraph (f) in its entirety;

E. Redesignating paragraph (g) as paragraph (f);

F. Removing paragraph (h) in its entirety;

G. Redesignating paragraphs (i) and (j) as paragraphs (g) and (h), respectively;

H. Amending newly designated paragraph (h), formerly paragraph (j), by removing from paragraph (h)(1) the phrase "drilling or" and by removing from paragraph (h)(2) the last sentence thereof; and

I. Redesignating paragraphs (k) and (l) as paragraphs (i) and (j), respectively, and revising them to read as follows:

(i) "Lessee" means a person or entity holding record title in a lease issued by the United States

(j) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

§ 3100.2-2 [Amended]

8. Section 3100.2-2 is amended by removing from the last sentence thereof the citation "30 CFR 221.21" and replacing it with the citation "§ 3162.2(a) of this title."

§ 3100.4-1 [Amended]

9. Section 3100.4-1(b) is amended by removing from where it appears in the opening paragraph the phrase "notice or option" and replacing it with the phrase "notice of option", by removing from paragraph (b)(3) the phrase "to the option; and" and replacing it with the phrase "to the option, including the date and expiration date of the option; and", and by removing from paragraph (b)(4) the phrase "signed copy of notice" and replacing it with the phrase "signed copy or notice".

10. Section 3100.4-3 is revised to read:

§ 3100.4-3 Option statements.

Each option holder shall file in the proper BLM office within 90 days after June 30 and December 31 of each year a statement showing as of the prior June 30 and December 31, respectively:

(a) Any changes to the statements submitted under § 3100.4-1(b) of this title, and

(b) The number of acres covered by each option and the total acreage of all options held in each State.

11. Sections 3101.1-1 and 3101.1-2 are revised to read:

§ 3101.1-1 Lease form.

A lease shall be issued only on the standard form approved by the Director.

§ 3101.1-2 Surface use rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

12. A new § 3101.1-3 is added to read:

§ 3101.1-3 Stipulations and information notices.

The authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. A lessee shall be required to indicate acceptance of stipulations prior to the issuance of a lease. Any party submitting a bid under Subpart 3120 of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in a list or notice of parcels available from the proper BLM office. An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.

§ 3101.2-1 [Amended]

13. Section 3101.2-1(b) is amended by removing from the second sentence thereof all after the word "Alaska" and replacing it with the phrase "begins at the northeast corner of the Tetlin National Wildlife Refuge as established on December 2, 1980 (16 U.S.C. 3101), at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63°9'38" north latitude, 142°20'52" west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth."

§ 3101.2-3 [Amended]

14. Section 3101.2-3 is amended by adding at the end thereof a new sentence to read:

* * * Acreage subject to offers to lease, overriding royalties and payments

out of production shall not be included in computing accountable acreage.

§ 3101.2-4 [Amended]

15. Section 3101.2-4(b) is amended by removing from where it appears the phrase "bring the lessee within" and replacing it with the phrase "comply with".

§ 3101.2-5 [Amended]

16. Section 3101.2-5 is amended by removing from where it appears the phrase "and co-leassees" and replacing it with the phrase "and co-parties", and by removing from the last sentence thereof the word "lessee" and replacing it with the word "party".

§ 3101.3-1 [Amended]

17. Section 3101.3-1 is amended by removing from where it appears in the second sentence the word "lessee" and replacing it with the word "operator".

§ 3101.3-2 [Amended]

18. Section 3101.3-2 is amended by removing from where it appears the word "noncompetitive" and by removing from where it appears the word "without" and replacing it with the word "outside".

§ 3102.1 [Amended]

19. Section 3102.1 is amended by removing from where it appears at the beginning of the section the word "Leases" and replacing it with the phrase "Leases or interests therein".

20. Section 3102.2 is revised to read:

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.

§ 3102.3 [Amended]

21. Section 3102.3 is amended by adding a new sentence at the end thereof to read: "Such legal guardians or trustees shall be citizens of the United States or otherwise meet the provisions of § 3102.1 of this title."

22. Section 3102.4 is revised to read:

§ 3102.4 Signature.

(a) The original of an offer or bid shall be signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.

(b) Three copies of a transfer of record title or of operating rights (sublease), as required by section 30a of the act, shall be originally signed and dated by the transferor or anyone authorized to sign on behalf of the transferor. However, a transferee, or anyone authorized to sign on his or her behalf, shall be required to sign and date only 1 original request for approval of a transfer.

(c) Documents signed by any party other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship. A signatory who is a member of the organization that constitutes the present or potential lessee (e.g., officer of a corporation, partner of a partnership, etc.) may be requested by the authorized officer to clarify his/her relationship, when the relationship is not shown on the documents filed.

(d) Submission of a qualification number does not meet the requirements of paragraph (c) of this section.

23. Section 3102.5 is revised and §§ 3102.5-1, 3102.5-2 and 3102.5-3 are added to read:

§ 3102.5 Compliance, certification of compliance and evidence.

§ 3102.5-1 Compliance.

In order to own, hold, or control an actual or potential interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee and all such parties (as defined in § 3000.0-5(k)) are:

(a) Citizens of the United States (See § 3102.1) or alien stockholders in a corporation organized under State or Federal law (See § 3102.2);

(b) In compliance with the Federal acreage limitations (See § 3101.2);

(c) Not minors (See § 3102.3);

(d) Not participants in any agreement, scheme, plan or arrangement prohibited in relation to oil and gas leasing; and

(e) Except for an assignment or transfer under Part 3106 of this title, in compliance with section 2(a)(2)(A) of the act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (e) shall be subject to the cancellation provisions of § 3108.3 of this title. The term 'entity' is defined at § 3400.0-5(rr) of this title.

§ 3102.5-2 Certification of compliance.

Any party(s) seeking to obtain an interest in a lease shall certify it is in compliance with the act as set forth in § 3102.5-1 of this title. A party(s) that is a corporation or publicly traded association, including a publicly traded partnership, shall certify that constituent members of the corporation, association or partnership holding or controlling more than 10 percent of the instruments of ownership fo the corporation, association or partnership are in compliance with the act. Execution and submission of an offer, competitive bid form, or request for approval of a transfer of record title or of operating rights (sublease), constitutes certification of compliance.

§ 3102.5-3 Evidence of compliance.

The authorized officer may request at any time further evidence of compliance and qualification from any party holding or seeking to hold an interest in a lease. Failure to comply with the request of the authorized officer shall result in adjudication of the action based on the incomplete submission.

§ 3103.1-2 [Amended]

24. Section 3103.1-2 is amended by:

A. Amending paragraph (a)(1) by removing from where it appears the phrase "applications for approval of an instrument of" and replacing it with the phrase "requests for approval of a"; and

B. Revising paragraph (a)(2) to read:

(a) * * *

(2) All second-year and subsequent rentals, except for leases specified in paragraph (b) of this section, shall be paid to the Service at the following address: Minerals Management Service, Royalty Management Program/BRASS, Box 5640 T.A., Denver, Colorado 80217.

25. Section 3103.2-2 introductory text is revised to read:

§ 3103.2-2 Annual rental payments.

Rentals shall be paid on or before the anniversary date. A full year's rental shall be submitted even when less than a full year remains in the lease term, except as provided in § 3103.4-2(d) of this title. Failure to make timely payment shall cause a lease to terminate automatically by operation of law. If the designated Service office is not open on the anniversary date, payment received on the next day the designated Service office is open to the public shall be deemed to be timely made. Payments made to an improper BLM or Service office shall be returned and shall not be forwarded to the designated Service

office. Rental shall be payable at the following rates:

§ 3103.3-1 [Amended]

26. Section 3103.3-1 is amended by:

A. Amending paragraph (b) by removing from where it appears the citation "30 CFR Part 221, 'Oil and Gas Operating Regulations.' " and replacing it with the citation "§ 3162.7-4 of this title."

B. Removing paragraphs (c) and (d) in their entirety;

C. Redesignating paragraph (e) as paragraph (c); and

D. Adding a new paragraph (d) to read:

(d) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

§ 3103.3-3 [Removed]

27. Section 3103.3-3 is removed in its entirety.

§ 3103.4-1 [Amended]

28. Section 3103.4-1 is amended by:

A. Amending paragraph (b)(1) by removing from where it appears the phrase "in triplicate" and by removing from where it appears in the second sentence thereof the phrase "the proper BLM office name, the name of the record title holder and operator or sub-lessee," and replacing it with the phrase "the names of the record title holders, operating rights owners (sublessees), and operators for each lease,"; and

B. Amending paragraph (c) by removing from where it appears in the second sentence the phrase "royalties or payments out of production" and replacing it with the phrase "overriding royalties, payments out of production, or similar interests" and by removing from where it appears the first time in the third sentence the word "royalties" and replacing it with the phrase "royalties or similar payments".

29. Section 3103.4-2 is revised to read:

§ 3103.4-2 Suspension of operations and/or production.

(a) A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of § 3165.1 of this title.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of all operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

§ 3104.1 [Amended]

30. Section 3104.1(a) is revised to read:

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart.

§ 3104.3 [Amended]

31. Section 3104.3(b) is amended by removing from the end thereof the phrase "or operations nationwide." and replacing it with the phrase "and operations nationwide."

32. Section 3104.6 is revised to read:

§ 3104.6 Where filed and number of copies.

All bonds shall be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. A bond filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of §§ 3104.2 and 3104.3(a) of this title, bonds or bond riders shall be filed in the Bureau State office having jurisdiction of the lease or operations covered by the bond or rider. Nationwide bonds may be filed in any Bureau State office (See § 1821.2-1).

§ 3104.7 [Amended]

33. Section 3104.7 is amended by revising paragraph (b) to read:

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer. In lieu thereof, the principal may file separate or substitute bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by the authorized officer. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may subject all leases covered by such bond(s) to cancellation under the provisions of § 3108.3 of this title.

§ 3104.8 [Amended]

34. Section 3104.8 is amended by removing from where it appears the phrase "alternative bond" and replacing it with the phrase "replacement bond".

35. Section 3105.2–3 is revised to read:

§ 3105.2-3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement shall be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement may be the effective date of the order.

(c) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extension under § 3107.4 of this title.

36. A new § 3105.6 is added to read:

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved by the authorized officer if it is determined that there is sufficient justification and it is in the public interest. Each application for consolidation of leases shall be considered on its own merits. Leases to different lessees for different terms, rental and royalty rates, and those containing provisions required by law that cannot be reconciled, shall not be consolidated. The effective date of a consolidated lease shall be that of the oldest lease involved in the consolidation.

37. Subpart 3106 is revised to read:

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

Sec.

3106.1 Transfers, general.
3106.2 Qualifications of transferees.
3106.3 Filing fees.
3106.4 Forms.
3106.4–1 Transfers of record title and of operating rights (subleases).
3106.4–2 Transfers of other interests, including royalty interests and production payments.
3106.4–3 Mass transfers.
3106.5 Description of lands.
3106.6 Bonds.
3106.6–1 Lease bond.
3106.6–2 Statewide/nationwide bond.
3106.7 Approval of transfer.
3106.7–1 Failure to qualify.
3106.7–2 Continuing responsibility.
3106.7–3 Lease account status.
3106.7–4 Effective date of transfer.
3106.7–5 Effect of transfer.
3106.8 Other types of transfers.
3106.8–1 Heirs and devisees.
3106.8–2 Change of name.
3106.8–3 Corporate merger.

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit or of part of a legal subdivision shall be disapproved unless the necessity of the assignment is established and it is determined that such assignment is in the best interest of the United States. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force. A transfer of production payments or overriding royalty or other similar payments, arrangements or interests shall be filed in the proper BLM office but shall not require approval.

(b) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

§ 3106.2 Qualifications of transferees.

Transferees shall comply with the provisions of Subpart 3102 of this title and post any bond that may be required.

§ 3106.3 Filing fees.

Each transfer of record title or of operating rights (sublease) or each transfer of royalty interest, payment out of production or similar interest for each lease, when filed, shall be accompanied by a nonrefundable filing fee of $25. A transfer not accompanied by the required filing fee shall not be accepted and shall be returned.

§ 3106.4 Forms.

§ 3106.4-1 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an operating right (sublease) shall be filed with the proper BLM office on a current form approved by the Director or exact reproductions of the front and back of such form. A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. A separate form for each transfer, in triplicate, originally executed shall be filed for each lease out of which a transfer is made. Only 1 originally executed copy of a transferee's request for approval for each transfer shall be required, including in those instances where several transfers to a transferee have been submitted at the same time (See also § 3106.4–3). Copies of documents other than the current form approved by the Director shall not be submitted. However, reference(s) to other documents containing information affecting the terms of the transfer may be made on the submitted form.

§ 3106.4-2 Transfers of other interests, including royalty interests and production payments.

(a) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease in conjunction with a transfer of record title or of operating rights (sublease) shall be described for each lease on the current form when filed.

(b) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease independently of a transfer of record title or of operating rights

(sublease), if not filed on the current form, shall be described and shall include the transferee's executed statement as to his/her qualifications under Subpart 3102 of this title. A single executed copy of each such transfer of other interests for each lease shall be filed with the proper BLM office.

§ 3106.4-3 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of §§ 3106.4-1 and 3106.4-2 of this title when a transferor transfers interests of any type in a large number of Federal leases to the same transferee.

(b) Three originally executed copies of the mass transfer shall be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer shall be on a current form approved by the Director or an exact reproduction of both sides thereof, with an exhibit attached to each copy listing the following for each lease:

(1) The serial number;

(2) The type and percent of interest being conveyed; and

(3) A description of the lands affected by the transfer in accordance with § 3106.5 of this title.

(c) One reproduced copy of the form required by paragraph (b) of this section shall be filed with the proper BLM office for each lease involved in the mass transfer. A copy of the exhibit for each lease may be limited to line items pertaining to individual leases as long as that line item includes the information required by paragraph (b) of this section.

(d) A nonrefundable filing fee of $25 for each such interest transferred for each lease, in accordance with the provisions of § 3106.3 of this title, shall accompany a mass transfer.

§ 3106.5 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease or in the manner required by § 3111.2 of this title, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

§ 3106.6 Bonds.

§ 3106.6-1 Lease bond.

Where a lease bond is maintained by the lessee or operating rights owner (sublessee) in connection with a particular lease, the transferee of record title interest or operating rights in such lease shall furnish, if bond coverage continues to be required, either a proper bond or consent of the surety under the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such consent. Where bond coverage is provided by an operator, the new operator shall furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond.

§ 3106.6-2 Statewide/nationwide bond.

If the transferee is maintaining a statewide or nationwide bond, a lease bond shall not be required, but the amount of the bond may be increased to an amount determined by the authorized officer in accordance with the provisions of § 3104.5 of this title.

§ 3106.7 Approval of transfer.

§ 3106.7-1 Failure to qualify.

No transfer of record title or of operating rights (sublease) shall be approved if the transferee or any other parties in interest are not qualified to hold the transferred interest(s), or if the bond, should one be required, is insufficient. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3106.7-2 Continuing responsibility.

The transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary. When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

§ 3106.7-3 Lease account status.

A transfer of record title or of operating rights (sublease) in a producing lease shall not be approved unless the lease account is in good standing.

§ 3106.7-4 Effective date of transfer.

The signature of the authorized officer on the official form shall constitute approval of the transfer of record title or of operating rights (sublease) which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

§ 3106.7-5 Effect of transfer.

A transfer of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. A transfer of an undivided record title interest or a transfer of operating rights (sublease) shall not segregate the transferred and retained portions into separate leases.

§ 3106.8 Other types of transfers.

§ 3106.8-1 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title. No filing fee is required. A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

(b) Any ownership or interest otherwise forbidden by the regulations in this group which may be acquired by descent, will, judgement or decree may be held for a period not to exceed 2 years after its acquisition. Any such forbidden ownership or interest held for a period of more than 2 years after acquisition shall be subject to cancellation.

§ 3106.8-2 Change of name.

A change of name of a lessee shall be reported to the proper BLM office. No filing fee is required. The notice of name change shall be submitted in writing and be accompanied by a list of the serial numbers of the leases affected by the name change. If a bond(s) has been furnished, change of name may be made by surety consent or a rider to the original bond or by a replacement bond.

§ 3106.8-3 Corporate merger.

Where a corporate merger affects leases situated in a State where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease interest is required. A notification of the merger shall be furnished with a list, by serial number, of all lease interests affected. No filing fee is required. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the

authorized officer as a prerequisite to recognition of the merger.

§ 3107.1 [Amended]

38. Section 3107.1 is amended by removing from where it appears in the first sentence thereof the phrase "of this title or 30 CFR 226.12," and replacing it with the phrase "and § 3186.1 of this title," and by removing the last sentence thereof and replacing it with the sentences: "Actual drilling operations shall be conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement or plan, it shall be taken to a depth sufficient to penetrate at lease 1 formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it shall be taken to a depth sufficient to penetrate at least 1 new and deeper formation recognized in the area as potentially productive of oil or gas. The authorized officer may determine that further drilling is unwarranted or impracticable."

§ 3107.2-2 [Amended]

39. Section 3107.2-2 is amended by adding immediately after the phrase "because of production" where it appears the phrase "in paying quantities".

§ 3107.2-3 [Amended]

40. Section 3107.2-3 is amended by revising the title to read: "§ 3107.2-3 Leases capable of production."

§ 3107.3-2 [Amended]

41. Section 3107.3-2 is amended by removing the last sentence in its entirety and replacing it with 3 new sentences to read as follows:

* * * The segregated lease covering the nonunitized portion of the lands shall continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer. However, for any lease segregated from a unit, if the public interest requirement for the unit is not satisfied, such segregation shall be declared invalid by the authorized officer. Further, the segregation shall be conditioned to state that no operations shall be approved on the segregated portion of the lease past the expiration date of the original lease until the public interest requirement of the unit has been satisfied.

§ 3107.4 [Amended]

42. Section 3107.4 is amended by adding at the end thereof the sentence:

* * * No lease shall be extended if the public interest requirement for an approved cooperative or unit plan or a communitization agreement has not been satisifed as determined by the authorized officer.

§ 3107.6 [Amended]

43. Section 3107.6 is amended by removing from where it appears in the introductory paragraph the citation "§ 3108.2-1" and replacing it with the citation "§ 3108.2".

§ 3107.8-3 [Amended]

44. Section 3107.8-3(b) is amended by removing from where it appears the phrase "out of production in excess of 5 percent" and replacing it with the phrase "out of production or similar interests in excess of 5 percent" and by removing from where it appears the phrase "out of production are reduced to not more than 5 percent" and replacing it with the phrase "out of production or similar interests are reduced to not more than 5 percent".

§ 3108.1 [Amended]

45. Section 3108.1 is amended by adding in the first sentence immediately after the phrase "record title holder" the phrase ", or the holder's duly authorized agent,".

§ 3108.2-1 [Amended]

46. Section 3108.2-1 is amended by:

A. Revising paragraph (a) to read:

(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the designated Service office on or before the anniversary date of such lease. However, if the designated Service office is closed on the anniversary date, a rental payment received on the next day the Service office is open to the public shall be considered as timely made.

and

B. Amending paragraph (b) by removing from where it appears in the first sentence the phrase "stated in a bill," and replacing it with the phrase "stated in a bill rendered by the designated Service office,", by revising the third sentence thereof to read "The designated Service office shall send a Notice of Deficiency to the lessee." and by removing from where it appears at the end of the fourth sentence the phrase "the proper BLM office or the Service, as appropriate." and replacing it with the phrase "the designated Service office."

§ 3108.2-2 [Amended]

47. Section 3108.2-2(a) is amended by:

A. Amending paragraph (a)(2) by removing from the end thereof the phrase "lessee; and" and replacing it with the phrase "lessee (reasonable diligence shall include a rental payment which is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public); and" and

B. Amending paragraph (a)(3) by adding at the end thereof the sentence "If a terminated lease becomes productive prior to the time the lease is reinstated, all required royalty that has accrued shall be paid to the Service.

§3108.2-4 [Amended]

48. Section 3108.2-4(a) is amended by removing from where it appears in the first sentence thereof the word "validy" and replacing it with the word "validly".

§ 3108.4 [Amended]

49. Section 3108.4 is amended by removing the last sentence thereof in its entirety.

50. A new § 3108.5 is added to read:

§ 3108.5 Waiver of suspension of lease rights.

If, during any proceeding with respect to a violation of any provisions of the regulations in Groups 3000 and 3100 of this title or the act, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

51. Section 3109.1-2 is revised to read:

§ 3109.1-2 Application.

No approved form is required for an application to lease lands in a right-of-way. Applications shall be filed in the proper BLM office. Such applications shall be filed by the owner of the right-of-way or by his/her transferee and be accompanied by a nonrefundable filing fee of $75, and if filed by a transferee, by a duly executed transfer of the right to

lease. The application shall detail the facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee; the development of oil or gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way. A description by metes and bounds of the right-of-way is not required by each legal subdivision through which a portion of the right-of-way desired to be leased extends shall be described.

§ 3109.2 [Amended]

52. Section 3109.2 is amended by:

A. Amending paragraph (c)(1) by removing from where it appears the phrase "map, 8360–80013A, revised December 1979.", and replacing it with the phrase "map, 8360–80013B, revised February 1986."; and

B. Amending paragraph (d)(1)(ii) by removing from where it appears the phrase "and all lands within any developed and/or concentrated public use area or other area of outstanding recreational significance as designated by the Superintendent on the map (NRA–L.M. 2291A, dated July 1966)" and replacing it with the phrase "and all lands outside of resource utilization zones as designated by the Superintendent on the map (602–2291B, dated October 1987)".

PART 3130—[AMENDED]

53. The authority citation for Part 3130 is revised to read:

Authority. The Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6504 *et seq.*), 43 U.S.C. 1701 et seq.

§ 3130.0–5 [Amended]

54. Section 3130.0–5 is amended by:

A. Removing paragraph (e) in its entirety; and

B. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

§ 3130.3 [Amended]

55. Section 3130.3 is amended by removing from where it appears the phrase "Director, U.S. Geological Survey," and replacing it with the phrase "authorized officer".

§ 3130.5 [Amended]

56. Section 3130.5 is amended by removing from where it appears the citation "§ 3102.1–2" and replacing it with the citation "§ 3108.4".

§ 3131.2 [Amended]

57. Section 3131.2 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "Management, with a copy to the Regional Conservation Manager, U.S. Geological Survey." and replacing it with the word "Management."; and

B. Amending paragraph (b) by removing from where it appears the phrase "shall, in consultation with the Regional Conservation Manager," and replacing it with the word "shall".

§ 3132.3 [Amended]

58. Section 3132.3 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "filing charges and fees" and replacing it with the phrase "and filing fees", and by removing from where it appears the phrase "Bureau of Land Management" and replacing it with the phrase "Department of the Interior, Bureau of Land Management"; and

B. Removing from where it appears in paragraph (b) the phrase "U.S. Geological Survey" and replacing it with the phrase "Department of the Interior, Minerals Management Service".

§ 3133.1 [Amended]

59. Section 3133.1(c) is amended by removing the phrase "in any year" and relacing it with the phrase "in any year prior to discovery of oil or gas on the lease".

§ 3133.2 [Amended]

60. Section 3133.2 is amended by removing from where it appears near the end of the section the misspelled word "royality" and replacing it with the correct word "royalty."

§ 3133.2–1 [Amended]

61. Section 3133.2–1 is amended by removing from where it appears near the beginning of the section the misspelled word "leasee" and replacing it with the correct word "lessee."

§ 3134.1 [Amended]

62. Section 3134.1 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "corporate surety bond" and replacing it with the phrase "surety or personal bond in accordance with the provisions of § 3104.1 of this title", and by removing the period at the end of the paragraph and adding the phrase ", or maintains or furnishes a nationwide bond as set forth in § 3104.3(b) of this title and furnishes a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases held within NPR–A.";

B. Revising paragraph (b) to read:

(b) A bond in the sum of $100,000 or $300,000, or a nationwide bond as provided in § 3104.3(b) of this title with a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases within NPR–A, may be provided by an operating rights owner (sublessee) or operator in lieu of a bond furnished by the lessee, and shall assume the responsibilities and obligations of the lessee for the entire leasehold in the same manner and to the extent as though he/she were the lessee.

C. Amending paragraph (c) by removing the phrase "$100,000 lease bond or a $300,000 NPR–A-wide";

D. Revising paragraph (d) to read:

(d) A new bond in the amount previously held or a larger amount as determined by the authorized officer shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu thereof, separate or substitute bonds for each lease covered by the prior bond may be filed.The authorized officer may cancel a lease(s) covered by a deficient bond(s), in accordance with § 3136.3 of this title. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee when such lessee is not a party to the bond.

and

E. Revising paragraph (e) to read:

(e) Except as provided in this subpart, the bonds required for NPR–A leases are in addition to any other bonds the successful bidder may have filed or be required to file under §§ 3104.2, 3104.3(a) and 3154.1 and subparts 3206 and 3209 of this title.

§ 3134.1–1 [Amended]

63. Section 3134.1–1 is amended by removing from where it appears the phrase "lessee shall" and replacing it with the phrase "lessee, operating rights owner (sublessee), or operator shall".

§ 3134.1–2 [Amended]

64. Section 3134.1–2 is amended by redesignating the existing text as paragraph (a), by removing from where it appears therein the phrase "the lessee to supply" and replacing it with the phrase "the bonded party to supply", and by adding a new paragraph (b) to read:

(b) The holders of any oil and gas lease bond for a lease on the NPR–A shall be permitted to obtain a rider to include the coverage of oil and gas geophysical operations within the boundaries of NPR–A.

65. The title of Subpart 3135 is revised to read:

Subpart 3135—Transfers, Extensions and Consolidations

66. Section 3135.1 is revised to read:

§ 3135.1 Transfers and extensions, general.

67. Section 3135.1–1 is amended by:

A. Revising the title to read:

§ 3135.1–1 Transfers.

B. Amending paragraph (a) by removing from where it appears the word "assign" and replacing it with the word "transfer";

C. Amending paragraph (b) by removing from where it appears the word "assignment" and replacing it with the word "transfer";

D. Amending paragraph (c) by removing from where it appears the phrase "assignor shall be liable for" and replacing it with the phrase "transferor shall continue to be responsible for" and by removing from where it appears at the end of the paragraph the word "assignment" and replacing it with the word "transfer";

E. Amending paragraph (d) by removing from where it appears the phrase "assignor shall be liable for" and replacing it with the phrase "transferee shall be responsible for", and by removing from where it appears the phrase "of an assignment," and replacing it with the phrase "a transfer,"; and

F. Adding new paragraphs (e) and (f) to read:

(e) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the rights transferred to the sublessee.

(f) Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3135.1–2 [Amended]

68. Section 3135.1–2 is amended by:

A. Amending paragraph (b) by removing from where it appears therein the word "assignment" and replacing it with the word "transfer"; and

B. Revising paragraph (c) to read:

(c) Where a transfer of record title creates separate leases, a bond shall be furnished covering the transferred lands in the amount prescribed in § 3134.1 of this title. Where a transfer does not create separate leases, the transferee, if the transfer so provides and the surety consents, may become co-principal on the bond with the transferor.

69. Section 3135.1–3 is revised to read:

§ 3135.1–3 Separating filing for transfers.

A separate instrument of transfer shall be filed for each lease on a form approved by the Director or an exact reproduction of the front and back of such form. Any earlier editions of the current form are deemed obsolete and are unacceptable for filing. When transfers to the same person, association or corporation, involving more than 1 lease are filed at the same time for approval, 1 request for approval and 1 showing as to the qualifications of the transferee shall be sufficient.

70. Section 3135.1–4 is amended by:

A. Revising the title to read:

§ 3135.1–4 Effect of transfer of a tract.

B. Amending paragraph (a) by removing from where it appears in the first sentence the phrase "an assignment" and replacing it with the phrase "a transfer", by removing from where it appears in the first sentence the word "assigned" and replacing it with the word "transferred" and by removing from where it appears at the beginning of the second sentence the word "Assignment" and replacing it with the word "Transfers".

§ 3136.1 [Amended]

71. Section 3136.1 is amended by removing from where it appears at the beginning of the fourth sentence the phrase "Are linquishment", and replacing it with the correct phrase "A relinquishment", and by removing from where it appears at the end of the section the phrase "Director, U.S. Geological Survey" and replacing it with the phrase "authorized officer".

72. A new Part 3150 is added to read:

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

Sec.
3150.0–1 Purpose.
3150.0–3 Authority.
3150.0–5 Definitions.
3150.1 Suspension, revocation or cancellation.

Subpart 3151—Exploration Outside of Alaska

Sec.
3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.
3151.2 Notice of completion of operations.

Subpart 3152—Exploration in Alaska

Sec.
3152.1 Application for oil and gas geophysical exploration permit.
3152.2 Action on application.
3152.3 Renewal of exploration permit.
3152.4 Relinquishment of exploration permit.
3152.5 Modification of exploration permit.
3152.6 Collection and submission of data.
3152.7 Completion of operations.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

Sec.
3153.1 Geophysical permit requirements.

Subpart 3154—Bond Requirements

Sec.
3154.1 Types of bonds.
3154.2 Additional bonding.
3154.3 Bond cancellation or termination of liability.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504), and the Department of the Interior Appropriations Act. Fiscal Year 1981 (42 U.S.C. 6508).

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

§ 3150.0–1 Purpose.

The purpose of this part is to establish procedures for conducting oil and gas geophysical exploration operations when authorization for such operations is required from the Bureau of Land Management. Geophysical exploration on public lands, the surface of which is administered by the Bureau, requires Bureau approval. The procedures in this part also apply to geophysical exploration conducted under the rights granted by any Federal oil and gas lease unless the surface is administered by the U.S. Forest Service. However, a lessee may elect to conduct exploration operations outside of the rights granted by the lease, in which case authorization from the surface managing agency or surface owner may be required. At the request of any other surface managing agency, the procedures in this part may be applied on a case-by-case basis to unleased public lands administered by such agency. The procedures of this part do not apply to:

(a) Casual use activities;

(b) Operations conducted on private surface overlying public lands unless such operations are conducted by a lessee under the rights granted by the Federal oil and gas lease; and

(c) Exploration operations conducted in the Arctic National Wildlife Refuge in

accordance with section 1002 of the Alaska National Interest Lands Conservation Act (See 50 CFR Part 37).

§ 3150.0-3 Authority.

The Mineral Leasing Act of 1920, as amended and supplemented, (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504) and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

§ 3150.0-5 Definitions.

As used in this part, the term:

(a) "Oil and gas geophysical exploration" means activity relating to the search for evidence of oil and gas which requires the physical presence upon the lands and which may result in damage to the lands or the resources located thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails and cross-country transit of vehicles over such lands. It does not include core drilling for subsurface geologic information or drilling for oil and gas; these activities shall be authorized only by the issuance of an oil and gas lease and the approval of an Application for a Permit to Drill. The regulations in this part, however, are not intended to prevent drilling operations necessary for placing explosive charges, where permissible, for seismic exploration.

(b) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicular movement and except over established roads and trails are casual use.

§ 3150.1 Suspension, revocation or cancellation.

The right to conduct exploration under notices of intent and oil and gas geophysical exploration permits may be revoked or suspended, after notice, by the authorized officer and upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations issued under Acts applicable to the public lands and applicable State air and water quality standards or implementation plans. The Secretary may order an immediate temporary suspension of activities authorized under a permit or other use authorization prior to a hearing or final administrative finding if he/she determines that such a suspension is necessary to protect health or safety or the environment. Further, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

Subpart 3151—Exploration Outside of Alaska

§ 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

Parties wishing to conduct oil and gas geophysical exploration outside of the State of Alaska shall file a Notice of Intent to Conduct Oil and Gas Exploration Operations, referred to herein as a notice of intent. The notice of intent shall be filed with the District Manager of the proper BLM office on the form approved by the Director. Within 5 working days of the filing date, the authorized officer shall process the notice of intent and notify the operator of practices and procedures to be followed. If the notice of intent cannot be processed within 5 working days of the filing date, the authorized officer shall promptly notify the operator as to when processing will be completed, giving the reason for the delay. The operator shall, within 5 working days of the filing date, or such other time as may be convenient for the operator, participate in a field inspection if requested by the authorized officer. Signing of the notice of intent by the operator shall signify agreement to comply with the terms and conditions contained therein and in this part, and with all practices and procedures specified at any time by the authorized officer.

§ 3151.2 Notice of completion of operations.

Upon completion of exploration, there shall be filed with the District Manager a Notice of Completion of Oil and Gas Exploration Operations. Within 30 days after this filing, the authorized officer shall notify the party whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary, specifying the nature and extent of actions to be taken by the operator.

Subpart 3152—Exploration in Alaska

§ 3152.1 Application for oil and gas geophysical exploration permit.

Parties wishing to conduct oil and gas geophysical exploration operations in Alaska shall complete an application for an oil and gas geophysical exploration permit. The application shall contain the following information:

(a) The applicant's name and address;

(b) The operator's name and address;

(c) The contractor's name and address;

(d) A description of lands involved by township and range, including a map or overlays showing the lands to be entered and affected;

(e) The period of time when operations will be conducted; and

(f) A plan for conducting the exploration operations.

The application shall be submitted, along with a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a lease held by or on behalf of the lessee), to the District Manager of the proper BLM office.

§ 3152.2 Action on application.

(a) The authorized officer shall review each application and approve or disapprove it within 90 calendar days, unless compliance with statutory requirements such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) delays this action. The applicant shall be notified promptly in writing of any such delay.

(b) The authorized officer shall include in each geophysical exploration permit terms and conditions deemed necessary to protect values, mineral resources, and nonmineral resources. Geophysical permits within National Petroleum Reserve—Alaska shall contain such reasonable conditions, restrictions and prohibitions as the authorized officer deems appropriate to mitigate adverse effects upon the surface resources of the Reserve and to satisfy the requirement of section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504) (See part 3130 for stipulations relating to the National Petroleum Reserve—Alaska).

(c) An exploration permit shall become effective on the date specified by the authorized officer and shall expire 1 year thereafter.

(d) For lands subject to section 1008 of the Alaska National Interest Lands Conservation Act, exploration shall be authorized only upon a determination that such activities can be conducted in a manner which is consistent with the

purposes for which the affected area is managed under applicable law.

§ 3152.3 Renewal of exploration permit.

Upon application by the permittee and payment of a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a leasehold by or on behalf of the lessee), an exploration permit may be renewed for a period not to exceed 1 year.

§ 3152.4 Relinquishment of exploration permit.

Subject to the continued obligations of the permittee and the surety to comply with the terms and conditions of the exploration permit and the regulations, the permittee may relinquish an exploration permit for all or any portion of the lands covered by it. Such relinquishment shall be filed with the District Manager of the proper BLM office.

§ 3152.5 Modification of exploration permit.

(a) A permittee may request, and the authorized officer may approve a modification of an exploration permit.

(b) The authorized officer may, after consultation with the permittee, require modifications determined necessary.

§ 3152.6 Collection and submission of data.

(a) The permittee shall submit to the authorized officer all data and information obtained in carrying out the exploration plan.

(b) The Bureau shall not release such data and information and any processed, analyzed and interpreted material until such time as disclosure would not adversely affect, in the opinion of the authorized officer, the competitive position of the permittee.

§ 3152.7 Completion of operations.

(a) The permittee shall submit to the authorized officer a completion report within 30 days of completion of all operations under the permit. The completion report shall contain the following:

(a) A description of all work performed;

(2) Charts, maps or plats depicting the areas and blocks in which the exploration was conducted and specifically identifying the lines of geophysical traverses and any roads constructed;

(3) The dates on which the actual exploration was conducted;

(4) Such other information about the exploration operations as may be specified by the authorized officer in the permit; and

(5) A statement that all terms and conditions have been complied with or that corrective measures shall be taken to rehabilitate the lands or other resources.

(b) Within 90 days after the authorized officer receives a completion report from the permittee that exploration has been completed or after the expiration of the permit, whichever occurs first, the authorized officer shall notify the permittee of the specific nature and extent of any additional measures required to rectify any damage to the lands and resources.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

§ 3153.1 Geophysical permit requirements.

Except in unusual circumstances, permits for geophysical exploration on unleased lands under the jurisdiction of the Department of Defense shall be issued by the appropriate agency of that Department. In the event an agency of the Department of Defense refers an application for exploration to the Bureau for issuance, the provisions of Subpart 3152 of this title shall apply. Geophysical exploration on lands under the jurisdiction of the Department of Defense shall be authorized only with the consent of, and subject to such terms and conditions as may be required by, the Department of Defense.

Subpart 3154—Bond Requirements

§ 3154.1 Types of bonds.

Prior to each planned exploration, the party(s) filing the notice of intent or application for a permit shall file with the authorized officer a bond as described in § 3104.1 of this title in the amount of at least $5,000, conditioned upon full and faithful compliance with the terms and conditions of this subpart and the notice of intent or permit. In lieu thereof, the party(s) may file a statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State or a nationwide bond in the amount of $50,000 covering all oil and gas exploration operations in the nation. Holders of individual, statewide or nationwide oil and gas lease bonds shall be allowed to conduct exploration on their leaseholds without further bonding, and holders of statewide or nationwide lease bonds wishing to conduct exploration on lands they do not have under lease may obtain a rider to include oil and gas exploration operations under this part. Holders of nationwide or any National Petroleum Reserve-Alaska oil and gas lease bonds shall be permitted to obtain a rider to include the coverage of oil and gas exploration within the National Petroleum Reserve—Alaska under Subpart 3152 of this title.

§ 3154.2 Additional bonding.

The authorized officer may increase the amount of any bond that is required under this subpart after determining that additional coverage is needed to ensure protection of the lands or resources.

§ 3154.3 Bond cancellation or termination of liability.

The authorized officer shall not consent to the cancellation of the bond or the termination of liability unless and until the terms and conditions of the notice of intent or permit been met. Should the authorized officer fail to notify the party within 90 days of the filing of a notice of completion of the need for additional action by the operator to rehabilitate the lands, liability for that particular exploration operation shall automatically terminate.

PART 3160—[AMENDED]

73. Note 1 is amended by:

A. Amending the paragraph immediately following the Operating Forms table by removing from where it appears in the second sentence thereof the phrase "the lessee elects" and replacing it with the phrase "the operator elects"; and

B. Amending the paragraph entitled Other Reporting Requirements by removing from where it appears in the first sentence thereof the citation "3162.7–4" and replacing it with the citation "3162.7–5"; and by removing from where it appears in the second sentence thereof the phrase "some lessees to either" and replacing it with the phrase "some operators to either".

74. The authority citation for Part 3160 is revised to read as follows:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Act of March 3, 1909, as amended (25 U.S.C. 369); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. § 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); the Department of the Interior Appropriations Act for Fiscal Year 1981 (42 U.S.C. 6508); the Alaska National Interest Lands Conservation

Act, as amended (16 U.S.C. 3101 *et seq.*), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

75. Section 3160.0–5 is revised to read:

§ 3160.0–5 Definitions.

As used in this part, the term:

(a) "Authorized representative" means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation or contract.

(b) "Avoidably lost" means the venting or flaring of produced gas without the prior authorization, approval, ratification or acceptance of the authorized officer and the loss of produced oil or gas when the authorized officer determines that such loss occurred as a result of:

(1) Negligence on the part of the operator; or

(2) The failure of the operator to take all reasonable measures to prevent and/or control the loss; or

(3) The failure of the operator to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the authorized officer; or

(4) Any combination of the foregoing.

(c) "Federal lands" means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

(d) "Fresh water" means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or acquatic life, unless otherwise specified in applicable notices or orders.

(e) "Knowingly or willfully" means a violation that constitutes the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of the law, regulations, orders, or terms of the lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistakes or mere inadvertency. Conduct that is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

(f) "Lease" means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of or removal of oil or gas.

(g) "Lease site" means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized under a lease.

(h) "Lessee" means a person or entity holding record title in a lease issued by the United States.

(i) "Lessor" means the party to a lease who holds legal or beneficial title to the mineral estate in the leased lands.

(j) "Major violation" means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

(k) "Maximum ultimate economic recovery" means the recovery of oil and gas from leased lands which a prudent operator could be expected to make from that field or reservoir given existing knowledge of reservoir and other pertinent facts and utilizing common industry practices for primary, secondary or tertiary recovery operations.

(l) "Minor violation" means noncompliance that does not rise to the level of a "major violation".

(m) "New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act" means the date on which a well commences production, or resumes production after having been off production for more than 90 days, and is to be construed as follows:

(1) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs; and

(2) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production.

(n) "Notice to lessees and operators (NTL)" means a written notice issued by the authorized officer. NTL's implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance within a State, District, or Area.

(o) "Onshore oil and gas order" means a formal numbered order issued by the Director that implements and supplements the regulations in this part.

(p) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

(q) "Operator" means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(r) "Paying well" means a well that is capable of producing oil or gas of sufficient value to exceed direct operating costs and the costs of lease rentals or minimum royalty.

(s) "Person" means any individual, firm, corporation, association, partnership, consortium or joint venture.

(t) "Production in paying quantities" means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

(u) "Superintendent" means the superintendent of an Indian Agency, or other officer authorized to act in matters of record and law with respect to oil and gas leases on restricted Indian lands.

(v) "Waste of oil or gas" means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas.

§ 3161.1 [Amended]

76. Section 3161.1(a) is amended by removing from where it appears the phrase "by, or on behalf of the lessee" and replacing it with the phrase "by the operator".

§ 3161.2 [Amended]

77. Section 3161.2 is amended by removing from where it appears the

phrase "that the operator is authorized to conduct such operations,".

Subpart 3162—[Amended]

78. The title of Subpart 3162 is revised to read:

Subpart 3162—Requirements for Operating Rights Owners and Operators

§ 3162.1 [Amended]

79. Section 3162.1 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

C. Amending paragraph (c) by removing from where it appears the phrase "the lessee or operator" and replacing it with the phrase "the operator".

§ 3162.2 [Amended]

80. Section 3162.2 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner shall", and by removing from where it appears in the second sentence of the paragraph the phrase "the lessee will pay a sum determined as adequate to compensate the lessor for lessee's failure" and replacing it with the phrase "the operating rights owner shall pay a sum determined by the authorized officer as adequate to compensate the lessor for the operating rights owner's failure";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee, at its" and replacing it with the phrase "The operator, at its"; and

C. Amending paragraph (c) by removing from where it appears the phrase "the lessee shall" and replacing it with the phrase "the operating rights owner shall".

81. Section 3162.3 is revised to read as follows:

§ 3162.3 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with § 3106.6 and subpart 3104 of this title.

(b) A contractor on a leasehold shall be considered the agent of the operator for such operations with full responsibility for acting on behalf of the operator for purposes of complying with applicable laws, regulations, the lease terms, NTL's Onshore Oil and Gas Orders, and other orders and instructions of the authorized officer.

§ 3162.3-1 [Amended]

82. Section 3162.3-1 is amended by:

A. Removing from where it appears in at the beginning of paragraph (c) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing paragraph (d)(3) in its entirety and redesignating paragraph (d)(4) as paragraph (d)(3); and

C. Adding a new paragraph (g) to read:

(g) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

§ 3162.3-2 [Amended]

83. Section 3162.3-2(a) is amended by removing from where it appears the phrase "the lessee on" and replacing it with the phrase "the operator on".

§ 3162.3-3 [Amended]

84. Section 3162.3-3 is amended by removing the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.3-4 [Amended]

85. Section 3162.3-4 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

B. Amending paragraph (c) by removing from where it appears the phrase "When justified by the lessee," and replacing it with the phrase "When justified by the operator,".

§ 3162.4-1 [Amended]

86. Section 3162.4-1 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

B. Removing from where it appears in paragraph (b) the phrase "Upon request, the lessee shall" and replacing it with the phrase "Upon request, the operator shall".

§ 3162.4-2 [Amended]

87. Section 3162.4-2 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "the lessee shall" and replacing it with the phrase "the operator shall"; and

B. Removing from the 2 places it appears in paragraph (b) the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.5-1 [Amended]

88. Section 3162.5-1 is amended by:

A. Removing from the 2 places it appears in paragraph (a) the phrase "lessee shall" and replacing it with the phrase "operator shall";

B. Removing from the 2 places it appears in paragraph (b) the phrase "lessee shall" and replacing it with the phrase "operator shall";

C. Removing from the 2 places it appears in paragraph (c) the phrase "the lessee" and replacing it with the phrase "the operator"; by removing from where it appears the phrase "The lessee" and replacing it with the phrase "The operator"; and by removing from where it appears the phrase "A lessee's" and replacing it with the phrase "An operator's"; and

D. Removing from where it appears at the beginning of paragraph (e) the phrase "The lessee's liability" and replacing it with the phrase "The operator's liability";

§ 3162.5-2 [Amended]

89. Section 3162.5-2 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing from where it appears in paragraph (b) the phrase "The lessee shall" and replacing it with the phrase "The operator shall";

C. Removing from where it appears in paragraph (c) the phrase "The lessee shall" and replacing it with the phrase "The operator shall"; and

D. Removing from the 2 places it appears in paragraph (d) the word "lessee" and replacing it with the word "operator".

§ 3162.5-3 [Amended]

90. Section 3162.5-3 is amended by removing from the 3 places it appears the word "lessee" and replacing it with the word "operator".

§ 3162.6 [Amended]

91. Section 3162.6(b) is amended by removing from where it appears the phrase "lessees shall" and replacing it with the phrase "the operator shall".

§ 3162.7-1 [Amended]

92. Section 3162.7-1 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the

phrase "The lessee shall" and replacing it with the phrase "The operator shall";

B. Removing from the 4 places it appears in paragraph (d) the word "lessee" and replacing it with the word "operator"; and

C. Removing from where it appears in paragraph (e) the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3162.7-4 [Amended]

93. Section 3162.7-4 is amended by:

A. Removing from the 2 places it appears in the introductory paragraph the phrase "BLM";

B. Removing from where it appears in paragraph (b) the phrase "BLM";

C. Removing from where it appears in paragraph (e) the phrase "BLM"; and

D. Removing from where it appears in paragraph (h) the phrase "BLM".

§ 3162.8 [Amended]

94-95. Section 3162.8 is amended by:

A. Removing from where they appear in paragraph (a): the phrase "obtained from a lessee" and replacing it with the phrase "obtained from an operating rights owner or operator"; the phrase "consent of the lessee" and replacing it with the phrase "consent of the operating rights owner or operator, as appropriate,"; and the phrase "the lessee may request" and replacing it with the phrase "the operating rights owner or operator, as appropriate,";

B. Removing from where it appears in paragraph (b) the word "lessee" and replacing it with the phrase "operating rights owner or operator";

C. Removing from where it appears in paragraph (c) the phrase "a lessee under this part" and replacing it with the phrase "an operating rights owner or operator under this part"; and

D. Removing from where they appear in paragraph (d): the phrase "the lessee submits" and replacing it with the phrase "the operating rights owner or operator submits"; and the phrase "the lessee's consent" and replacing it with the phrase "the consent of the operating rights owner or operator, as appropriate".

Subpart 3163—[Amended]

96. Subpart 3163 is amended by removing the heading "Noncompliance and Assessments" and replacing it with the heading to read: "Subpart 3163—Noncompliance, Assessments, and Penalties"

§ 3163.1 [Amended]

97. Section 3163.1 is amended by:

A. Removing from the beginning of paragaph (a): the phrase "Whenever a lessee" and replacing it with the phrase "Whenever an operating rights owner or operator"; the phrase "notify the lessee" and replacing it with the phrase "notify the operating rights owner or operator, as appropriate,"; by removing from where it appears in paragraph (a)(1) the phrase "subject the lessee" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate,", by removing from where it appears in paragraph (a)(2) the phrase "subject the lessee" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate,", by removing from where it appears in paragraph (a)(4) the phrase "the lessee, operations that the lessee fails" and replacing it with the phrase "the operator, operations that the operator fails", by removing from where it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a)(5) the phrase "subject the lessee to lease cancellation and forfeiture under the bond." and replacing it with the phrase "subject the lease to cancellation and forfeiture under the bond.", by removing from where it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a)(6) the phrase "the lessee's noncompliance" and replacing it with the phrase "the operator's noncompliance", and by removing from the end of paragraph (a)(6) the word "lessee" and replacing it with the word "operator";

B. Removing from the 2 places it appears in paragraph (c) the phrase "per operator," and replacing it with the phrase "per operating rights owner or operator,"; and

C. Removing from where it appears in paragraph (d) the phrase "subject the lessee to" and replacing it with the phrase "subject the operating rights owner or operator, as appropriate, to".

§ 3163.2 [Amended]

98. Section 3163.2 is amended by:

A. Removing from where it appears at the beginning of paragraph (a) the phrase "Whenever a lessee fails" and replacing it with the phrase "Whenever an operating rights owner or operator, as appropriate, fails", by removing from where it appears in paragraph (a) the phrase "notify the lessee in writing" and replacing it with the phrase "notify the operating rights owner or operator, as appropriate, in writing", and by removing from where it appears in paragraph (a) the phrase "the lessee shall be liable" and replacing it with the phrase "the operating rights owner or operator, as appropriate, shall be liable";

B. Removing from where it appears in paragraph (b) the phrase "the lessee shall be liable" and replacing it with the phrase "the operating rights owner or operator, as appropriate, shall be liable";

C. Removing from the 2 places where it appears in paragraph (g)(1) the phrase "per operator" and replacing it with the phrase "per operating rights owner or operator", by removing from where it appears at the beginning of paragraph (g)(2)(i) the phrase "The lessee has" and replacing it with the phrase "The operating rights owner or operator, as appropriate, has", by removing from where it appears at the beginning of paragraph (g)(2)(ii) the phrase "The lessee has been" and replacing it with the phrase "The operating rights owner or operator, as appropriate, has been" and by removing from the 2 places it appears in paragraph (g)(2)(iii) the phrase "per operator," and replacing it with the phrase "per operating rights owner or operator,"; and

D. Removing from where it appears in paragraph (j) the phrase "maximum specific" and replacing it with the phrase "maximum specified".

§ 3163.5 [Amended]

99. Section 3163.5 is amended by:

A. Revising the title to read: "§ 3163.5 Assessments and civil penalties.";

B. Removing from where it appears at the beginning of paragraph (b) the phrase "Administrative penalties" and replacing it with the phrase "Civil penalties"; and

C. Removing from where it appears in paragraph (c) the phrase "lessee from the responsibility" and replacing it with the phrase "responsible party".

§ 3164.1 [Amended]

100. Section 3164.1(b) is amended by removing from where it appears the phrase "binding on lessees and operators" and replacing it with the phrase "binding on operating rights owners and operators, as appropriate,".

§ 3164.3 [Amended]

101. Section 3164.3(a) is amended by removing from where it appears at the beginning of the section the phrase "Lessees shall" and replacing it with the phrase "Operators shall".

§ 3165.1 [Amended]

102. Section 3165.1 is amended by:

A. Removing from where it appears in paragraph (a) the phrase "in triplicate with the authorized officer, and they shall" and replacing it with the phrase "with the authorized officer, and shall";

B. Revising paragraph (b) to read:

(b) The authorized officer shall act on applications submitted for a suspension of operations or production, or both, filed pursuant to § 3103.4–2 of this title. The application for suspension shall be filed with the authorized officer prior to the expiration date of the lease; shall be executed by all operating rights owners or, in the case of a Federal unit approved under Part 3180 of this title, by the unit operator on behalf of the committed tracts or by all operating rights owners of such tracts; and shall include a full statement of the circumstances that makes such relief necessary.

and

C. Removing from where it appears in paragrph (c) the phrase "was filed with the authorized officer" and replacing it with the phrase "was filed or the date specified by the authorized officer".

§ 3165.1–1 [Amended]

103. Section 3165.1–1 is amended by removing from where it appears the phrase "shall be filed in triplicate in the office" and replacing it with the phrase "shall be filed in the office".

§ 3165.2 [Amended]

104. Section 3165.2 is amended by removing from where it appears the phrase "the lessee's obligations" and replacing it with the phrase "the obligations".

§ 3165.3 [Amended]

105. Section 3165.3(a) is amended by removing from where it appears at the beginning of the paragraph the phrase "Whenever a lessee fails" and replacing it with the phrase "Whenever an operating rights owner or operator, as appropriate, fails", by removing from where it appears the phrase "given the lessee to remedy" and replacing it with the phrase "given the appropriate party to remedy", by removing from where it appears the phrase "to any person authorized by the lessee to conduct or supervise" and replacing it with the phrase "to any person conducting or supervising", and by removing from where it appears the phrase "or field employee shall be mailed to the lessee or the lessee's designated representative as described above", and replacing it with the phrase "or field employee or designated representative shall also be mailed to the operator", and by removing from where it appears at the end of the last sentence the phrase "mailed to the lessee of record" and replacing it with the phrase "mailed to the operating rights owner"; and

§ 3165.4 [Amended]

106. Section 3165.4 is amended by:

A. Amending paragraph (c) by removing from where it appears the phrase "an appeal shall not result" and replacing it with the phrase "any appeal filed pursuant to paragraphs (a) and (b) of this section shall not result"; and

B. Amending paragraph (d) by removing from where it appears the phrase "in the event the lessee has failed" and replacing it with the phrase "in the event the operator has failed".

PART 3180—[AMENDED]

107. The authority citation for Part 3180 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181, 189, 226(e), 226(m)).

§§ 3183.3–1, 3183.4, 3183.5 and 3183.6 [Redesignated as §§ 3183.4, 3183.5, 3183.6 and 3183.7 respectively]

108. Sections 3183.3–1, 3183.4, 3183.5 and 3183.6 are redesignated as §§ 3183.4, 3183.5, 3183.6 and 3183.7, respectively.

109. Section 3183.4, previously § 3183.3–1, is revised to read:

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (§ 3186.1 of this title for example). No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

(b) The public interest requirement of an approved unit agreement for unproven areas shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement. If an application is received for voluntary termination of a unit agreement for an unproven area during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer and lease segregations and extensions under § 3107.3–2 of this title shall be invalid, and no Federal lease shall be eligible for extensions under § 3107.4 of this title.

(c) Any modification of an approved agreement shall require the prior approval of the authorized officer.

§ 3186.1 [Amended]

110. Section 3186.1 is amended by:

A. Amending Section 9 by revising the last paragraph thereof to read:

Until the establishment of a participaint area, the failure to commence a well subsequent to the drilling of the initial obligation well, or in the case of multiple well requirements, if specified, subsequent to the drilling of those multiple wells, as provided for in this (these) section(s), within the time allowed including any extension of time granted by the AO, shall cause this agreement to terminate automatically. Upon failure to continue drilling diligently any well other than the obligation well(s) commenced hereunder, the AO may, after 15 days notice to the Unit Operator, declare this unit agreement terminated. Failure to commence drilling the initial obligation well, or the first of multiple obligation wells, on time and to drill it diligently shall result in the unit agreement approval being declared invalid *ab initio* by the AO. In the case of multiple well requirements, failure to commence drilling the required multiple wells beyond the first well, and to drill them diligently, may result in the unit agreement approval being declared invalid *ab initio* by the AO;

B. Amending Section 13 by removing from the beginning of the first paragraph the phrase "Any party hereto owning or controlling the working interest in any unitized land having thereon a regular well location may" and replacing it with the phrase "Any operator may", by removing from the first paragraph the phrase "drill a well to test" and replacing it with the phrase "drill a well on the unitized land to test", by removing from the second paragraph the phrase "by a working interest owner results in production" and replacing it with the phrase "by a non-unit operator results in production", and by removing from the third paragraph from where it appears the phrase "by a working interest owner that obtains" and replacing it with the phrase "by a non-unit operator that obtains";

C. Amending Section 14 by removing from where it appears in the first paragraph the phrase "or the working interest owner in case of the operation of a well by a working interest owner as herein provided" and replacing it with the phrase "or the non-unit operator in the case of the operation of a well by a non-unit operator as herein provided", by removing the phrase "be made by working interest owners responsible" and replacing it with the phrase "be made by an operator responsible", and

by removing the phrase "to relieve the lessees of any land" and replacing it with the phrase "to relieve the responsible parties of any land";

D. Amending Section 15 by removing from where it appears in the first paragraph the phrase "paid by appropriate working interest owners under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the lessees of any land from their respective lease obligations" and replacing it with the phrase "paid by the appropriate parties under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the responsible parties of the land from their respective obligations";

E. Amending Section 18(g) by removing from where it appears in the first paragraph the phrase "sec. 17 (j)" and replacing it with the phrase "sec. 17(m)", by removing the phrase "(30 U.S.C. 226(j))" and replacing it with the phrase "(30 U.S.C. 226(m))", and by adding at the end of the second paragraph a new sentence to read: "If public interest requirement is not satisfied, the segregation of a lease and/or extension of a lease pursuant to 43 CFR 3107.3-2 and 43 CFR 3107.4, respectively, shall not be effective.";

F. Amending Section 20 by revising the last sentence of the section to read: "If the public interest requirement is not satisfied, the approval of this unit by the AO shall be invalid."; and

G. Amending the portion entitled "Certification—Determination" by adding at the end of paragraph A a new sentence to read: "This approval shall be invalid *ab initio* if the public interest requirement under § 3183.4(b) of this title is not met."

PART 3200—[AMENDED]

111. The authority citation for Part 3200 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

§ 3200.0-3 [Amended]

112. Section 3200.0-3 is amended by removing from where it appears the phrase "the Geothermal Steam Act of 1970" and replacing it with the phrase "the Geothermal Steam Act of 1970, as amended.

§ 3200.0-5 [Amended]

113. Section 3200.0-5 is amended by:

A. Revising paragraph (b) to read:

(b) "Secretary" means the Secretary of the Interior.

B. Revising paragraph (e) to read:

(e) "Party in interest" means a party who is or will be vested with any interest under the lease as defined in paragraph (f) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest in such lease.

C. Revising paragraph (f) to read:

(f) "interest" means any interest whatever in a geothermal lease, including, but not limited to: (1) A record title interest; (2) a working interest; (3) an operating right; (4) an overriding royalty interest or other similar fiduciary payments or arrangements; or (5) options. "Interest" does not include stock ownership, stockholding or stock control in a lease application or offer or in a bid, except for purposes of acreage limitations in § 3201.2 of this title and qualifications of leases in Subpart 3202 of this title.

D. Revising paragraph (g) to read:

(g) "Director" means the Director of the Bureau of Land Management.

E. Amending paragraph (k), by removing paragraphs (k)(1) through (k)(3) in their entirety; and

F. Adding new paragraphs (m) through (w) to read:

(m) "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3200.

(n) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Group 3200.

(o) "Anniversary date" means the same day and month in succeeding years as that on which the lease became effective.

(p) "Surface managing agency" means any Federal agency outside of the Department of the Interior which has jurisdiction over the surface overlying Federally-owned minerals.

(q) "Bureau" means the Bureau of Land Management.

(r) "Service" means the Minerals Management Service.

(s) "Transfer" means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: "assignment" which means a transfer of all or a portion of the lessee's record title interest in a leasee; and "sublease" which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(t) "Lessee" means a person or entity holding record title in a lease issued by the United States.

(u) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

(v) "Operator" means any person or entity, including but not limited to the lessee, operating rights owner, or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(w) "Public domain lands" means lands, including mineral estates, that never left the ownership of the United States; lands that were obtained by the United States in exchange for public domain lands, lands that have reverted to the ownership of the United States through the operation of the public land laws, and other lands specifically identified by the Congress as part of the public domain.

§ 3200.0-6 and 3200.0-7 [Removed]

114. Sections 3200.0-6 and 3200.0-7 are removed in their entirety.

§ 3200.0-8 [Redesignated as § 3200.0-6]

115. Section 3200.0-8 is redesignated as § 3200.0-6 and paragraph (a) thereof is amended by removing the third sentence thereof in its entirety and by removing from the end thereof the word "chapter" and replacing it with the word "title".

116. A new § 3200.1 is added to read:

§ 3200.1 Competitive and noncompetitive leasing areas.

The authorized officer shall determine the boundaries of known geothermal resource areas. All lands within such boundaries shall only be leased competitively to the highest qualified bidder in accordance with Part 3220 of this title. All other lands shall be leased noncompetitively, if at all, to the first qualified offeror in accordance with Part 3210 of this title.

(a) In determining whether the geology of an area is of such a nature that the area should be designated as a KGRA, the authorized officer shall use such geologic and technical evidence as he/she deems appropriate, including the following:

(1) The existence of siliceous sinter and natural geysers;

(2) The temperature of fumaroles, thermal springs and mud volcanoes;

(3) The SiO_2 content of spring water;

(4) The Na/K ratio in spring waters or hot-water systems;

(5) The existence of volcanoes and calderas of late Tertiary or Quaternary age;

(6) Conductive heat flows and geothermal gradient;

(7) The porosity and the permeability of a potential reservoir;

(8) The results of electrical resistivity surveys;

(9) The results of magnetic, gravity and airborne infrared geophysical surveys; and

(10) The information obtained through other geophysical methods, such as microseismic, seismic ground noise, electromagnetic and telluric surveys if such methods prove to have significant use in evaluation.

(b) For purposes of KGRA classification, a "discovery" or "discoveries" shall be considered to be any well deemed by the authorized officer to be capable of producing geothermal resources in commercial quantities. Where the geological structure is not known, "nearby" shall be considered to be 5 miles or less from any such discovery. Lands nearby a discovery shall be classified as KGRA unless it is determined that the lands are on a different geological structure from the discovery. Where the authorized officer has determined the extent of a structure on which a discovery has been made, all lands in that structural area contributing geothermal resources to that discovery shall be deemed a KGRA regardless of the distance from the discovery.

(c) "Competitive interest" shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one-half of the lands subject to the first application are covered by any other single application filed during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this paragraph.

117. A new § 3200.2 is added to read:

§ 3200.2 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provided that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of use of such minerals shall be accomplished under the regulations of Group 3200 of this title. Such mineral estate include, but are not limited to, those that have been or will be reserved under the authorities of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management of 1976 43 U.S.C. 1701 *et seq.*).

§ 3201.1-1 [Amended]

118. Section 3201.1-1 is amended by:

A. Adding a new paragraph (a) to read:

(a) The Secretary may issue a geothermal lease when he/she determines such issuance would be in the public interest;

and

B. The existing paragraph of the section is designated as paragraph (b) by inserting the figure "(b)" at the beginning of the paragraph, and the figures (a), (b), and (c) are changed to (1), (2), and (3).

§ 3201.1-2 [Amended]

119. Section 3201.1-2(b)(2) is amended by removing from where it appears the word "chapter" and replacing it with the word "title".

§ 3201.1-4 [Amended]

120. Section 3201.1-4 is amended by removing the phrase "Federal Power Commission" from the title and the place it appears in the body of the section and replacing it with the phrase "Federal Energy Regulatory Commission".

§ 3202.2 [Amended]

121. Section 3202.2 is amended by revising the first sentence of the section to read: "Submission of an executed lease application or offer, competitive bid or request for approval of a transfer of record title or of operating rights (sublease) constitutes certification of compliance with the regulations of this group and the Act."

§ 3202.2-2 [Removed]

122. Section 3202.2-2 is removed in its entirety.

123. Section 3202.2-3 is redesignated as § 3202.2-2 and revised to read:

§ 3202.2-2 Attorney-in-fact/agent.

An attorney-in-fact or an agent may execute and file an application, offer, competitive bid or transfer of record title or of operating rights (sublease), request for approval of a transfer or other lease-related document.

§ 3202.2-4 [Removed]

124. Section 3202.2-4 is removed in its entirety.

§ 3202.2-5 [Redesignated as § 3202.2-3]

125. Section 3202.2-5 is redesignated as § 3202.2-3 and is amended by removing the last two sentences thereof and replacing them with the sentence to read: "All interested parties may be required to furnish evidence of their qualifications upon the written request of the authorized officer."

§ 3202.2-6 [Redesignated as § 3202.2-4]

126. Section 3202.2-6 is redesignated as § 3202.2-4 and is amended by removing in its entirety all language following the first two sentences of the section.

127. Section 3203.1-1 is revised to read:

§ 3203.1-1 Dating of leases.

All geothermal leases shall be considered issued when signed by the authorized officer. Geothermal leases, except future interest leases issued under Subpart 3207 of this title, shall be effective as to the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. A renewal lease shall be dated from the termination of the original lease.

§ 3203.1-3 [Amended]

128. Section 3203.1-3 is amended by removing from the beginning of the section the designation "(a)".

§ 3203.1-4 [Amended]

129. Section 3203.1-4 is amended by removing from where it appears in paragraph (d) the citation "30 CFR 270.17" and replacing it with the citation "§ 3205.3-8 of this title".

§ 3203.2 [Amended]

130. Section 3203.2 is amended by:

A. Amending paragraph (b) by removing from where it appears at the end of the second sentence the phrase ", or as provided for in Part 3230 of this

chapter with respect to 'conversion rights' "; and

B. Amending paragraph (d) by removing from where is appears in the first sentence thereof the word "will" and replacing it with the word "shall", by removing from where it appears in the first sentence thereof the word "chapter" and replacing it with the word "title" and by removing from where it appears in the third sentence thereof the word "will" and replacing it with the word "shall".

§ 3203.3 [Amended]

131. Section 3203.3 is amended by removing from where it appears the citation "§ 3203.2" and replacing it with the phrase "§ 3203.2 of this title".

§ 3203.5 [Amended]

132. Section 3203.5 is amended by:

A. Removing from where it appears the phrase "lessee or designated operator," and replacing it with the word "operator", and

B. Removing from the 2 places where it appears the word "supervisor" and replacing it with the phrase "authorized officer".

§ 3203.6 [Amended]

133. Section 3203.6 is amended by removing from where it appears in the introductory paragraph the citation "§ 3209.9–5(d)" and replacing it with the citation "3209.0–5", by removing from where it appears in the introductory paragraph and paragraph (a) the word "chapter" and replacing it with the word "title", by removing from where it appears in paragraphs (a) and (b) the phrase "The lessee shall" and replacing it with the phrase "The operator shall", by removing from where it appears in paragraph (a) the citation "43 CFR 3264.4" and replacing it with the citation "§ 3264.4 of this title", by removing from where it appears in paragraph (b) the citation "43 CFR 3262.4" and replacing it with the citation "§ 3262.4 of this title", and by removing from where it appears in paragraph (b), the citation "43 CFR 3262.4–2" and replacing it with the citation "§ 3262.4–2 of this title".

§ 3203.8 [Amended]

134. Section 3203.8 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "the Supervisor" and replacing it with the phrase "the authorized officer", and by removing from where it appears the phrase "consent of any lessee affected" and replacing it with the phrase "consent of any operating rights owner affected"; and

B. Amending paragraph (b) by removing from where it appears the phrase "the lessee must drill" and replacing it with the phrase "the operating rights owner shall drill", by removing from where it appears the phrase "wells, the lessee may, with" and replacing it with the phrase "wells, the operating rights owner may, with", by removing from where it appears the phrase "the Supervisor" and replacing it with the phrase "the authorized officer", and by removing from where it appears at the end of paragraph (b) the citation "43 CFR Part 3260" and replacing it with the citation "§ 3262.3 of this title".

135. The title of Subpart 3205 is revised to read:

Subpart 3205—Fees, Rentals and Royalties

§ 3205.1–2 [Amended]

136. Section 3205.1–2(a)(1) is amended by removing from where it appears the phrase "all first-year rentals" and replacing it with the phrase "all first-year advance rentals".

137. Section 3205.2 is revised to read:

§ 3205.2 Filing fees.

(a) No filing fee is required for competitive lease applications.

(b) Applications for noncompetitive leases, including future interest leases, shall be accompanied by a nonrefundable filing fee of $75 for each application.

(c) Applications for approval of a transfer of a lease or any interest therein shall be accompanied by a nonrefundable filing fee of $50 for each separate transfer.

(d) No filing fee is required for requests or nominations for parcels to be offered for competitive sale.

§ 3205.3–1 [Amended]

138. Section 3205.3–1 is amended by revising the first sentence thereof to read: "Each application shall be accompanied by payment of the first-year's advance rental of $1 per acre or fraction thereof based on the total acreage included in the application, except that no advance rental payment is required with an application for a future interest.", by removing where it appears in the second sentence thereof the phrase "first-year's rental" and replacing it with the phrase "first-year's advance rental" and by removing from where it appears in the last sentence thereof the phrase "of the application" and replacing it with the phrase "or the application".

§ 3205.3–2 [Amended]

139. Section 3205.3–2 is amended by:

A. Amending paragraph (a) by removing from where it appears the phrase "proper BLM office" and replacing it with the phrase "designated Service office" and by removing from where it appears the word "chapter" and replacing it with the word "title";

B. Amending paragraph (c) by removing from where it appears the word "chatper" and replacing it with the word "title"; and

C. Revising paragraph (d) to read:

"(d) If the payment is due on a day in which the designated Service office is closed, payment received on the next official working day shall be deemed to be made on time."

§ 3205.3–7 [Amended]

140. Section 3205.3–7(b) is amended by revising the introductory paragraph to read:

"(b) An application hereunder shall be filed with the authorized officer and shall:".

141. Section 3205.3–8 is revised to read:

§ 3205.3–8 Suspension of operations and production or suspension of operations.

(a) A suspension of all operations and production on a producing lease may, upon application by the operating rights owner, be consented to by the authorized officer, including cases where the operator is prevented from continuing production, despite the exercise of due care and diligence, by matters beyond the operator's reasonable control. Applications for suspensions of all operations and production shall be filed in the proper BLM office. Complete information showing the necessity for such relief shall be furnished.

(b) The authorized officer may, in the interest of conservation, direct the suspension of operations on any lease.

(c) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(d) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer and shall last for the period specified in the order or approval, except as provided in paragraphs (f) and (g) of this section.

(e) Rental or minimum royalty payments shall be suspended during any period of suspension directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension becomes effective or, if the suspension becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental or minimum royalty payments shall resume on the

first day of the lease month in which the suspension is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

(f) Where operations only or all operations and production have been suspended on a lease and the authorized officer approves resumption of operations only or all operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental or minimum royalty payments, as provided in paragraph (e) of this section.

(g) Whenever it appears from information obtained by or furnished to the authorized officer that the interest of the lessor requires additional drilling or producing operations, he/she may, by written notice, order the beginning or resumption of such operations.

(h) The relief authorized under this section also may be obtained for any leases included within an approval unit or cooperative plan or development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

§ 3205.3.9 [Amended]

142. Section 3205.3–9 is amended by removing from the two places it appears the word "Supervisor" and replacing it with the phrase "authorized officer", by removing from where it appears the word "chapter" and replacing it with the word "title", by removing from where it appears in fourth, seventh and eighth sentences the word "will" and replacing it with the word "shall" and by removing from where it appears in the seventh sentence the word "must" and replacing it with the word "shall".

§ 3205.4–1 [Amended]

143. Section 3205.4–1 is amended by removing from where it appears the citation "§ 3205.3" and replacing it with the citation "§ 3205.3 of this title".

§ 3205.4–2 [Amended]

144. Section 3205.4–2 is amended by removing from where it appears the citation "Subpart 3205" and replacing it with the citation "subpart 3205 of this title" and by removing from where it appears the citation "§ 3205.3" and replacing it with the citation "§ 3205.3 of this title".

145. Sections 3206.1, 3206.1–1 and 3206.1–2 are revised to read:

§ 3206.1 Bond obligations and filing.

§ 3206.1–1 Bond obligations.

A surety or personal bond conditioned upon compliance of the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to the commencement of drilling operations.

§ 3206.1–2 Filing.

A single originally executed copy of a bond on the appropriate form approved by the Director shall be filed in the proper BLM office. Nationwide bonds may be filed in any Bureau State office (See § 1821.2–1). For unit bond forms see subpart 3284 of this title.

146. Section 3206.2 is revised to read:

§ 3206.2 Lease bond.

A lease bond may be posted by a lessee, operating rights owner (sublessee), or operator, in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more pricipals have interests in different portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her name as principal, or in the name of the lessee or sublessee, provided that lessee or sublessee and surety consent is provided.

§§ 3206.3 and 3206.3–1 [Removed]

147. Sections 3206.3 and 3206.3–1 are removed in their entirety.

§ 3206.3–2 [Removed]

§ 3206.3–3 [Redesignated from § 3206.3]

148. Section 3206.3–2 is removed in its entirety, and § 3206.3–3 is redesignated as § 3206.3 and revised to read as follows:

§ 3206.3 Liability.

Where a bond is furnished by an operating rights owner (sublessee) or operator, the Secretary may bring suit thereon without joining the lessee if he/she is not a party to the bond.

149. Section 3206.5 is revised to read:

§ 3206.5 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

150. Section 3206.6 is revised to read:

§ 3206.6 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases.

151. A new § 3206.9 is added to read:

§ 3206.9 Termination of period of liability.

The period of liability of any lease shall not terminate until all lease terms and conditions have been fulfilled.

152. Section 3207.2–3(c) is revised to read as follows:

§ 3207.2–3 Leasing.

* * * * *

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a noncompetitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

153. Section 3207.3–2(c) is revised to read as follows:

§ 3207.3–2 Leasing.

* * * * *

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a competitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

§ 3209.0–1 [Amended]

154. Section 3209.0–1(a) is amended by removing from where it appears the phrase "on the public land for geothermal resources" and replacing it

with the following: "unleased public lands, the surface of which is administered by the Bureau, and on lands under a Federal lease for geothermal resources by the lessee. At the request of any other surface managing agency, the procedures in this part may be applied on a case by case basis to unleased public lands administered by such agency"; and by removing the last sentence thereof in its entirety.

§ 3209.0-5 [Amended]

155. Section 3209.0-5 is amended by removing paragraph (c) in its entirety and redesignating paragraph (d) as paragraph (c).

156. Section 3209.4-1(b) is revised to read:

§ 3209.4-1 General.

* * * * *

(b) A party shall be excused from compliance with the requirements of paragraph (a) of this section if he/she possesses either a nationwide bond in the amount of not less than $50,000 covering all exploration operations, or a statewide bond in the amount of not less than $25,000 covering all exploration operations in the state in which the lands on which he/she has filed the Notice of Intent are situated, or a lease bond of not less than $10,000 furnished in accordance with § 3206.2 of this title.

PART 3210—[AMENDED]

157. The authority citation for Part 3210 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

158. Section 3210.2-1 is revised to read:

§ 3210.2-1 Application.

An application for a lease shall be filed in an original and 2 copies in the proper BLM office on a form approved by the Director. The original form, or a copy thereof, filled in by typewriter or printed plainly in ink, manually signed in ink and dated by the offeror, or the offeror's duly authorized agent or attorney-in-fact, shall be required. Copies shall be an exact reproduction on 1 page of both sides of the approved form without additions, omissions or other changes or advertising. The application shall be submitted in a sealed envelope marked "Application for lease pursuant to 43 CFR Part 3210." The application shall include a complete and accurate description of the lands applied for, which shall include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed nor protracted and are described by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted. The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

PART 3220—[AMENDED]

159. The authority citation for Part 3220 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

160. Section 3220.2 is revised and §§ 3220.2-1 and 3220.2-2 are added to read:

§ 3220.2 Notice of lease sale.

§ 3220.2-1 Contents of notice.

The notice of lease sale shall state the time, date and place of the sale, shall include a general description of the lands offered for sale and information on where the detailed statement of the precise description and terms and conditions of the lease(s), including rental and royalty rates, as well as the form on which a bid(s) shall be submitted and where that form may be obtained. Remittances for competitive bids shall be submitted as required in the detailed statement of sale notice.

§ 3220.2-2 Detailed statement.

The detailed statement shall contain informtion on when and where to submit bids, bidding requirements, required payments, lease terms and conditions, the description of the leasing units being offered and any other information that may be helpful to the prospective bidder.

161. Section 3220.3 is revised to read:

§ 3220.3 Publication of the notice.

The notice of lease sale shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated or in such other publications as the authorized officer may determine approriate. The successful bidder shall, prior to lease issuance, pay his/her proportionate share of the total cost of publication of the notice.

§ 3220.4 [Amended]

162. Section 3220.4(a) is amended by removing from where it appears in the second sentence the phrase ", together with proof of qualifications as required by these regulations" and by removing the last sentence thereof and adding two new sentences to read: "Execution and submission of a bid as prescribed in the detailed statement of lease sale constitutes certification of compliance with Subpart 3202 of this title. Proof of qualifications to hold a lease shall be furnished upon the written request of the authorized officer in accordance with § 3202.2 of this title."

§ 3220.5 [Amended]

163. Section 3220.5 is amended by:

A. Amending paragraph (b) by removing from where it appears at the end thereof the phrase ", except as required under Part 3230 of this chapter" and by adding to the end thereof the sentence "High bids determined to be inadequate by the authorized officer shall be rejected."

B. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively;

C. Adding a new paragraph (c) to read as follows:

(c) If the authorized officer cannot issue a decision to accept or reject the high bid within 30 days, the high bidder shall be notified and informed in writing of the reason for the delay and when a decision is expected.

D. Revising redesignated paragraph (d) to read as follows:

(d) The right to reject any and all bids is reserved by the Secretary. If the high bid is rejected or is determined by the authorized officer to not be in compliance with the requirements set out in the detailed statement or the award notice, the bonus bid submitted with the bid shall be refunded. ; and

E. Amending redesignated paragraph (e) by revising the first sentence thereof to read: "If the lease is awarded, 3 copies of the lease shall be sent to the successful bidder who shall, within 15 days of receipt of notice, sign and return the lease forms together with payment of the balance of the bonus bid, the first year's rental and the bidder's proportionate share of the notice of lease sale pubication costs."; and

F. Amending redesignated paragraph (f) by removing from where it appears the phrase "the Secretary" and replacing it with the phrase "the authorized officer".

PART 3240—[AMENDED]

164. The authority citation for Part 3240 is revised to read:

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

165. The title to Subpart 3241 is revised to read:

Subpart 3241—Transfers

166. Section 3241.1 is revised to read:

§ 3241.1 Transfers, interests and qualifications.

167. Section 3241.1–1 is amended by:

A. Revising the title to read:

§ 3241.1–1 Transfers of record title.

B. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the designation "(a)", by removing from where it appears the word "will" and replacing it with the word "shall", by removing from where it appears the word "chapter" and replacing it with the word "title" and by removing from where it appears the word "Secretary" and replacing it with the phrase "authorized officer"; and

C. Removing paragraph (b) in its entirety.

D. Designating paragraphs (1), (2), and (3) as paragraphs (a), (b), and (c).

168. A new § 3241.1–2 is added to read:

§ 3241.1–2 Transfers of operating rights.

A working interest or operating right in a lease also may be transferred under this subpart.

169. Section 3241.2 is revised to read:

§ 3241.2 Requirements for filing of transfers.

170. Section 3241.2–1 is revised to read:

§ 3241.2–1 Place of filing and filing fee.

A request for approval of a transfer of a lease or interest therein shall be filed in the proper BLM office and accompanied by a nonrefundable filing fee of $50. A transfer not accompanied by the required nonrefundable filing fee shall not be accepted and shall be returned.

§ 3241.2–2 [Removed]

171. Section 3241.2–2 is removed in its entirety.

172. Section 3241.2–3 is redesignated as § 3241.2–2 and is revised to read:

§ 3241.2–2 Time of filing of transfers.

(a) A request for approval of a transfer of a lease or of an interest therein, including a transfer of operating rights (sublease), shall be filed in the proper BLM office within 90 days from the date of execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect.

(b) A separate transfer shall be filed in the proper BLM office for each geothermal lease involving transfers of record title or of operating rights (sublease). When transfers to the same person, association, including partnerships, or corporation, involve more than 1 geothermal lease, 1 request for approval shall be sufficient.

173. Section 3241.2–4 is redesignated as § 3241.2–3 and is revised to read:

§ 3241.2–3 Forms and number of copies required.

A current form approved by the Director or an exact reproduction of the front and back thereof shall be used for each transfer of record title or of operating rights (sublease). A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. Three copies of the form, including at least 1 originally executed copy, shall be filed in the proper BLM office.

174. Section 3241.2–5 is redesignated as § 3241.2–4 and is revised to read:

§ 3241.2–4 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease, except no land description is required when 100 percent of the entire area encompassed in a lease is conveyed.

175. Section 3241.3 is revised to read:

§ 3241.3 Bonds.

Where a transfer does not create separate leases, the transferee, if the transfer so provides, may become a co-principal on the bond with the transferor. Any transfer which does not convey the transferor's record title in all of the lands in a lease shall also be accompanied by a consent of his/her surety to remain bound under the bond as to the lease retained by said transferor, if the bond, by its terms, does not contain such consent. If a party to the transfer has previously furnished a statewide or nationwide bond, as appropriate, no additional showing by such party is necessary as to the bond requirement.

176. Section 3241.4 is revised to read:

§ 3241.4 Approval.

The request for transfer of record title or of operating rights (sublease) shall be approved upon the execution of the forms by the authorized officer. Upon approval, a transfer shall be effective as of the first day of the lease month following the date of filing of the transfer. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

177. Section 3241.5 is revised to read:

§ 3241.5 Continuing responsibility.

(a) The transferor and his/her surety shall continue to be responsible for the performance of any obligation under the lease until the transfer is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as if no such transfer had been filed for approval.

(b) Upon approval, the transferee and his/her surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the transfer to the contrary.

(c) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

§ 3241.7–1 [Amended]

178. Section 3241.7–1 is amended by:

A. Amending paragraph (b) by removing from where it appears the phrase "assignment or transfer, a statement must" and replacing it with the phrase "transfer, a statement shall";

B. Redesignating paragraph (d) as paragraph (c) and amending the newly redesignated paragraph (c) by removing from where it appears in the first sentence thereof the phrase "assignments by overriding royalty interests must" and replacing it with the phrase "transfers of overriding royalty interests shall", and by removing from where it appears the phrase "interests will not" and replacing it with the phrase "intersts shall not".

179. Section 3241.8 is revised to read:

§ 3241.8 Lease account status.

Unless the lease account is in good standing as to the area covered by a transfer at the time the transfer is filed, or is placed in good standing before the transfer is acted upon, the request for approval of the transfer shall be denied.

180. Section 3241.9 is revised to read:

§ 3241.9 Effect of transfer.

A transfer of record title of the complete interest in a portion of the lands in a lease shall segregate the transferred and retained portions of the lease into separate and distinct leases. A transfer of an undivided record title interest in the entire leasehold or a transfer of operating rights (sublease) shall not segregate the lease into separate or distinct leases.

§ 3242.1 [Amended]

181. Section 3242.1 is amended by removing from where it appears in the first sentence of the introductory paragraph the word "Supervisor" and

replacing it with the phrase "authorized officer", also by removing from where it appears in the introductory paragraph the word "he" and replacing it with the phrase "he/she" and by removing from where it appears in paragraph (c) the word "him" and replacing it with the phrase "him/her".

§ 3242.2-2 [Amended]

182. Section 3242.2-2 is amended by removing from where it appears the citation "§ 3242.2-1" and replacing it with the citation "§ 3242.2-1 of this title".

§ 3243.1 [Amended]

183. Section 3243.1 is amended by removing from where it appears in the second sentence thereof the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears at the end of the second sentence thereof the citation "43 CFR Part 3260" and replacing it with the citation "part 3280 of this title."

§ 3243.2 [Amended]

184. Section 3243.2 is amended by removing from where it appears in the first sentence thereof the word "supervisor" and replacing it with the phrase "authorized officer".

§ 3243.3-1 [Amended]

185. Section 3243.3-1 is amended by amending paragraph (a) by revising the first sentence thereof to read: "When separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve or require lessees to enter into communitization or drilling agreements providing for the apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof, with other lands, whether or not owned by the United States, when found in the public interest." And amending paragraphs (b) and (c) by removing from where it appears in those paragraphs the word "Supervisor" and replacing it with the phrase "authorized officer".

§ 3243.3-2 [Amended]

186. Section 3243.3-2 is amended by removing from where it appears in the second sentence the word "Supervisor" and replacing it with the phrase "authorized officer" and also by removing from where it appears in the second sentence the word "must" and replacing it with the word "shall."

§ 3243.4-1 [Amended]

187. Section 3243.4-1 is amended by:

A. Revising paragraph (a) to read:

(a) The authorized officer may, on such conditions as may be prescribed, approve operating, drilling or development contracts made by 1 or more geothermal lessees, with 1 or more persons, associations, including partnerships, or corporations whenever the authorized officer determines that such contracts are required for the conservation of natural resources or are in the best interest of the United States.

B. Amending paragraph (b) by removing from where it appears therein the word "Supervisor" and replacing it with the phrase "authorized officer"; and

C. Amending paragraph (c) by removing from where it appears therein the word "Secretary" and replacing it with the phrase "authorized officer" and also by removing from where it appears the word "will" and replacing it with the word "shall".

§ 3243.4-2 [Amended]

188. Section 3243.4-2 is amended by:

A. Amending paragraph (a) by removing from the two places it appears therein the word "must" and replacing it with the word "shall" and also by removing from where it appears therein the word "Secretary" and replacing it with the phrase "authorized officer"; and

B. Amending paragraph (b) by removing from where it appears the word "must" and replacing it with the word "shall".

§ 3244.1 [Amended]

189. Section 3244.1(a) is amended by revising the introductory text of the paragraph to read:

(a) A lease, or any legal subdivision thereof, may be surrendered by the record title holder or the holder's duly authorized agent by filing a written relinquishment in the proper BLM office. A partial relinquishment shall not reduce the remaining acreage in the lease to less than 640 acres, except where a departure is occasioned by an irregular subdivision. The minimum acreage provision may be waived by the authorized officer when it is determined that an exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment shall:

§ 3244.2-1 [Amended]

190. Section 3244.2-1 is amended by removing from where it appears in the first sentence thereof the citation "§ 3244.2-2" and replacing it with the citation "§ 3244.2-2 of this title" and by revising the second sentence thereof to read: "However, if the designated Service office is not open on the day a payment is due, payment received on the next day the designated Service office is open to the public shall be deemed timely made."

§ 3244.2-2 [Amended]

191. Section 3244.2-2 is amended by:

A. Amending paragraph (a) by removing from where it appears in the first sentence the word "paid" and replacing it with the phrase "received" and revising the third and fourth sentences thereof to read: "The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office."; and

B. Amending paragraph (b)(1) by adding after the phrase "part of the lessee;" the words "(reasonable diligence shall include a rental payment that is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public);"

§ 3244.5 [Amended]

192. Section 3244.5 is amended by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer".

PART 3250—[AMENDED]

193. The authority citation for Part 3250 is revised to read:

Authority: Secs. 3 and 24, Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

§ 3250.0-3 [Amended]

194. Section 3250.0-3 is amended by removing from where it appears the word "Stream" and replacing it with the word "Steam".

195. Section 3250.1-2 is revised to read:

§ 3250.1-2 Who may hold licenses.

Licenses shall be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States, any State or the District of Columbia or governmental

units, including, without limitations, municipalities.

§3250.4-1 [Amended]

196. Section 3250.4-1 is amended to remove from where it appears the citation "§ 3200.0-8" and replacing it with the citation "§ 3200.0-6".

§3250.4-2 [Amended]

197. Section 3250.4-2 is amended by removing the second and third sentences thereof in their entirety and adding a new sentence at the end thereof to read: "In order to install such a facility, a permit shall be obtained from the authorized officer under the provisions of Part 3260 of this title. Permits granted under Part 3260 of this title shall conform with the requirements of § 3200.0-6 of this title."

§3250.6-1 [Amended]

198. Section 3250.6-1(b) is amended by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer" and by removing from where it appears the citation "43 CFR Part 3260" and replacing it with the citation "Part 3260 of this title".

§3250.6-2 [Amended]

199. Section 3250.6-2(a) is amended by removing from where it appears the word "Secretary" and replacing it with the phrase "authorized officer".

§3250.6-3 [Amended]

200. Section 3250.6-3 is amended by revising the first sentence to read: "Rental at a rate to be determined by the authorized officer shall be paid annually, but said rental shall not be less than $100 per acre or fraction thereof if the utilization facility is for electrical generation, or not less than $10 per acre or fraction thereof if the utilization facility is for non-electrical purposes."

§3250.8 [Amended]

201. Section 3250.8 is amended by:

A. Amending paragraph (a) by removing from the three places it appears the word "must" and replacing it with the word "shall" and by removing from the two places it appears the word "will" and replacing it with the word "shall"; and

B. Amending paragraph (b) by removing from where it appears the phrases "non-refundable fee" and replacing it with the phrase "nonrefundable filing fee".

§3250.9 [Amended]

202. Section 3250.9 is amended by:

A. Amending paragraph (a) by removing from where it appears in the first sentence thereof the phrase", in triplicate," and by removing from where it appears in the third sentence thereof the word "will" and replacing it with the word "shall"; and

B. Amending paragraph (d) by removing from where it appears therein the phrase "Area Geothermal Supervisor" and replacing it with the phrase "authorized officer".

203. The authority citation for Part 3260 continues to read:

Authority: Geothermal Steam Act as amended (30 U.S.C. 1001-1025) and Order No. 3087 (dated Dec. 3, 1982, as amended Feb. 7, 1983) [48 FR 8983].

§3260.0-5 [Amended]

204. Section 3260.0-5 is amended by:

A. Revising paragraph (a) to read:

(a) "Lessee" means a person or entity holding record title in a lease issued by the United States.

and

B. Revising paragraph (b) to read:

(b) "Operator" means any person or entity, including but not limited to the lessee, operating rights owner (sublessee), or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

C. Redesignating paragraphs (c) through (o) as (d) thorugh (p), respectively, and adding a new paragraph (c) to read:

(c) "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

D. Amending redesignated paragraph (i) by removing from the last sentence thereof the phrase "exclusive right of a lessee to drill" and replacing it with the phrase "right to drill";

E. Revising redesignated paragraph (j) to read:

(j) "Casual use" means activities that involve practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. For example, activities that do not involve use of heavy equipment or explosives and that do not involve vehicle movement except over established roads and trails are "casual use".

F. Revising redesignated paragraph (o) to read:

(o) "Facility operator" means the operator, licensee, or the individual, corporation, association, or municipality that operates any facility on a Federal geothermal lease for the beneficial utilization of geothermal resources.

and

G. Amending redesignated paragraph (p) by removing from where it appears the phrase "between a lessee" and replacing it with the phrase "between an operating rights owner".

§3261.2 [Amended]

205. Section 3261.2 is amended by removing from where it appears in the next to last sentence thereof the phrase "State agencies, lessees, operators" and replacing it with the phrase "State agencies, operating rights owners, operators," by removing from where it appears in the last sentence thereof the phrase "is authorized to conduct the proposed operations;" and by adding at the end of the section a new sentence to read: "Approval of a plan of operations or other permit does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct operations."

§ 3261.8 [Removed]

206. Section 3261.8 is removed in its entirety.

Subpart 3262—[Amended]

207. The title of Subpart 3262 is revised to read: "Subpart 3262—Requirements for Operating Rights Owners and Operators".

§ 3262.1 [Amended]

208. Section 3262.1 is amended by:

A. Amending paragraph (a) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall";

B. Amending paragraph (b) by removing from where it appears at the beginning of the paragraph the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner or operator, as appropriate, shall"; and

C. Amending paragraph (c) by removing from where it appears the phrase "created by the lessee's operations" and replacing it with the phrase "created by the operations".

209. Section 3262.2 is revised to read as follows:

§ 3262.2 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of

sufficient bond coverage in accordance with Subpart 3206 of this title.

(b) In all cases where an individual production well facility, research and demonstration facility, or plant facility is to be operated by a party other than the operating rights owner or licensee, such other party shall submit to the authorized officer the joint facility operating agreement between the operating rights owner or licensee and the facility operator. Such joint facility operating agreement shall authorize, upon acceptance by the authorized officer, the facility operator to enter upon the proposed facility site and related sites and to conduct thereon, in accordance with § 3262.4–1 of this title, such preliminary geologic and soil studies as are appropriate for the planning and design of the facilities necessary for the utilization of geothermal resources in the manner proposed. An operating rights owner, operator, or licensee also may construct and operate such facilities as have been approved under a plan of operation or utilization and for which a permit has been issued pursuant to the regulations in this part and, if a plant facility, for which a license has been issued in accordance with the regulations in this group.

§ 3262.2–1 [Amended]

210. Section 3262.2–1 is amended by:

A. Revising the title to read: "§ 3262.2–1 Local representative."; and

B. Amending the language of the section by removing from where it appears the phrase "the lessee shall" and replacing it with the phrase "the operator shall".

§ 3262.3 [Amended]

211. Section 3262.3 is amended by removing from where it appears at the beginning of both paragraphs (a) and (b) the phrase "The lessee shall" and replacing it with the phrase "The operating rights owner shall".

§ 3262.4 [Amended]

212. Section 3262.4 is amended by removing from where it appears in the opening paragraph three times the word "lessee," and replacing it with the word "operator,".

§ 3262.4–1 [Amended]

213. Section 3262.4–1 is amended by:

A. Amending the opening paragraph of the section by removing from where it appears in the first sentence the phrase "the lessee, licensee, or the designated facility" and replacing it with the phrase "the operating rights owner, operator, licensee, or facility", and by removing from where it appears in the third sentence of the opening paragraph the phrase "the lessee, licensee" and replacing it with the phrase "the operating rights owner, licensee"; and

B. Amending paragraph (i) by removing from where it appears the phrase "The lessee, licensee," and replacing it with the phrase "The operating rights owner, licensee,".

§ 3262.4–2 [Amended]

214. Section 3262.4–2 is amended by removing from the 4 places it appears the phrase "the lessee" and replacing it with the phrase "the operator", and by removing from where it appears the phrase "a lessee" and replacing it with the phrase "an operator".

§ 3262.5 [Amended]

215. Section 3262.5 is amended by removing from the 2 places it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.5–1 [Amended]

216. Section 3262.5–1 is amended by removing from the 2 places it appears the phrase "The lessee" and replacing it with the phrase "The operator", and by removing from where it appears in paragraph (c) the phrase "lessee will" and replacing it with the phrase "operator shall".

§ 3262.5–2 [Amended]

217. Section 3262.5–2 is amended by removing from the two places it appears the phrase "The lessee" and replacing it with the phrase "The operator".

§ 3262.5–3 [Amended]

218. Section 3262.5–3 is amended by removing from where it appears the phrase "the lessee unless requested by an offset lessee, and then, at the risk and expense of the offset lessee.", and replacing it with the phrase "the operator unless requested by an offset operating rights owner or operator, and then, at the risk and expense of the offset party."

§ 3262.5–4 [Amended]

219. Section 3262.5–4 is amended by removing from the beginning of the section the phrase "The lessee or operator" and replacing it with the phrase "The operator".

§ 3262.5–5 [Amended]

220. Section 3262.5–5 is amended by removing from the 2 places it appears the phrase "lessee shall" and replacing it with the phrase "operator shall".

§ 3262.6 [Amended]

221. Section 3262.6 is amended by removing from the 2 places it appears the phrase "lessee shall" and replacing it with the phrase "operator shall".

§ 3262.6–1 [Amended]

222. Section 3262.6–1 is amended by removing from where it appears at the beginning of the section the phrase "The lessee or, as appropriate, the licensee, designated operator, or designated facility operator" and replacing it with the phrase "The operator, licensee, or facility operator, as appropriate,".

§ 3262.6–2 [Amended]

223. Section 3262.6–2 is amended by removing from the 2 places it appears the phrase "the lessee" and replacing it with the phrase "the operator".

§ 3262.6–3 [Amended]

224. Section 3262.6–3 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.7 [Amended]

225. Section 3262.7 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3262.7–1 [Amended]

226. Section 3262.7–1 is amended by removing from the 2 places it appears the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

Subpart 3263—[Amended]

§ 3263.1 [Amended]

227. Section 3263.1 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3263.2 [Amended]

228. Section 3263.2 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

229. Section 3263.3 is revised to read:

§ 3263.3 Commingling production.

The authorized officer may authorize an operator to commingle production from wells on a lease with production from other leases subject to such conditions as may be prescribed.

Subpart 3264—[Amended]

§ 3264.2–2 [Amended]

230. Section 3264.2–2(d) is amended by removing from where it appears the phrase "the lessee commences" and

replacing it with the phrase "the operator commences".

§ 3264.2-3 [Amended]

231. Section 3264.2-3 is amended by removing from where it appears at the beginning of the section the phrase "The lessee shall" and replacing it with the phrase "The operator shall".

§ 3264.3 [Amended]

232. Section 3264.3 is amended by removing from where it appears the phrase "the lessee or operator must" and replacing it with the phrase "the operator shall".

§ 3264.4 [Removed]

§ 3264.5 [Redesignated as § 3264.4 and amended]

233. Section 3264.4 is removed in its entirety and § 3264.5 is redesignated as § 3264.4 and is amended by removing the phrase "the lessee so long" and replacing it with the phrase "the operating rights owner or operator, as appropriate, so long".

Subpart 3265.1—[Amended]

234. Section 3265.1(a) is amended by removing from the beginning of the section the phrase "Whenever a lessee or" and replacing it with the phrase "Whenever an operating rights owner, operator, or", by removing from where it appears in the first sentence the phrase "give the lessee notice "and replacing it with the phrase "give notice", and by removing from the beginning of the second sentence the phrase "Failure by the lessee to perform" and replacing it with the phrase "Failure by the party to perform".

Group 3000—[Amended]

235. The Note at the beginning of Group 3000 is amended bya revising the first sentence there of to read as follows:

Note: The information collection requirements contained in Part 3000 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0145.

Group 3100—[Amended]

236. The Note at the beginning of Group 3100 is amended by revising the first sentence thereof to read as follows:

Note: The information collection requirements contained in Parts 3100, 3110, 3120, 3130, 3140, 3150, and 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0034, 1004-0065, 1004-0067, 1104-0074, 1004-0132, 1004-0134, 1004-0135, 1004-0136, 1004-0137, 1004-0138, and 1004-0145.

Group 3200—[Amended]

237. Group 3200—Beothermal Resources Leasing is amended by inserting at the beginning thereof the following Note:

Note: The information collection requirements contained in Parts 3200, 3210, 3220, 3240, 3250, and 3260 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0074 and 1004-0132. The information is being collected to permit the authorized officer to determine whether an applicant is qualified to hold a lease for the exploration, development, and utilization of geothermal resources on the public lands. The information will be used to make this determination. A response is required to obtain a benefit.

PART 3210—[AMENDED]

238. The Note at the beginning of Part 3210 is removed.

PART 3250—[AMENDED]

239. The Note at the beginning of Part 3250 and the Note at the beginning of Subpart 3250 are removed.

PART 3260—[AMENDED]

240. Note 1 at the beginning of Part 3260 is amended by revising the clearance number at the end of the first sentence of paragraph (b) to read "1004-0132".

241. Note 2 at the beginning of Part 3260 is revised to read as follows:

Note 2: The information collection requirements contained in Part 3260 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0132. The information is being collected to evaluate the technical feasibility and environmental impacts of geothermal operations on Federal lands. Clearance number 1004-0132 also covers information required by § 3264.3 as is required to document exploration expenditures for which diligence credit is desired in accordance with § 3203.5. A response is required to obtain a benefit.

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Monday
May 16, 1988

Part IV

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa and Pima Counties Carbon Monoxide Plans; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3380-8]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa and Pima Counties Carbon Monoxide Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces EPA's proposed action to approve revisions to the Maricopa portion of the Arizona Carbon Monoxide State Implementation Plan (SIP) submitted by the State on October 5, 1987. Because the approvable measures in the revised plan do not by themselves provide sufficient emissions reductions to demonstrate timely attainment of the carbon monoxide (CO) standard, this notice also proposes to promulgate under section 110(c) of the Clean Air Act (CAA) a Federal Implementation Plan (FIP) for Maricopa County, consisting of a motor vehicle oxygenated fuels program and an employer-based trip reduction program. EPA believes that the revised SIP, supplemented by these two federally promulgated rules, will meet the requirements of section 110 and Part D of the Clean Air Act. The proposed combined plan provides for attainment of the CO standard by the end of 1991, and for continued maintenance of the standard. In addition, EPA is taking comments on whether it may be appropriate to promulgate a FIP for Maricopa County based solely on a motor vehicle oxygenated fuels program. This program would be implemented with a sufficiently high oxygen requirement so that all of the CO reductions necessary for attainment by the FIP would be achieved by the motor vehicle oxygenated fuels program and the approvable State measures. EPA is also proposing: (1) To continue the Part D disapproval of the Maricopa CO plan that EPA announced September 23, 1986 (51 FR 33746) and (2) to find that the State is not making reasonable efforts to submit an adequate Part D plan for CO for Maricopa County. As a result, EPA is proposing to retain the construction ban for major new and modified stationary sources under section 110(a)(2)(I) and to impose in Maricopa County the federal highway funding restriction under section 176(a).

EPA's proposed promulgation of a FIP is in response to an order by the U.S. District Court for the District of Arizona, requiring EPA to promulgate no later than August 10, 1988, a FIP for CO in the Maricopa and Pima Counties Nonattainment Areas. On April 26, 1988, EPA proposed to approve the revised SIP for the Tucson CO Planning Area (Pima County) as meeting the requirements of Part D of the Act. EPA proposes in this notice that, in the event that EPA determines that the Tucson SIP cannot be approved, EPA will promulgate an oxygenated fuels program for Pima County. Any oxygenated fuels program that EPA ultimately would adopt for Pima County would provide for attainment in Pima County by 1990.

DATES: EPA will conduct a public hearing on this Notice of Proposed Rulemaking (NPRM) on June 10, 1988, from 9:00 a.m. until 6:00 p.m. Written comments on the NPRM must be submitted to EPA at the address below by June 15, 1988. The comment period will remain open until July 11, 1988, for submission of rebuttal and supplemental comments relating only to comments already raised at the public hearing.

ADDRESSES: Comments on this proposal should be sent to: Regional Administrator, Attention: A-2-2, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105.

The public hearing will be in the Hearing Room of the Maricopa County Board of Supervisors, 205 W. Jefferson Street, Phoenix, Arizona.

Rulemaking dockets for this notice, including the Technical Support Document, may be inspected at the following locations between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket.

U.S. Environmental Protection Agency, Central Docket Section, Docket No. 9-A-88-01, South Conference Room 4, 401 M. Street SW., Washington DC 20460

U. S. Environmental Protection Agency, Region 9, Air Management Division, State Liaison Section, A-2-2, 215 Fremont Street, San Francisco, California 94105.

Copies of the submitted plans, proposed FIP, and the Technical Support Document are also available at the County and State offices listed below:

Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, Phoenix, Arizona 85004

Maricopa Association of Governments, 1820 West Washington, Phoenix, Arizona 85007

Maricopa County Bureau of Air Pollution Control, 1825 East Roosevelt Street, Phoenix, Arizona 85006

Pima Association of Governments, 405 Transamerica Building, 177 North Church Street, Tucson, AZ 95701

Pima County Health Department, Air Quality Control District, 150 West Congress, Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, State Liaison Section (A-2-2), Air Management Division, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634, FTS: 454-7634.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) amendments of 1977 required states to revise their state implementation plans (SIPs) by certain times for all areas that had not then attained the National Ambient Air Quality Standards (NAAQS). Generally, the states containing these designated "nonattainment areas" had to submit revised SIPs by January 1, 1979. The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or carbon monoxide (CO) to no later than December 31, 1987, was available under section 172 if the state could demonstrate as part of its 1979 SIP revision that attainment by the end of 1982 was not possible, despite the implementation of all reasonably available control measures. For areas that received an attainment date extension from EPA, states were required to submit to EPA by July 1, 1982 an additional SIP revision that provided for attainment no later than December 31, 1987, and that complied with all other requirements of Part D of the CAA.

A. SIP Disapproval

Maricopa County was designated as nonattainment for CO on March 3, 1978 (43 FR 8970), and the State submitted Maricopa County's initial nonattainment area plan for CO in 1979 and 1980. On October 30, 1980, the State submitted a request to EPA to extend the CO attainment date in Maricopa County to December 31, 1987. EPA proposed to approve the extension request on February 5, 1982 (47 FR 5439).

On May 5, 1982 (47 FR 19826), EPA took final action to approve the 1979 SIP revision on the condition that the State submit revised regulations for Maricopa County to meet the Act's New Source Review (NSR) requirements. On June 3, 1982, and March 4, 1983, the State

submitted NSR regulations for Maricopa County. On July 3, 1983 (48 FR 34293), EPA proposed to approve the Maricopa rules with one exception and certain understandings. On April 27, 1988, Maricopa County submitted a letter to EPA making certain commitments regarding implementation of the Maricopa NSR rules pursuant to those understandings. EPA expects to receive an identical commitment letter from the Arizona Department of Environmental Quality in the near future. Based upon these letters, EPA will take final action approving the NSR rules when EPA takes final action on today's proposal.

Beyond establishing this NSR condition, EPA, in its final action on the 1979 CO plan, found that the plan was not adequate to bring about attainment by the end of 1982. EPA premised its limited approval of the plan on the expectation that (1) the Agency would take final action to grant the State's request for an attainment date extension to December 31, 1987, and (2) the State would submit another plan revision which would provide for attainment by that date. The State submitted a plan purporting to meet this requirement on October 26, 1982.

On January 27, 1986 (51 FR 3343), EPA proposed to disapprove the Maricopa revised plan and impose the section 110(a)(2)(I) construction ban because the State had not adequately demonstrated that it would provide for timely attainment of the standard.

On September 23, 1986 (51 FR 33746), EPA published a final notice disapproving the CO plans for both the Maricopa and Pima Counties Nonattainment Areas, and imposing the section 110(a)(2)(I) construction ban on major new sources and major modifications to existing sources of CO in the two areas. As explained fully in the September 23, 1986 notice, EPA determined that it was not necessary to take final action on the State's attainment-date extension request. The Ninth Circuit Court of Appeals upheld EPA's action. *Arizona* v. *Thomas*, 829 F.2d 834 (1987).

B. U.S. District Court Order

On August 10, 1987, the U.S. District Court for the District of Arizona ordered EPA to promulgate a federal implementation plan (FIP) under section 110(c) of the Act for CO in the Maricopa and Pima Counties Nonattainment Areas. The Court found that EPA's duty to promulgate a FIP arose when EPA found the State plans were inadequate. The Court Order is the result of a citizen suit brought against EPA on April 8, 1985, by the Arizona Center for Law in the Public Interest (ACLPI). The timeframe specified in the Court Order for EPA to promulgate a FIP was six months, following either the formal submittal of the Pima CO plan or September 30, 1987, whichever came first. *McCarthy* v. *Thomas*, D. Ariz. No. CIV-85-34-TUC-IWDB (slip op., Aug. 10, 1987). The court left open the possibility that EPA could file a motion after January 1, 1988 requesting an extension of the time period for FIP promulgation if necessary.

EPA outlined its intended approach to comply with the Court Order to promulgate a FIP for Maricopa and Pima Counties in an Advance Notice of Proposed Rulemaking (ANPRM) (52 FR 45466) published on November 30, 1987. EPA received 54 comments on the ANPRM which it took into account in preparing this proposal. A full analysis of the comments and EPA's response to them is included in the TSD. In the ANPRM EPA explained that, to promulgate a FIP for these two areas, EPA must select control measures that fill whatever gaps are left by approved portions of the State plans. The ANPRM also discussed the Maricopa County CO plan that had been submitted as a SIP revision by the State on October 5, 1987. The plan indicated that the area could attain the CO standard as early as 1990 and in any event by 1995 if the recommended control strategy in the SIP, including an oxygenated fuels program for motor vehicles, winter daylight savings time, and an employer-based trip reduction ordinance, were fully adopted and implemented.

The Maricopa plan claimed credit, both implicitly and explicitly, for the Arizona vehicle inspection and maintenance (I/M) program as expanded through 1987. In a separate **Federal Register** notice on the revised Pima CO plan, EPA recently proposed to approve the improvements to the State's I/M program as adopted by the Arizona State Legislature in 1985, 1986, and 1987. (51 FR 14818 (April 26, 1988).) The revised Maricopa plan also assumed credit for the following additional control measures: Transit and ridesharing improvements, expanded facilities to encourage increased pedestrian and bicycle trips, alternative work hours, alternative fuels for vehicle fleets, alternate-fueled transit vehicle purchase, and a voluntary-no-drive-day program. As discussed below, EPA is proposing to approve and assign emissions reduction credit to all of these measures except for the alternative fuels for vehicle fleets and the voluntary-no-drive-day program. The approvable measures in the revised plan, however, do not by themselves provide sufficient emissions reductions to demonstrate timely attainment of the CO standard.

On March 14, 1988, EPA moved the Court to extend the period for EPA to promulgate a FIP for the Maricopa and Pima areas. On April 19, 1988, the Court issued an order requiring EPA to propose a FIP for Maricopa County no later than May 13, 1988, hold public hearings on the proposal no later than June 10, 1988, close the public comment period following the hearing by July 11, 1988, and promulgate a FIP for Maricopa County no later than August 10, 1988. The Court also ordered that the same schedule for FIP promulgation shall apply for Pima County if EPA does not accept the Pima County SIP.

II. Summary of EPA's Proposal

Section 110(c)(1) of the Act provides that the Administrator shall promulgate a FIP within the statutory schedule unless, prior to such promulgation, the state has adopted and submitted a plan which the Administrator determines to be in accordance with the requirements of section 110. While EPA believes that expeditious attainment of the standards would result if the approvable measures in the revised plan were supplemented by an appropriate State oxygenated fuels program alone or in conjunction with a local trip reduction program, the State Legislature and the local Maricopa County jurisdictions have not yet adopted such programs. Thus, EPA believes that the revised Maricopa plan does not at this time relieve the Agency of the responsibility to promulgate a FIP for Maricopa. As discussed in the ANPRM, EPA has evaluated measures that could fill the gaps left by the State plan and thereby bring about near-term attainment of the CO standard. In this notice, EPA proposes to promulgate the two control measures for Maricopa County identified in the ANPRM—an oxygenated fuels program and an employer-based trip reduction program—as technologically-available elements of the FIP to provide the emissions reduction necessary for attainment.

With respect to oxygenated fuels, EPA proposes to require an equivalent oxygen content level of 2.57 percent in motor vehicle fuels first introduced into commerce within the Maricopa area in the winter CO season—specifically, from October 1 through March 31. (The equivalent oxygen content requirement may change in the final rulemaking depending on the combination of control measures selected for promulgation and on whether the State adopts any additional control measures.) Oxygen fuel blends, in the form of aliphatic

alcohols and/or ethers, which are currently on the market and available to the Maricopa area, include methyl-tertiary-butyl ether (MTBE), ethanol (Gasohol), and methanol/cosolvent blends. The effect of these blends in gasoline is to cause motor vehicle engines to run leaner thereby reducing emissions of carbon monoxide.

With respect to the proposed federal trip reduction regulation, EPA proposes to require that each employer of 100 or more employees at a worksite in the nonattainment area develop and offer to his employees alternative modes incentives. These incentives would be designed to reduce the number of single-occupant-vehicle (SOV) commute trips to the employer's worksite. The proposed trip reduction goal is a 5 percent reduction in SOV commute trips in the first year and an additional 5 percent reduction in the second year. Both the proposed trip reduction program and the oxygenated fuels program are discussed in detail later in this notice.

While these two measures are being proposed, EPA intends to give consideration between proposal and final promulgation to the implementation of FIP based upon a single control measure—an oxygenated fuels requirement with a sufficiently high oxygen requirement (2.79 percent) so that attainment can be achieved solely based upon this measure. In essence, with a sufficiently high oxygen content in the motor vehicle oxygenated fuels program the trip reduction program would become unnecessary.

Since EPA has not promulgated either of these measures before, EPA has very little experience regarding the advantages and disadvantages of implementing one measure over the other. Consequently, the final decision of whether to promulgate a trip reduction regulation or whether to rely on a more stringent oxygenated fuels program and no trip reduction regulation will be made after EPA reviews comments received on all parts of this proposal.

EPA believes that the combination of approved SIP measures and the proposed FIP measures will result in attainment of the CO standards in 1991. As discussed in full below, EPA believes that the attainment date that applies to the Maricopa area, now that both of the Part D statutory dates have passed, is the date that is the most expeditious date practicable but no later than three years from the date EPA promulgates this FIP. For the reasons described below, EPA believes that the 1991 date selected for the Maricopa CO FIP meets this test.

The Arizona State Legislature is currently considering several bills that would establish oxygenated fuels programs of varying degrees of stringency in Maricopa County. In addition, the Legislature is debating adoption of legislation aimed at achieving CO emission reductions through mandatory decreases in allowable wintertime gasoline volatility and by improvements to the existing motor vehicle inspection and maintenance program, including initiation of a loaded mode testing requirement, and a trip reduction ordinance similar to that adopted by Pima County. Finally, additional CO emissions reductions may be achieved in the near future from the adoption of the MAG model trip reduction ordinance by Maricopa jurisdictions.

State submittal of any one of these control measures or a combination of these measures as a SIP may occur before EPA's final promulgation of federal control measures. EPA proposes that, if before EPA takes final action on this FIP proposal, the State submits measures with sufficient emission reductions to demonstrate expeditious attainment and maintenance of the CO NAAQS, then EPA will approve those measures in lieu of final FIP promulgation. If additional control measures are submitted before FIP promulgation, but the measures do not completely eliminate the shortfall in CO emissions reductions, EPA will adjust the FIP by either eliminating altogether a superfluous federal control measure or relaxing the stringency of the measures so long as neither expeditious attainment nor maintenance of the standard would be jeopardized. Thus, for example, EPA's proposed oxygenated fuels program might be amended in the final promulgation to mandate a lower oxygen-content requirement if the higher oxygen content were no longer necessary, or the TRO program may be eliminated, in light of the State's supplemental submittal. The emission reductions achievable by the measures under consideration in Arizona, and some of the possible amendments to EPA's proposed oxygenated fuels rule are discussed below in Section VI, "Effect on Proposal of any Future SIP Submittal by Arizona." Should the state submit added control measures after final EPA promulgation of the FIP, EPA will approve those measures and rescind (or amend as appropriate) any EPA regulations that are deemed unnecessary based upon the State revised submittal.

With the exceptions specified below, EPA proposes to approve under sections 110(a)(2)(B) and 172(b)(8) of the Act, the control measures adopted by the State and MAG since the measures would not interfere with timely attainment of the CO standard and, indeed, are necessary for attainment. EPA proposes to conclude, however, that the Maricopa CO plan does not, absent further supplement by the relevant governments in Arizona, provide for attainment of the CO standards. EPA, therefore, proposes to continue the Part D disapproval of the CO plan for Maricopa County and the federal ban on construction of major new or modified stationary sources of CO and to impose the section 176(a) highway funding sanctions until the Agency approves a state plan as adequate to meet the Part D requirements.

EPA believes that the construction ban contained in section 110(a)(2)(I) should remain in place in an area until such time as a state submits and EPA subsequently approves a plan meeting the requirements of Part D, notwithstanding the fact that EPA may promulgate its own plan for the area that meets the requirements of Part D. As a statutory matter, the construction ban is contained in section 110(a), which governs plans submitted by the states. The reference in section 110(a)(2)(I) to the need for a construction ban unless "such plan" meets the requirements of Part D is to the plan referred to in section 110(a)(1), the plan required to be submitted by a state. In addition, EPA's regulations at 40 CFR 52.24 clearly impose the construction ban until such time as a state plan meeting the requirements of Part D is approved by the Administrator. Finally, the primary policy reason for which Congress created the section 110(a)(2)(I) construction ban was to encourage states to promptly prepare and submit to EPA plans meeting the requirements of Part D. EPA was to promulgate plans under section 110(c) for states only where states failed to comply with their statutory duties to prepare adequate plans. It would thus be inconsistent with the Act's purpose to reward these states by lifting the construction ban when EPA prepares a plan for them meeting the requirements of Part D. Although the plan for an area would then meet Part D, there would remain strong policy grounds for continuing the construction ban. The implementation of air pollution control measures in an area is always facilitated if carried out at the state level, and clearly Congress intended such planning and implementation to be done by the states. Thus, although an area would progress towards attainment under a federally promulgated plan, the

construction ban would remain in place to encourage the state to complete its own plan meeting the requirements of Part D and eventually substitute it for the federal plan. EPA specifically solicits comment on this interpretation of section 110(a)(2)(I).

Although the Arizona State and local governments have taken substantial steps in recent months to supplement the previous State CO SIP submittals for the Maricopa area, EPA has no assurance at this time that they will complete action on these supplements. As a result, EPA believes it is appropriate to lay the groundwork now for imposing the additional sanctions provided by section 176(a) of the Clean Air Act should the Arizona governmente ultimately fail to adopt the necessary control measures. For this reason, EPA is proposing today that, if Arizona does not supplement the Maricopa plan with the measures necessary to demonstrate expeditious attainment, EPA will make a final finding that the State is not making reasonable efforts to submit an adequate Part D plan. That finding would be based on the State's failure to adopt measures that are necessary to produce attainment of the standard in the Maricopa area. For a further discussion of the criteria EPA would use to make this finding final, see EPA's Notice of Intent on the subject (51 FR 4934 (February 10, 1986)) and EPA's November 30, 1987, ANPRM (52 FR 45466). Upon making such a final finding, the federal highway funding restriction of section 176(a) would go into effect.[1]

With respect to the implementation plan for Pima County, the emission reductions needed for attainment in the Pima County area are significantly less than needed for attainment by the end of 1991 in the Maricopa County area. EPA, therefore, believes that an oxygenated fuels program no more stringent than that proposed in this notice for the Maricopa area, if applied in the Pima area, would provide for attainment of the CO standard in Pima County. Accordingly, EPA intends to rely upon the oxygenated fuels program set forth in this Notice as the most stringent proposed FIP that EPA might promulgate for Pima County in the event that EPA determines, after the close of the comment period on the proposed Pima SIP approval (53 FR 14818 (April 26, 1988)), that the Pima SIP cannot be approved. EPA therefore solicits comment on such a program as a FIP for Pima County.

III. Legal Requirements

Section 110(c)(1) requires EPA to prepare regulations "setting forth an implementation plan, or portion thereof, for a state" when a state has failed to submit an adequate SIP. The CAA appears to indicate that such an "implementation plan" must meet all of the requirements of section 110(a)(2) and, where still applicable to the state's own planning effort, Part D. For example, section 110(c)(1) states that EPA must promulgate a FIP unless the state, before EPA takes final action, submits a plan "which the Administrator determines to be in accordance with the requirements of (section 110)." This passage indicates that Congress regarded a FIP meeting section 110 (rather than some lesser requirements) as the substitute for a state plan meeting section 110. Beyond that, each of the predicates for the duty to promulgate a FIP (*see* section 110(c)(1)(A)–(C)) directly or indirectly relates to the need to have some plan in place that meets the requirements of section 110. Thus, it is unlikely that Congress would have intended EPA to promulgate a FIP meeting less than those requirements. Moreover, section 110(d) states that the applicable implementation plan for an area is the plan "which has been approved under subsection (a) or promulgated under subsection (c) and which implements the requirements of this section." This language implies that all plans promulgated by the Administrator under section 110(c) must implement the requirements of section 110.

In addition, section 110(a)(2) contains a requirement that the plans for designated nonattainment areas contain a construction moratorium, unless the plan "meets the requirements of Part D." Since the Maricopa Plan for CO has never received EPA's approval as meeting Part D, this requirement still applies to CO planning for the area. For two reasons the Part D requirements also seem to apply to EPA's FIP. First, the section 110(a)(2)(I) requirement for a state plan meeting Part D is contained in section 110 which, as discussed earlier, apparently governs FIPs promulgated under section 110(c). Second, section 172(b), which contains the requirements for Part D plans, refers to plan provisions adopted by the State "or promulgated by the Administrator under section 110(c)." This phrase suggests that, if an area is still otherwise subject to Part D, any FIP required for that area also is subject to Part D.

Having concluded that any FIP that EPA promulgates for the Maricopa area should meet the requirements of both section 110 and Part D, EPA must next interpret those requirements to determine how they apply to the Agency's FIP for this area after December 31, 1987, the latest attainment date expressly identified in the CAA. That date is the planning date for areas that received EPA's approval of an extension beyond the otherwise applicable planning date—December 31, 1982. *See* section 172(a). The Maricopa area has not received EPA's approval of such an extension. However, since the later date, December 31 1987, has now elapsed as well, the discussion below analyzes both dates similarly—as elapsed Part D dates.

The policy that EPA proposed on November 24, 1987 (52 FR 45044) provides background for today's proposal on how to apply Part D to the Arizona CO plans now that the statutory dates have passed. On its face, Part D calls for plans that "provide for attainment" of the standard by the stated date (December 31, 1982, or December 31, 1987). Since plans developed after 1987 cannot conceivably provide for attainment by either of these dates, under the strictest possible reading of Part D EPA could never develop a plan that meets Part D's requirements, and hence, could not actually satisfy the applicable requirements (and the Court's Order).

As explained in EPA's proposed policy, EPA does not believe that such an interpretation of these elapsed dates would be consistent with Congress's intent in adopting Part D, since Congress obviously called for the creation of "plans" for future attainment, not findings that an area could never meet Part D. Thus, since it will be physically impossible after 1987 for EPA to plan for these areas to attain by the elapsed dates in Part D, EPA intends to interpret the requirement to plan for attainment by those dates as a legal impossibility. EPA believes that Congress would have intended EPA in such circumstances to select, in place of the elapsed dates, a subsequent date consistent with the general principles of the CAA and Part D. *See Chevron, U.S.A.* v. *N.R.D.C.*, 467 U.S. 837 (1984).

Although it is not clear what subsequent date Congress would have intended in these circumstances, the history of the CAA's planning requirements suggests that Congress

[1] Pub. L. 100–202, signed into law December 22, 1987, prohibits EPA from imposing certain sanctions under the Clean Air Act, including the section 176(a) funding restriction, during a moratorium extending through August 30, 1988. Therefore, while EPA is today proposing to make a final finding regarding such sanctions should fail to supplement the Maricopa plan, any final action on the sanctions would not go into effect any earlier than August 31, 1988.

would have provided EPA (and these areas) an additional period analogous to the 3- and 5-year periods set forth in section 110(a)(2)(A) and section 110(e), respectively. When Congress in 1977 directed EPA to initiate a new round of planning for areas that had failed earlier to produce adequate plans meeting the section 110 requirements, it created new planning periods comparable to the section 110 periods (3/5 years from EPA's approval of the state plan), rather than shortening those periods and thereby demanding plans for immediate attainment. Section 172(a)(1) required the SIPs for nonextension areas to provide for attainment by the end of 1982, four years from the date these submittals were due (January 1, 1979) (*see* section 129(c)). Congress provided a much longer attainment period for extension areas—from January 1, 1979 to December 31, 1987, approximately nine years from the date the initial Part D SIPs were due. But it set up two planning periods for these areas—one to apply all "reasonably available" measures and a second to supplement those measures. Since most reasonably available measures should already have been implemented in the Maricopa area by now, EPA regards post-1987 planning for the area as comparable to the planning during the second Part D period. That period spanned from the July 1982 submittal date (*see* section 129(c)) to the end of 1987, a period roughly consistent with the 3- and 5-year periods in section 110. Thus, although sections 110(a)(2) and (e) do not literally apply to the Maricopa area, EPA will use them as the best indicators of the attainment periods Congress would have intended to apply to these areas after passage of the Part D dates.[2]

Section 110(a)(2) requires the plan to provide for attainment as expeditiously as practicable but no later than 3 years from EPA's approval of an adequate plan, which in the context of section 110(c) must mean 3 years from the date EPA promulgates the FIP. Section 110(e) allows the EPA Administrator to grant a 2-year extension of the attainment date (beyond the 3-year period in section 110(a)(2)(A)) only if:

(A) One or more emissions sources (or classes of moving sources) are unable to comply with the requirements of such plans which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and

(B) The State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3 years cannot be achieved.

It is not readily apparent from the language of subparagraph (A) whether an area becomes eligible for this extension only if the means to attain within 3 years are not available in a technological rather than a cost-related sense. It is doubtful, however, that Congress intended to preclude EPA from considering the economic feasibility or reasonableness of the available means of attainment in making this judgment. If Congress had intended to do so, no area would be eligible for the extension, since all areas can attain the standard within 3 years simply by shutting down all economic activity. Since Congress clearly intended that some areas be provided the extension, EPA is inclined to interpret subparagraph (A) to require only a showing that the implementation of the "reasonably available alternative means" (RAAM) described in subparagraph (B) would not bring about attainment within 3 years. Subparagraph (B), then, would provide assurance that those reasonably available means are indeed implemented to achieve interim progress within the 3-year period. Therefore, an area would be eligible for the 2-year extension if the plan demonstrates that the area is actually implementing the RAAM within the 3-year period and that it still cannot attain within that 3-year period.

Applying these attainment deadlines to the Maricopa area, the plan must demonstrate attainment as expeditiously as practicable but in no case later than 1991 (assuming plan approval or promulgation in 1988), unless even with the application of reasonably available alternative means attainment cannot be achieved within that period. For the reasons described below and later in this notice, EPA proposes to supplement the State's plan for the Maricopa area with two measures suggested by the State's plan—an employer-based trip reduction program and an oxygenated fuels program—that will bring about attainment of the CO standard by 1991 in the area.

EPA believes that both a trip reduction program and an oxygenated fuels program are technologically available measures that would produce enough emissions reductions in combination to bring about attainment by 1991. However, EPA does not believe that any combination of available, practicable measures exists which could provide for attainment in the Maricopa area before 1991. It is true that a very stringent oxygenated fuels program could theoretically advance the attainment date to 1990, but EPA cannot now conclude that any oxygenated fuels program is definitely practicable for application in the Maricopa area due to numerous outstanding questions concerning market penetration, fuel availability, compliance monitoring, and consumer reaction to such a program. EPA is proposing the oxygenated fuels program described later only because it is necessary to provide for attainment by 1991. Whether or not a trip reduction program would be practicable for Maricopa, the emission reduction attributed to such a program alone would not be sufficient to advance the attainment date for the area. Further, as explained in EPA's ANPRM, EPA rejected all other measures for inclusion in the FIP either because EPA lacked authority to implement them, they were impracticable due to major economic and social impacts, or it would be impracticable for EPA to implement them at the federal level given similar existing state programs. *See* (52 FR 45466, 45468 (col. 1)). Consequently, EPA does not believe that any practicable measures exist which could achieve attainment in the Maricopa area before 1991.

On the other hand, EPA can also not make the conclusion, necessary to support a two-year attainment date extension under section 110(e), that a trip reduction program and an oxygenated fuels program are clearly not reasonably available alternative measures. Oxygenated fuels are technologically available and EPA believes that, although they are numerous and significant, the outstanding questions concerning the program may well prove not to be significant obstacles to successful implementation of the program. Similarly, a trip reduction program is in place in some California localities and thus, despite employer resistance, it is possible that such a program will prove reasonably available for the Phoenix area as well.

Therefore, EPA is proposing a trip reduction ordinance and an oxygenated fuels program for the Maricopa area because both programs are technologically available measures to provide the emission reductions that are necessary to bring the area into attainment by 1991. And, beyond that,

[2] EPA has historically concluded that the Administrator may grant himself a 2-year attainment date extension request under section 110(e) if necessary when he promulgates a FIP provided that all of the requirements of that section have been met. *See, e.g.*, 38 FR 30626 (November 6, 1973). *See also City of Santa Rosa* v. *EPA*, 534 f.2D 150, 153 (9th Cir. 1976) ("The Administrator is permitted to provide a two-year extension of the deadline" in promulgating a FIP).

EPA proposes not to invoke the two-year extension provided in section 110(e).

In preparing the FIP for Maricopa, EPA will comply with outstanding agency guidance on CO SIP preparation. In an April 4, 1979 notice (44 FR 20372), EPA published criteria for approval of the Part D SIP revisions that the Act required states to submit in 1979. On January 22, 1981 (46 FR 7182), EPA published criteria for evaluating the supplemental SIP revisions for extension areas due in mid-1982.

Section 110(a)(2) requires a plan to provide not only for timely attainment of the NAAQS but also for maintenance of the standards thereafter. EPA's FIP for the Maricopa area is based on the modeling and emission projections prepared by MAG as part of its SIP submittal. The MAG Plan projects emissions only through 1995; however, the projections demonstrate that the proposed FIP will continue maintenance of the CO NAAQS at least through 1995. EPA's proposed policy on post-1987 planning would require post-1987 SIPs to include a demonstration of maintenance for a period of ten years following the time of SIP submittal. If this proposed policy were applied to the Maricopa FIP, it would require a maintenance demonstration through 1998. EPA's rough projections indicate that with the FIP proposed today the Maricopa area would attain and maintain the CO NAAQS through 1998 despite the phase out of the CO reduction benefits of the Federal Motor Vehicle Emission Control Program and the continued growth and associated increases in vehicle miles traveled in the Maricopa area. EPA will continue to gather the necessary data to determine whether this initial projection is valid. In the meantime, EPA solicits comment on whether it should apply the maintenance requirements of the proposed post-1987 policy to the Maricopa FIP. If EPA concludes that the FIP should demonstrate maintenance through 1998, and the final data analysis indicate that the standard will not be maintained through that period with the measures in the proposed FIP, EPA will supplement the FIP with additional measures sufficient to demonstrate continued maintenance of the CO standard through at least 1998.

IV. SIP Evaluation

A. Description of the Modeling Analysis

The Maricopa Plan used the Urban Airshed Model (UAM) to evaluate regional carbon monoxide levels and CALINE4/V9–PG to evaluate hotspot CO levels. UAM requires both spacial and temporal disaggregation of the emission inventory. In Maricopa County in 1985, 88.5 percent of the carbon monoxide emitted was from on-road motor vehicles. The balance of the inventory was from military and civilian aircraft operations (6.5 percent), industrial sources, fires, and miscellaneous sources (a total of 5 percent). Stationary source emissions were gridded based on the known locations of the sources (civilian airports and Air Force bases) or were allocated by population.

Mobile source emissions were gridded in a multi-step process which first required traffic modeling and then integration of the traffic modeling results with emission factors from EPA's MOBILE3 model. Traffic modeling was performed by MAG's Transportation Planning Office (MAGTPO) using the Urban Transportation Planning System (UTPS) model. UTPS allocates regional traffic to links in the transportation network based on residential and employment patterns. Vehicle fleet emission factors were developed with MOBILE3 using local vehicle registration data, mileage accumulation rates by age of vehicle, the Arizona inspection and maintenance (I/M) program characteristics, and local tampering and misfueling rates. The mobile source inventory was gridded by integrating traffic volumes for each link from UTPS with the speed- and temperature-adjusted emission factor from MOBILE3. Intrinsic in the mobile source emission inventory are the impacts of the Federal Motor Vehicle Control program (FMVCP), improvements to the Arizona I/M program passed by the State Legislature before 1987, and roadway improvements including the construction of the MAG Regional Freeway/Expressway Plan.

Both the UAM and CALINE4/V9–PG air quality modeling was performed by Systems Applications, Inc. (SAI) under contract to MAG. The modeling simulated the Phoenix atmospheric conditions from 3:00 p.m. to 5:00 a.m. on October 25 to 26, 1985. The results were validated against the measured ambient CO levels. The maximum modeled 8-hour CO concentration was 18.5 ppm, which occurred between the hours of 8:00 p.m. and 4:00 a.m. The modeling results indicate that in the area of the predicted highest 8-hour ambient CO concentrations, the ambient levels are caused by a gradual build-up of CO throughout the urban area rather than by accounted for 15 percent or less of the total modeled ambient CO levels. The relative contributions do not change significantly in the future years modeled.

After SAI completed its work, the State of Arizona's Department of Environmental Quality (ADEQ) with MAG concurrence made three adjustments to the modeling results. All three of these corrections increased the emission reductions needed for attainment in the three future years modeled: 1987, 1990, and 1995.

During the modeling effort, new population forecasts were adopted by the MAG Regional Council. Because the number of vehicle trips and vehicle miles traveled (VMT) in an area are directly related to population, the new population forecasts, which are substantially higher than previous forecasts, indicated that the VMT figures used in the SAI modeling were too low and thus the future ambient concentrations of carbon monoxide predicted in the modeling were also too low. The State corrected the modeling to account for the new VMT projections developed by MAGTPO from the new population figures.

MOBILE3 predicts substantial conversion of the light-duty vehicle fleet to diesel; however, the predicted rates of diesel conversion are not being seen in the Maricopa County vehicle registration data. Because diesel vehicles emit much lower levels of CO than equivalent gasoline-powered vehicles, using the higher fleet penetration of diesels that MOBILE3 predicts, would underestimate the Maricopa fleet emissions. The State thus corrected the modeling to reflect the lower number of diesel vehicles.

The final adjustment that the State made to the modeling was to freeze the I/M benefits for any vehicle that had been in the program for five years. ADEQ believes that the Arizona program provides lower and lower benefits in each consecutive year that a vehicle is inspected. The State modeled this effect by freezing the I/M benefits for any vehicle after five years of inspections. MOBILE3, however, continues to assign benefits in each year that a vehicle is in an I/M program.

Based on the original modeling and the three adjustments discussed above, the State estimated that the reduction in baseline CO emissions that were needed for attainment by the end of 1987 was 34.0 percent. The State also estimated that emission reductions of 31.2 percent are needed to attain by the end of 1990 and 18.5 percent by the end of 1995. A straight-line interpolation of the 1990 and 1995 estimates gives a 1991 reduction target of 28.6 percent.

B. EPA Evaluation of the Modeling Analysis

EPA reviewed the dispersion modeling conducted by SAI and finds that the appropriate models and techniques were used for the analysis. EPA agrees with the State's assessment that high ambient CO levels in Phoenix are due to a gradual build-up of CO throughout the urban area, with a minimal impact from hot spot sources. Because of the areawide nature of the CO problem, the post-modeling adjustments should not introduce any significant error into the emission reduction estimates. EPA recognizes, however, that more accurate emission inventories, if used in the base case simulations and validations, would yield a more accurate forecast of the necessary future-year emission reductions. If future SIP updates are submitted, the most current emission inventories, VMT estimates, meteorological data and air quality data should be used for the modeling inputs and validations.

EPA also reviewed the three adjustments to the modeling made by the State. Because the new population forecasts were substantially higher than the ones used in the model, the State was correct to adjust the modeling to reflect the new figures. EPA is aware of the over-prediction in MOBILE3 of the diesel fraction and will be correcting the problem in the next update of the mobile source emissions model. Therefore, EPA concurs with this correction to the modeling results. The third adjustment the State made—to freeze the I/M benefits for each vehicle after five years—is inconsistent with the accepted use of MOBILE3. The State was unable to provide EPA with data showing that such an effect occurs in either the Arizona I/M program or other I/M programs in the country. EPA, therefore, believes that this adjustment is incorrect and has recalculated the emission reductions needed for attainment excluding it. Although the State is free to base its planning on the higher emission reduction targets derived from its assumption on I/M benefits (*see* CAA section 116), EPA does not believe that it can base its FIP on the State's I/M assumptions.

EPA estimates, based on the information in the MAG CO Plan and its analysis of the modeling adjustments, that a CO emission reduction of 34.0 percent was needed for attainment by the end of 1987. Emission reduction of 25.6 percent is needed for attainment in 1990, 22.0 percent in 1991, and 7.8 percent in 1995.

C. Evaluation of Control Measures in the SIP

The Maricopa Association of Governments recommended a list of forty-five transportation and mobile source control measures for inclusion in its final Carbon Monoxide Plan. These measures include expansion of the I/M program boundaries, improvements to transit and ridesharing programs, trip reduction ordinances, public awareness programs, a voluntary no-drive-day program, parking management, high occupancy vehicle (HOV) facilities, traffic flow improvements, pedestrian and bicycle travel amenities, alternative fuels, alternative work hours, changes in land use policies, winter daylight savings time, and miscellaneous other measures. A complete list of these measures can be found in the technical support document. Modeling of this recommended control package showed that, if it were fully implemented, the Maricopa area could attain the CO standard before 1990.

The MAG member jurisdictions passed resolutions adopting the Plan and describing their specific commitments to the measures listed in it. These resolutions are included in the submitted SIP. Resolutions or letters of commitments are also included in the SIP from the MAG Regional Council, the Phoenix Metropolitan Chamber of Commerce, the Regional Public Transportation Authority (RPTA), the Arizona Department of Transportation (ADOT), and the two local air force bases. Not every jurisdiction or agency committed to every measure recommended by MAG. For many measures, they lacked legal authority to adopt or implement or were not the primary lead agency. Several measures including fleetwide use of alternative fuels, I/M program improvements, and winter daylight savings time require legislative authority to implement.

From the review of the specific commitments in the plan as well as actions of the State Legislature, EPA is crediting as part of the Maricopa SIP the measures listed in Table 1. The measures are described more specifically in Chapter V of the MAG plan. EPA estimates that the total emission reductions from this package of approved measures is 3.9 percent in 1990 and 1991 and 4.3 percent in 1995. The total emission reductions are not the sum of the reduction achieved by the individual measures because measures that control tailpipe emissions (e.g. the I/M program) reduce the impact of measures which control VMT (e.g. ridesharing).

TABLE 1.—Emission Reductions Credits in the MAG CO SIP

Measure	1990	1991	1995
I/M Program—1987 Legislation	2.1%	2.1%	1.8%
Short-Range Transit Improvements	0.1	0.1	0.1
Expanded MAG Regional Ridesharing Program	0.3	0.3	0.5
High Occupancy Vehicle Lanes on Freeways	N/A	N/A	0.3
Freeway Surveillance, Ramp Metering, and Signage	N/A	N/A	0.1
Increased Bicycle Use	0.2	0.2	0.2
Pedestrian Travel	0.1	0.1	0.1
Conversion of Buses to Alternative Fuels and Use of Electric Buses for Shuttle Service	0.1	0.1	0.3
Alternative Work Hours	1.1	1.1	1.0

The cities, towns, and the County of Maricopa also made commitments to other measures (for example: Traffic flow improvements, educational programs, and city/county employee programs) that will contribute to reductions in ambient carbon monoxide concentrations. Unfortunately, due to the nature of many of these measures and their often very small emission reductions, specific emission reduction estimates were impossible to calculate.

MAG claimed credit in its Plan for two additional measures that EPA is not proposing to approve in this notice. The first measure is conversion of state, local, and corporate fleets to alternative fuels. EPA is not crediting this measure because, later in this notice, EPA is proposing a regional alternative fuels program that will automatically cover these vehicle fleets. Giving individual credit to the MAG measure would result in a double counting of emission reductions.

MAG also claimed substantial credit for a voluntary no drive day program. EPA compliments the Maricopa region on its efforts to establish a program; however, the Agency's review of this measure found several issues that should be resolved before EPA will consider approving the measure as part of the SIP.

The first issue is assurance of annual funding, as required by CAA section 172(b)(7), adequate to support the effort

needed to achieve continuing emission reductions. The second issue is the development of an institutional structure meeting the requirements of section 172(b)(10) that the State, the general purpose local governments, or a regional agency designated by the general purpose local governments have legal responsibility for implementing the measure. The last issue is the development of a monitoring program to assess and verify the impact of the program.

In addition to these issues, EPA is unsure of what emission reduction credit to give the program. The MAG plan claims a credit of 11 percent in 1990 and 12.5% in 1995 for the measure; however, based upon EPA's review of the program this credit is clearly too high. MAG has not proposed any alternative level of credit. While the program was operated during the winter of 1987/88, EPA has not yet received documentation of the results. EPA would wish to review these results before determining a specific emission reduction credit. EPA stated its concerns about the voluntary no-drive-day program in a letter to the Maricopa Association of Governments on April 7, 1988. The letter is part of the docket for this notice.

Several other control measures are currently under consideration or study for inclusion in the Maricopa SIP. These measures are further improvements to the inspection and maintenance program, a trip reduction ordinance, an alternative fuels program, and winter daylight saving time. These measures and their potential impact on the proposed FIP are discussed in greater detail later in this notice.

EPA's 1981 policy establishing criteria for approval of 1982 Plan revisions (46 FR 7182 (January 22, 1981)) required SIPs to include procedures to comply with requirements under section 176(c) of the Clean Air Act to assure that federally funded or approved projects conform to the SIP. Although the Maricopa plan does include procedures that can be used for conformity review, the TSD describes additional criteria that the State should add to its program to fully comply with EPA's 1981 guidance. EPA's proposed policy on post-1987 attainment planning (52 FR 45044 (November 24, 1987)) proposed additional conformity requirements. EPA will work with Maricopa County to incorporate procedures and criteria incorporating EPA's guidance of 1980, 1981, and the post-1987 proposal concerning conformity procedures.

D. Demonstration of Attainment in the MAG Plan

EPA's analysis of the Maricopa CO Plan finds that a reduction of 22.0 percent in the 1991 baseline emission inventory is necessary to demonstrate attainment by December 31, 1991. The State submitted approvable control measures that will achieve only a 3.9 percent reduction in carbon monoxide emissions by the end of 1991, leaving a shortfall of 18.1 percent. Therefore, EPA finds that the State's plan neither demonstrates attainment within the necessary timeframe nor maintenance thereafter.

E. New Source Review (NSR)

Arizona has not submitted all of the revisions to its NSR rules necessary to cure the deficiencies that EPA identified in its July 3, 1983 notice proposing approval of the Maricopa NSR rules. EPA has reviewed the deficiencies and has determined that the NSR rules in their current form meet federal current requirements when supplemented by commitments from the ADEQ and MCBAQC to issue permits in compliance with specific provisions of existing federal NSR regulations and policies. The Maricopa County Bureau of Air Quality Control (MCBAQC) submitted its commitment letter to the EPA on April 28, 1988. A copy of the letter is included in EPA's technical support document for this notice. The ADEQ commitment is expected in the near future. Thus, with these commitments, EPA intends to take final action to approve the Maricopa NSR program when EPA takes final action on today's proposal.

F. Public Participation

Based on MAG's public participation program, EPA finds that the State fulfilled the federal public participation requirements. The program utilized four major planning groups: The MAG Air Quality Policy Committee; MAG Air Quality Planning Group; MAG Management Committee and MAG Regional Council. Technical support for the program was provided by MAG, ADEQ, ADOT and Maricopa County Health Department. Together, these groups are composed of elected officials, citizen representatives, and regional traffic and planning experts.

To gather input on the MAG plan, these groups held numerous meetings, provided briefings to local councils, held public hearings and conducted an air quality survey to determine public perceptions regarding air quality.

V. Proposed Federal Implementation Plan

A. Reductions Needed from a Federal Plan for 1991 Attainment

The State of Arizona submitted the *1987 MAG Carbon Monoxide Plan for the Maricopa County Area* to EPA as a revision to the Maricopa County portion of the Arizona State Implementation Plan (SIP). As described above, EPA's evaluation of the air quality modeling analysis in the SIP submittal shows that a 22.0 percent reduction in the 1991 baseline carbon monoxide emissions is needed to demonstrate attainment of the 8-hour CO standard by December 31, 1991. The Plan, however, provides an approvable emission reduction of only 3.9 percent by the end of 1991, leaving a shortfall of 18.1 percent in the emission reductions needed for attainment.

To fill this shortfall, EPA is proposing two federal control measures for Maricopa County. These measures are an Employer Alternative Modes Incentives Program and an Oxygenated Fuels Program. The measures in the Arizona SIP submittal that are being proposed for approval together with the two proposed federal measures will provide a 22.0 percent reduction in carbon monoxide emissions by the end of 1991 and are thus sufficient to demonstrate attainment of the 8-hour carbon monoxide standard in Maricopa County.

The proposed federal measures are discussed in detail in the following sections. In this notice, EPA is soliciting comments on all parts of its proposed control measures. It is also requesting comment on the overall control strategy and specifically on whether the proposed trip reduction regulation should be replaced by a higher average oxygen-content level in the oxygenated fuels program.

Trip Reduction Regulation versus Higher Oxygen Content Fuels

EPA recognizes the relatively low emission impact of the proposed trip reduction regulation: Approximately 1.8% of a total 22% reduction in CO emissions necessary by 1991. Trip reduction regulations are also fairly new concepts in controlling air pollution and there is little actual data on implementation and emission reductions. However, locally adopted trip reduction ordinances (TROs) have been successful as traffic congestion and energy conservation measures in many areas of the country. Accordingly, EPA is continuing to examine the usefulness of a trip reduction regulation

as an alternative to an even higher oxygen-content fuel.

The cost of implementing the proposed regulation is a major concern. Limited studies on the range of cost to employers to implement a trip reduction program range from $10,000 for a modest program to cover $100,000 for an extensive program run by a large employer (over 1,000 employees). The total costs for Maricopa County employers of the proposed regulation range from $9.5 to $65.8 million.

Another concern about the proposed trip reduction regulation in Maricopa County is the potential controversies that may occur when over 700 employers, located in 22 jurisdictions, attempt to implement a federally mandated rule. In addition, some local government representatives have expressed strong concern over the timing of the TROs for the Maricopa area. They argue that the sales tax initiative for public transit should be decided in early 1989 before adopting TROs. In addition, they argue that it would be a more cost-effective approach to have a higher oxygen content fuel because it would be a less disruptive method of achieving higher emission reduction sooner.

Another concern raised in the comments to the ANPRM published by EPA on November 30, 1987, was the impact that a trip reduction regulation might have on citizen's ability to travel to and from work and the potential for added cost that an alternative mode of transit might incur.

Because of these numerous concerns over mandating a TRO, and the impacts of a higher average oxygen content fuel program as discussed elsewhere, EPA is especially soliciting comments on the usefulness of mandating a trip reduction regulation in this FIP. EPA is open to both options at this time. Upon review of comments on all parts of this proposal, we will make the final decision on whether to promulgate a federal trip reduction regulation.

B. EPA Proposed Control Measures

1. The Employer Alternative Modes Incentives Program

Trip Reduction Ordinances in the Maricopa CO Plan

Of the forty-five control measures in its 1987 Carbon Monoxide Plan, the Maricopa Association of Governments recommended six for high priority. These six were an expansion to statewide of the vehicle inspection and maintenance program, a feasibility study on the use of alternative fuels, a voluntary no drive day program, long range transit improvements, a switch to winter daylight savings time, and the development of a model trip reduction ordinance. In its resolution to adopt the Plan, MAG committed to "prepare a Model Trip Reduction Ordinance and Coordinated Parking Management Program for consideration for adoption by the MAG cities, towns, and Maricopa County." [3] In addition, a majority of the MAG jurisdictions committed to participate with MAG in the development of the model ordinance and/or consider the model ordinance once developed for adoption.

MAG contracted with K.T. Analytics, Inc. (Frederick, Maryland) to develop the model trip reduction ordinance (TRO) and coordinated parking management program. MAG also appointed a working group to review the contractor's products, to provide information to the contractor, and to monitor the progress of the project. The group was also to solicit input from the private development community. This working group consisted of twenty members representing Maricopa jurisdictions, several State agencies, the Regional Public Transportation Authority, the Phoenix Chamber of Commerce, private businesses, and community groups. EPA participated informally in the working group.

The working group met regularly with the consultant from late September, 1987, to February, 1988, to review and comment on the model ordinance as it was being drafted. During this period, the working group also held a public hearing on the draft model and four forums with local Chambers of Commerce to inform their members about the ordinance and to receive comments. On February 5, 1988, the working group made several changes to the draft model TRO and then voted unanimously to forward it to the MAG Air Quality Policy Committee.

On February 18, 1988, the MAG Air Quality Policy Committee reviewed the draft model ordinance and voted to continue consideration of the model at its March meeting. On March 10, the Air Quality Policy Committee, based on public comment that it had received and its own consideration of the ordinance, voted to recommend to the MAG Regional Council that further consideration of the model trip reduction ordinance be postponed until after the transit funding election tentatively scheduled for the spring of 1989. On March 23, the Regional Council accepted the Policy Committee's recommendation and tabled approval of the model ordinance for effectively one year.

Request by MAG for an Extended Deadline for Adoption of the TRO

On January 27, 1988, EPA stated to the Regional Council that EPA expected adoption of trip reduction ordinances by the Maricopa jurisdictions by May 31, 1988. EPA also stated that if the jurisdictions needed more time to adopt the ordinances, EPA would consider extending the deadline. On March 31, 1988, MAG sent a letter to EPA which described the actions of the MAG Regional Council to table the ordinance, gave the rationale for the action, and requested that EPA extend the May 31, 1988 deadline until after a transit funding election set for an indefinite date in 1989. Please see the Technical Support Document concerning EPA's response to MAG's request.

The question of a new deadline for the adoption of a TRO is made moot by the publication of today's FIP proposal. Since EPA is under court order to promulgate a FIP at this time, it cannot delay into next year for the local jurisdictions to adopt trip reduction ordinances.

The MAG Model Trip Reduction Ordinance

The draft model trip reduction ordinance developed for MAG requires all employers with 100 or more employees at a worksite to implement trip reduction programs to reduce commute trips by their employees. The goal of the employer programs are to reduce single-occupant-vehicle (SOV) trips to the worksite by 5 percent in the first year of operation and by an additional 5 percent in the second year. The model also requires employers of 100 or more in a jurisdiction, but not necessarily all at a single worksite, to provide information to their employees annually on alternative commute modes. Under the model, new developments may receive a reduction in normal parking requirements by taking actions which support trip reduction strategies, such as operating shuttle buses or installing showers, lockers, or bicycle storage lockers.

An employer with 100 or more employees at a worksite is required by the model to disseminate information on alternative modes (trip reduction promotion program), to appoint a transportation coordinator, to perform annual employee surveys, and to prepare and submit an annual trip reduction report and plan. The transportation coordinator can be either

[3] "Resolution to Adopt the MAG 1987 Carbon Monoxide Plan and the MAG 1987 Ozone Plan for the Maricopa County Area," the Maricopa Association of Governments, July 10, 1987.

an employee of the employer or a contract service. The employee surveys require information on the number of employees at the worksite, the commute modes of the employees, and other information which the jurisdiction will use to assess the impact of the TRO. The annual trip reduction report and plan is to describe the trip reduction activities of the employer in the previous year and to outline the trip reduction goal and strategies for the forthcoming year.

The schedule on which employers become subject to the requirements of the ordinance is based on the number of employees at a worksite. Employers with 500 or more employees at a worksite become subject six months after the effective date of the ordinance. Employers of 200 to 499 employees at a worksite become subject ten months after the effective date, and employers of 100 to 199 employees at a worksite become subject eighteen months after the effective date. The effective date of the ordinance is thirty days after its adoption. Employers are required to appoint a transportation coordinator and initiate the trip reduction promotion program within two months of the date that they become subject to the ordinance. All affected employers have the same due date for the employee survey and the annual trip reduction report and plan. Exact due dates are not specified in the model but are left to the individual jurisdictions to select.

The model ordinance requires the jurisdiction to appoint a jurisdictional transportation coordinator to oversee implementation of the ordinance. The model also establishes an advisory committee in each jurisdiction. Membership of this advisory committee may include representatives of the jurisdiction, employers in the jurisdiction, regional transit and rideshare programs, civic or public interest groups, and the jurisdiction's transportation coordinator. The duties of the committee are to recommend to the jurisdiction guidelines for implementation of and compliance with the ordinance, new trip reduction goals as appropriate, and enforcement actions and to prepare an annual report to the governing body on the TRO. In addition, the jurisdiction transportation coordinator is to coordinate with other jurisdictions and regional agencies. The Maricopa Association of Governments is to recommend regional trip reduction goals annually for consideration by its local jurisdictions.

Violations of the ordinance are failures to conduct or provide the results of the annual survey to the jurisdiction, to prepare or provide the annual trip reduction plan and report, to designate a transportation coordinator, or to implement the trip reduction plan or the promotion program in "good faith and with reasonable efforts." Failure to meet the annual trip reduction goal is not considered to be a violation of the ordinance. Violations are punishable by fines of up to $300 per day or by a civil injunction from violating the provisions of the ordinance.

In its Plan, MAG modeled a hypothetical TRO which required a 10 percent reduction in *vehicle* trips to single employer worksites with 100 or more employees. This modeling showed that such a TRO would reduce carbon monoxide emissions by 2.8 percent in 1990, 2.8 percent in 1991, and 2.7 percent in 1995. The model TRO developed for MAG differed from the hypothetical one in that its goal is a 10 percent reduction in *single-occupant-vehicle* (SOV) trips. These goals are not the same because there is not always a one-to-one correspondence between a SOV trip reduction and a vehicle trip reduction. For example, if two employees who formerly drove to work alone now carpool together, two single-occupant-vehicle trips have been eliminated; however, because one vehicle is still being driven to the worksite, only one vehicle trip has been eliminated. The modeling also assumed adoption of a TRO by all jurisdictions in the nonattainment area.

To determine the appropriate emission reduction for the MAG model ordinance, EPA estimated that the new commute mode of one-half of the SOV trip reductions from the model ordinance would be two-person carpools and one-half would be the third or greater person in a car or vanpool or a transit, bicycle or pedestrian trip. Based on these estimates, EPA calculated the actual trip reduction from the model ordinance to be 7.5 percent and the emission reduction from the ordinance to be 1.8 percent in 1991 (7.5% compared to the 10% trip reduction from the hypothetical TRO). The emission reduction of 1.8 percent is not 75 percent of the 2.8 percent modeled by MAG because factors such as the decrease in vehicle miles traveled and congestion relief as well as the decrease in trips influence the emission reduction from a TRO.

Recently, an amendment to Arizona Senate Bill 1181 was introduced into the Arizona House of Representatives. This amendment is a trip reduction statute modeled closely on the ordinance adopted by five jurisdictions in Pima County. The amended S.B. 1181 would require Maricopa County, through an appointed board, to implement and enforce the statute for all parts of the Maricopa carbon monoxide nonattainment area. Starting in January, 1989, employers with more than 100 employees at a worksite would be required to implement trip reduction strategies sufficient to have 15 percent of all their employees using alternative modes in the first year and 20 percent in the second year. New trip reduction goals would be set annually after the second year. If an employer failed to meet his trip reduction goal, he would be required to implement a specific number of trip reduction strategies. Because of the difference in how the trip reduction goals are measured between this bill and the hypothetical TRO modeled in the MAG Plan, EPA is not able at this time to estimate the potential emission reductions in Maricopa County from the amendment. Informally, EPA has been informed by MAG that this proposed amendment would achieve approximately the same emission reduction as the model TRO. EPA requests that the State analyze the emission reduction benefits of the measure.

Selection of Trip Reduction Regulation for the FIP

The Maricopa region is one of the fastest growing areas in the United States, adding approximately 4 percent to its population each year. Because of the region's large area, low density development patterns, and inadequate transit, the population is highly dependent on the private automobile for mobility. Thus, the number of vehicle miles traveled (VMT) has grown at a faster rate than population. In such situations, growth in VMT can begin to offset the emission reductions from cleaner motor vehicles. When considering measures for the FIP, EPA reviewed both the projected VMT growth rates in Maricopa County and the measures to reduce VMT in the MAG SIP and determined that additional measures to control the rate of growth in VMT needed to be considered for the federal plan.

While home-to-work and work-to-home commute trips are often not the majority of trips taken in an area, they are the most routine of all trip types. The majority of workers commute to and from work each day at the same time following the same route. This routineness facilitates the substitution of alternative commute modes for drive-alone commutes. In addition, commute trips traditionally have had the lowest vehicle occupancy rates. Finally, due to the large number of vehicles on the road,

the low speeds, and the congestion which are common during rush hours, most violations of the carbon monoxide standard start during the commute hours. For these reasons, programs that address commute trips would be the most effective at reducing VMT and carbon monoxide emissions and ambient air quality standard violations.

There are many ways to encourage conversion of single-occupant commute trips to alternative modes. Improved ridesharing programs; peak hour local and express transit services; parking price strategies that discourage all day parking or provide discounts for car and vanpools; variable work hours which allow employees to make ridesharing/transit arrangements; facilities at the worksite such as showers, lockers, and bicycle parking which encourage walking and bicycling; and provision of food, banking, postal or other services at or near the worksite which eliminate the need for vehicles at lunch time are just some of the viable programs to reduce trips to the workplace. However, of these available measures, the more traditional transportation control measures (TCMs)—like transit improvements or construction of flow improvements, bicycle lanes or pedestrian facilities—would be impracticable for EPA to finance and beyond the authority of EPA to require local jurisdictions to finance (see Response to ANPRM Comments in the TSD). In addition, a blanket requirement for many of these strategies without reference to their applicability to a particular worksite would waste limited resources and would not be as effective at reducing trips as more selective applications.

Faced with the myriad of methods of reducing commute trips, the potential cost of implementing traditional TCMs, and the need to tailor trip reduction strategies to the individual worksites, EPA decided to propose and take comment on an approach to controlling VMT growth that is becoming increasingly popular among communities in the West and is given high priority in the MAG CO Plan: Trip reduction ordinances (TROs) which require employers to develop and implement worksite trip reduction programs. The principle behind TROs is that if an employer enhances alternative commute options and the benefits to the individual employee of these options, then some employees will voluntarily shift out of single-occupant vehicles. However, the individual employee at all times retains his right to choose his commute mode.

TROs have disadvantages as well. Although TROs may be more easily enforced than other TCMs, a TRO would add an additional level of federal enforcement that would not be necessary if a more stringent oxygenated fuels program were adopted. Further, the TRO would be mandatory for certain employers and the costs for providing the incentives necessary to ensure mode switching are not certain and may be expensive.

Individual employees maintain their option to drive alone to work but are informed of and offered alternative modes. TROs allow employers to choose among the range of trip reduction incentives appropriate to their worksite and their employees' interest. Because of these incentives, traditional TCMs such as regional rideshare programs, transit, bicycle and pedestrian amenities are enhanced.

A trip reduction regulation has one important additional advantage which makes it more appropriate for a federal implementation plan than many traditional TCMs. This advantage is that the emission reductions from a TRO can be more easily made enforceable. Regional strategies such as transit and regional rideshare programs must rely on drivers switching voluntarily to them in order to decrease trips. While increased services in these types of programs generally lead to higher levels of use, this result is neither guaranteed nor enforceable. Emission reductions, however, from a trip reduction regulation where employers must offer sufficient incentives to their employees to achieve a certain level of trip reduction can be made enforceable.

The Proposed Federal Trip Reduction Regulation

EPA is proposing for comment today a federal trip reduction regulation similar but not identical to the model trip reduction ordinance developed by the Maricopa Association of Governments. The final decision of whether to promulgate a trip reduction regulation or whether to rely on a more stringent oxygenated fuels program and no trip reduction regulation will be made after EPA reviews comments received on all parts of this proposal. Like MAG's ordinance, this federal rule, titled the "Employer Alternative Modes Incentives Program" (EAMIP), would regulate all employers in the Maricopa County carbon monoxide nonattainment area (which is also the MAG urban planning area) with 100 or more employees at a worksite. The proposed regulation defines all employers with 100 or more employees at a worksite as "Major Employers." The proposed EAMIP requires a Major Employer to develop and offer to his employees an alternative modes incentives program that would reduce single-occupant-vehicle commute trips to his worksite.

Before describing the detailed requirements of the proposed federal trip reduction regulation, a discussion of the EPA's proposed method of and philosophy on implementing the regulation in Maricopa County is appropriate.

Primary responsibility for implementing and enforcing the EAMIP would lie with the Director of the Air Management Division of EPA's Region 9 Office in San Francisco, California. In implementing this program, EPA would work closely with all Major Employers in Maricopa County. EPA realizes that this would be infeasible if the Agency attempts to implement the regulation from its San Francisco office; therefore, EPA at this time proposes to hire a qualified contractor located in Maricopa to implement the EAMIP. A final decision on how to implement will depend on the comments received on this proposal. EPA, however, would retain enforcement activities in its Region 9 Office.

EPA would fund the selected, Maricopa-based, contractor to provide training to employer transportation coordinators, to review and recommend approval and disapproval of trip reduction plans and annual reports, to process exemption requests, and to implement other provisions of the regulation. A major responsibility of the contractor would be to furnish the Major Employer with timely information and assistances on complying with the EAMIP. Currently, it is believed that there are over 700 worksites which would be subject to this proposed regulation. EPA estimates that the contractor would require four full-time employees with additional clerical support. EPA would closely monitor its contractor to insure that the needs of Major Employers are being served.

EPA would select a qualified contractor in Maricopa County within four months of the date of this regulation's promulgation. It is EPA's hope that the contractor would be a regional agency in Maricopa County or an Arizona State agency. EPA would like to integrate the implementation of this regulation into on-going State, regional, and local alternative mode programs and thereby enhance both the effectiveness of the EAMIP and the local programs.

For several reasons, EPA would prefer to have trip reduction programs implemented at the local level. First and

primarily, local concerns are best addressed from that level. While EPA intends to establish an advisory committee made up of representatives of affected groups in the Maricopa region, this will not provide EPA with the same knowledge of the area as those who live and work there. Second, even with a contractor in place in Maricopa, some of the implementation and all of the enforcement of the program would still need to be conducted from EPA's Region 9 offices in San Francisco. This distance from the Maricopa region makes the communications necessary for successful implementation more difficult than if the program were adopted by a local government. Finally, EPA believes that to be effective, trip reduction ordinances or regulations must be integrated into other local trip reduction programs. While EPA would make every attempt to do this, the ability to work with local programs to achieve integration is more difficult from the federal level. EPA therefore encourages the local jurisdictions to adopt similar programs.

The sections of the proposed Employer Alternative Modes Incentives Program regulation are described in detail below. Prior to implementing this regulation in Maricopa, EPA would hold workshops for all Major Employers, their transportation coordinators, and other interested parties to discuss the requirements of this regulation.

a. *Notification.* Major Employers who are subject to this regulation would be required to notify EPA that they are subject within six months of its date of promulgation and provide EPA with the company's name, address, a person EPA may contact in the company and that person's telephone number, and the number of employees at the regulated worksite. Employers who become subject to the regulation after the first six month period would be required to notify EPA within three months of first becoming subject and provide the same information.

Notification is intended to give EPA the opportunity to provide information and assistance to the Major Employer on this regulation and means of complying with it well before the Major Employer would be be required to meet any of its requirements. EPA intends to inform potentially subject employers of the notification requirement through the media, trade publications, the local chambers of commerce, local jurisdictions, and other routes. While failure to notify EPA would be a violation of the regulation, each October would be an amnesty period for Major Employers who did not notify EPA within the required time periods to do so without penalty.

b. *Trained Transportation Coordinators.* All Major employers would be required to appoint a trained transportation coordinator. The trained transportation coordinator may be an employee of the Major Employer or a contractor hired to operate the Major Employer's program. Groups of Major Employers may choose to jointly employ a single transportation coordinator which can represent the most cost effective approach that significantly decreases the program cost to individual employers. EPA's purpose in requiring a trained transportation coordinator would be to ensure that there be a designated person at each Major Employer who is knowledgeable on the provisions of this regulation and who is responsible for the operation of the Major Employer's alternative modes incentives program.

The proposed regulation would require that the transportation coordinator be trained. Training is intended to ensure that the employer's transportation coordinator is fully informed on the requirements of the EAMIP and on available trip reduction techniques and programs. The training is envisioned as an initial three- to four hour course and annual or semiannual one- to two-hour refresher courses offered free or at cost by EPA. It is EPA's intention to keep transportation coordinators as fully informed as possible on available trip reduction techniques and programs so that they may develop alternative modes incentives programs which both maximize trip reductions and minimize costs.

The coordinator's responsibilities would include disseminating and posting alternative modes information, performing the annual employee survey, preparing the trip reduction plan and annual report, obtaining management approval of the plan, setting up the incentives programs necessary to implement the plan, and providing assistance to employees on alternative modes. EPA would not expect employers to hire a new person to fill this position. In fact, such a position would best be filled by a current employee who is familiar with the company and its employees. The position would not need to be filled by a management level employee. A management assistant, personnel representative, or equivalent staff person would be sufficient. EPA estimates that an employer with up to 500 employees would need to staff the transportation coordinator position for a maximum of one day per week and in most cases considerably less, especially after the program is up and running, and if a coordinator is shared by a group of employers. The staffing required at larger employers would depend on the complexity of the trip reduction program.

c. *Annual Employee Survey.* Major employers would be required to survey their employees annually on their commute modes. The results of this survey would be used by the Major Employer and EPA to determine if the trip reduction goal has been met. At least six months prior to the first required survey, EPA would publish guidelines detailing the minimum criteria that surveys would be required to meet for completeness and coverage.

Major Employers should consider the survey an opportunity to learn of their employees' alternative mode preferences. This information will enable the Major Employer to tailor the alternative modes incentives program to the interests of his employees and thereby reduce the program's cost by eliminating unwanted incentives.

Because the results of the survey would be used to determine whether the trip reduction goal has been met, EPA may request that a Major Employer use a neutral, third party to perform the survey. EPA would limit this request for a neutral third party to when it believes that the Major Employer's survey did not accurately reflect the situation at the worksite. At any time, a Major Employer at his own discretion may use a neutral third party to perform the employee survey.

EPA is specifically requesting comments on the need for and benefits of the annual employee survey.

d. *Annual Trip Reduction Promotion Program.* In order to inform employees of the alternatives to the single-occupant-vehicle commute, the EAMIP would require Major Employers to annually disseminate information on alternative modes. This information could include bus schedule and route information, ridesharing brochures, information on bicycle routes, etc. The Major Employer would also be required to post alternative mode information in prominent places and provide such information to new employees on hiring. All disseminated information should include information on employer sponsored alternative modes incentives. EPA would assist the Major Employer in developing or obtaining the necessary information.

The purpose of the Employer Alternative Modes Incentives Program would be to have Major Employers

support programs that encourage their employees to voluntarily switch to commute modes other than the single-occupant vehicle. The reason that a promotion program would be required as part of the EAMIP is that an employee's commute pattern becomes a routine. The first step for employees to change modes is education on alternatives, how to use those alternatives, and the positive impact of changing modes. Therefore, Employers should view the promotion program as an integral part of his alternative modes incentives program, that, if effectively implemented, would achieve trip reduction goals in a least cost manner.

e. *The Trip Reduction Plan and Annual Report.* All Major Employers would be required to submit to EPA annually a trip reduction plan and annual report. The plan would describe in detail the alternative modes incentives that the Major Employer would offer during the coming year. The annual report would describe the results of the employee survey, the previous year's alternative modes promotion program and incentives program, and the results of that incentives program. A representative of the Major Employer who is authorized to approve the expenditures necessary to carry out the trip reduction plan and who certifies the accuracy of the annual report should sign the document before submitting it to EPA.

The trip reduction plan would describe in detail the alternative modes incentives that the Major Employer would offer during the coming year. In order to insure that Major Employers offer sufficient alternative modes incentives to achieve the trip reduction goal, EPA would review the plans and annual reports and would either approve or disapprove them. EPA would commit to work with Major Employers and their transportation coordinators to insure that few plans would need to be disapproved.

EPA expects that all alternative modes incentives described in an approved plan would be implemented during the following year. If during the course of a year, a Major Employer were unable to offer an incentive in the plan, he would be able to request that the plan be modified to remove the incentive. The Major Employer should make the request to EPA in writing as early as possible but in all cases before the trip reduction plan and annual report would be due. The request should explain why the incentive could not be offered and discuss the impact of withdrawing the incentive on achieving the trip reduction goal. If possible, the Major Employer should substitute another incentive for the one being removed. No request to modify the trip reduction plan would be denied if the Major Employer adequately supported the reasons why he cannot implement an incentive and showed that the plan would still meet the required trip reduction goal.

The annual trip reduction report would be required to be submitted with the trip reduction plan as a single document. The annual trip reduction report should describe the trip reduction promotion program; report on the conduct of the survey; give a current and accurate estimate of the SOV commute trips made to the worksite as determined from the survey; and describe the alternative modes incentives program, if any, that was in the previous years trip reduction plan including any modifications to the plan. The annual report should also describe what incentives were actually offered and used by the employees, state the previous year's trip reduction goal and whether it was met, and, if the trip reduction goal was not, the reason the Major Employer believes it was not.

Despite the lengthy list of required information in the annual report, EPA does not intend this to be a lengthy document. Tables listing the incentives and their use by employees, charts showing the results of the survey, and short narrative sections would in many cases suffice. In order to give better guidance to Major Employers on these plans and reports, EPA would develop a model trip reduction plan and annual report and distribute it to all transportation coordinators.

Once submitted by the Major Employer, EPA would have sixty days to approve or disapprove the trip reduction plan and annual report. Should EPA disapprove the document, the Major Employer would have thirty days to correct it. When issuing a disapproval, EPA would describe in detail the reasons for the disapproval and would work closely with the transportation coordinator to correct the deficiencies. Any employer who disagrees with EPA's disapproval of his plan and report could appeal the decision following the procedures discussed below under Appeals.

f. *Recordkeeping.* In order to adequately carry out its enforcement responsibilities, EPA may request that the Major Employer provide information to support any statement in his annual plan and report. Major Employers should maintain records on the information in the annual plan and report including the results of the survey for at least three years. By maintaining information, the Major Employer would be able to support his position should EPA question his trip reduction plan and annual report. EPA is aware that much of the information which may be requested would be considered confidential by the Major Employer. Upon submitting any data to the Agency, the Major Employer could, if appropriate, assert a business confidentiality claim covering all or part of it.

g. *Trip Reduction Goal.* The proposed trip reduction goal in the EAMIP is the same as the one proposed in the MAG model: A 5 percent reduction in SOV trips in the first year of a Major Employer's program and an additional 5 percent in the second year for a total of a 10 percent reduction in SOV commute trips within two years. EPA chose to propose the same goals because it concurs with the MAG Model TRO working group that the goals are aggressive yet achievable in light of the transportation system in Maricopa County. Like the MAG model ordinance, EPA's proposed regulation has a procedure for annually reviewing and revising the goal after the first two years. EPA would first consult with agencies and Major Employers in Maricopa County as well as with the Maricopa Region Advisory Committee before revising any goals.

Trip reduction ordinances adopted in other areas vary in the import that they place on the trip reduction goal. Some enforce immediately on failure to meet the goal, while some require specific actions on the part of the employer if the goal is not met, and others only require an updated trip reduction plan for failure to achieve the goal. MAG's Model TRO is in the final group.

EPA is proposing that if a Major Employer fails to achieve the trip reduction goals after three consecutive trip reduction plans with the same goal, he may be subject to enforcement actions. EPA is proposing this provision because it believes that this is a method that insures the emission reductions attributed to this regulation would actually occur. Under the scenario that EPA is proposing, a Major Employer has three years to determine the mix of alternative modes incentives that would encourage his employees to switch from their single-occupant vehicles. In addition, EPA would be working with the Major Employers to develop trip reduction plans that would achieve the goals so that enforcement actions, based on failure to achieve the goal, would not be needed. Any time that the trip reduction goal changes, the Major

Employer would have an additional three years to meet that new goal.

Because this proposed treatment of the trip reduction goal varies from the MAG model, EPA is requesting specific comment on the provision allowing enforcement for failure to meet the trip reduction goal and on the penalties for such failures as described below.

h. *Violations.* Major Employers would be subject to enforcement actions under section 113 of the Clean Air Act if they fail to meet any of the requirements of this proposed regulation. Major Employers would also be subject to enforcement actions if they falsify or misreport information in the trip reduction plan and annual report, fail to implement any part of an approved trip reduction plan, or fail to meet the trip reduction goal after three consecutive years at the same goal. It would be EPA's intent to work with Major Employers to identify problems with compliance and correct them as quickly as possible. While the majority of implementation tasks would be performed by EPA's contractor in Maricopa County, any enforcement actions would be conducted by EPA's Region 9 Office.

Section 113(a) of the Clean Air Act authorizes EPA to commence an enforcement action against any person in violation of an applicable implementation plan. As defined in section 110(d) of the Act, the term "applicable implementation plan" includes both state implementation plans (SIPs) approved by EPA and federal implementation plans (FIPs) promulgated by EPA under section 110(c). Enforcement under section 113 begins with the issuance of a notice of violation (NOV) whenever, on the basis of available information, EPA finds that any person is in violation of an applicable implementation plan. If the violation extends beyond the thirtieth day after the issuance of the NOV, EPA may issue an administrative order requiring the person to comply with the requirements of the applicable implementation plan, or EPA may bring a civil action in federal district court for injunctive relief and/or a civil penalty of not more than $25,000 per day of violation.

i. *Exemptions.* Three categories of Major Employers would be allowed to apply for exemptions from the requirements of this regulation. The first category is Major Employers who on the date of promulgation of this regulation already have in place trip reduction programs which achieve at least a 30 percent participation rate of all employees in alternative modes. These trip reduction programs may either be voluntary on the part of the Major Employer or a condition of approval for development imposed by a city, town, or the County of Maricopa. To apply for this exemption, the qualified Major Employer would only need to perform an employee survey annually and submit the results to EPA when requesting the exemption.

The second category of Major Employers who qualify for an exemption is those that emp1oy 100 or more employees for less than three months of the year. The final exemption is for employers covered by a city, town, or county trip reduction ordinance. In order for a Major Employer to receive this exemption, EPA would first have to find that the local ordinance is at least as effective as the federal rule at reducing trips to the Major Employer's worksite. All Major Employers who would apply for any exemption would have to do so in writing and renew the exemption annually.

j. *Schedules.* Major Employers who would be subject to the EAMIP on its date of promulgation would have to notify the Agency within six months of the date of promulgation. Major Employers who would become subject to the regulation after the initial six months would have to notify EPA within three months of the date that they become subject.

Due dates for the requirements of this regulation, except notification, would be determined from the Major Employer's "Effective Date." Effective dates for a Major Employer would be determined by the number of employees at his worksite or by the date the Major Employer first becomes subject to the EAMIP.

The effective dates for Major Employers who would be subject on the date of promulgation would be: For Major Employers of 500 or more at a worksite, nine months after the date of promulgation; for Major Employers of 200 to 499 employees at a worksite, twelve months after the date of promulgation; and for Major Employers of 100 to 199 at a worksite, fifteen months after the date of promulgation.

For Major Employers who would become subject to the regulation after the first six months but before June 1, 1989, their effective date would be fifteen months after the date of promulgation. For Major Employers who would become subject after June 1, 1989, their effective date would be three months after notification.

Within two months of a Major Employer's effective date, he should appoint his trained transportation coordinator and inform the EPA of the coordinator's name, work address and phone number. Within three months of his effective date and annually thereafter on the same date, the Major Employer should perform his employee survey. Within four months of his effective date and annually thereafter on the same date, the Employer should submit his trip reduction plan and annual report.

If a Major Employer wishes to request an exemption, he should apply for it in writing within thirty days of his effective date. In subsequent years, he should apply for the exemption by that same date.

EPA is aware that not all Major Employers would be able to meet the schedules in the EAMIP. Major Employers would be allowed, with good cause, to request extension of their deadlines. EPA would make every effort to be fair and equitable in granting extensions. If a Major Employer failed to meet a deadline because of an action of EPA, the Major Employer would not be held responsible.

In order to provide Major Employers with assistance and prompt responses to submittals and/or requests, EPA would attempt to arrange that about the same number of Major Employers would submit trip reduction plans and annual reports in each month of the year. EPA would do this by assigning randomly selected Major Employers new effective dates or deadlines for meeting the provisions of this regulation. Any Major Employer given a new effective date or deadline would be informed by EPA of the new date at least three months before his original effective date or deadline. Under no circumstances would EPA advance an effective date or deadline.

k. *Appeals.* EPA would work with Employers to minimize the need to disapprove trip reduction plans and annual reports or to deny exemptions. Should the EPA disapprove a plan or deny an exemption, a Major Employer could appeal the decision to the Regional Administrator of Region 9. Appeals should only be made based on reasons or information first provided to and considered by the EPA in making its initial decision.

Appeals would be required to be made in writing within fifteen days of the Major Employer receiving the disapproval or denial. In applying to the Regional Administrator to reverse a decision, the Major Employer should state the reasons why the decision is in error and should show that all issues raised in the appeal were previously considered by EPA.

Within a reasonable time following the appeal, the Regional Administrator

would grant or deny it. The Regional Administrator would grant the appeal by either reversing the decision or remanding the decision to the Director of Region 9's Air Management Division for further review. EPA would move to process any appeal that it receives as quickly as possible.

l. *Maricopa Regional Advisory Committee.* EPA would consider the concerns of Maricopa jurisdictions, their Major Employers and citizens, and the State of Arizona when taking major actions under the EAMIP. Because the Agency cannot claim as much knowledge of the area and its concerns as those who live and work there, EPA proposes to establish the Maricopa Regional Advisory Committee (MRAC) consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

EPA hopes that the State, MAG and its local jurisdictions, and the local chambers of commerce would assist the Director in establishing MRAC by appointing members to it. To achieve a balance among the interested groups, EPA is proposing that the MRAC have eighteen members and that they be appointed as described below. Two members may be appointed by the MAG Regional Council. One of these two members should represent the mid-sized cities of Chandler, Glendale, Mesa, Scottsdale, and Tempe, and the other member should represent the smaller jurisdictions of Maricopa County. Because it has over half the total population and workers in the region, the City of Phoenix may appoint one member. Maricopa County, because it has primary responsibility for tracking air quality, may also appoint one member. Two members representing state agencies, preferably the Department of Environmental Quality and the Department of Transportation, may be appointed by the Governor. One member of the general public who is a citizen of Maricopa County may be appointed by each Chairman of the Transportation Committees of the State Legislature. The Regional Public Transportation Authority, because of its expertise on regional ridesharing and transit issues, may also appoint a member. Eight members representing regulated Employers may be selected by the region's Chambers of Commerce, three by the Phoenix Chamber of Commerce and five by a coalition of the other Chambers. Finally, the Director of EPA Region 9's Air Management Division shall also be a member. Representatives should be either elected or appointed officials or staff members of the jurisdictions or agencies.

The proposed duties of the MRAC would be to advise the Director on implementing and/or revising the regulation when appropriate, on revising the Trip Reduction Goals after June 1991, on alternative enforcement procedures, and on other matters as appropriate. The Committee would also provide the Director with liaison on the EAMIP with the State government and the jurisdictions, citizens, and employers of Maricopa County. EPA proposes that the Committee hold bimonthly public meetings in Maricopa County.

m. *Delegation.* The Administrator of the Environmental Protection Agency has the authority to delegate implementation and enforcement of this regulation to the State, to a regional agency in Maricopa County, or to a local government or the County of Maricopa within its jurisdictional boundaries. Prior to any delegation, the Administrator would have to determine that the agency or jurisdiction requesting the delegation has legal authority to implement and enforce the regulation and has committed the necessary staffing and resources to implement and enforce it. EPA would encourage agencies who meet these criteria to apply for delegation of this regulation.

n. *Implementation Guidelines.* Well before any Major Employer's effective date, EPA would publish additional guidelines for compliance as an appendix to the EAMIP. The Guidelines would be intended to provide more detailed information on various requirements, most specifically on the employee survey. As stated previously, employee surveys would be required to meet certain standards of completeness and coverage. The Implementation Guidelines would contain these standards as well as a list of possible survey questions, techniques for evaluating the results of the survey, and a list of the information that should be presented on the survey in the trip reduction annual report. The Guidelines might also contain information on other topics as appropriate.

Costs to the Major Employer of Complying With the EAMIP

In order for Major Employers to select cost-effective alternative modes incentives, EPA would regularly develop and update data on the effectiveness and costs of various alternative modes incentives and provide the information to Major Employers. EPA would urge Major Employers to work with their employees to determine which alternative modes incentives would be most effective. EPA would also encourage Major Employers to experiment with trip reduction strategies to determine those that maximize reductions in SOV commute trips and minimize the trip reduction program costs.

Evaluation of trip reduction programs in jurisdictions that have TROs or in companies that have voluntary programs shows that substantial reductions in trips can be achieved without great expense. K.T. Analytics, in developing information for MAG's Model Trip Reduction Working Group, reviewed several employer programs in the San Francisco Bay Area and found programs costing from $6.15 per employee to $55.00 per employee per year. Costs of the programs were directly related to how extensive the program was, with the highest cost being for programs that included shuttle buses or van services. Based on its review, K.T. Analytics estimated that the cost for a small employer (less than 500 employees) for a modest program can run from $10,000 to $20,000 per year and for an extensive program, $30,000 to $60,000 per year. Cost for a large employer (more than 1,000 employees) for a modest program can range from $30,000 to $60,000 per year and, for an extensive program, can be from $100,000 to $250,000 depending especially on whether shuttle or van services are included.

EPA would encourage and assist smaller Major Employers to form transportation management associations (TMAs) to meet the requirements of this regulation. By forming or joining TMAs, employers could hire a single transportation coordinator for all members and can share resources and programs, thereby reducing the cost of the overall program to each Major Employer. The larger pool of employees in a TMA can also enhance the effectiveness of relatively low-cost rideshare matching programs. EPA would also encourage Major Employers to use, to the maximum extent possible, the available public programs which encourage ridesharing, transit use, bicycling or pedestrian travel.

It would be EPA's intent to review from time to time the cost and benefits of complying with the EAMIP for Major Employers in Maricopa County. EPA would also solicit information from the Maricopa Region Advisory Committee and the general public on the cost and benefits of compliance. The benefits include decreased congestion, decreased trip times for non-affected commuters, delayed infrastructure investment, reduced employer parking requirements, and increased transit/rideshare usage. EPA would use this information and

data on trip reduction levels being achieved to modify the regulation and adjust the trip reduction goals as appropriate.

Expected Emission Reductions

EPA is proposing today to regulate the same group of employers at the same trip reduction level as the MAG Model Trip Reduction Ordinance discussed earlier in this notice. EPA estimates that the MAG model, if fully implemented, could reduce carbon monoxide emission by 1.8 percent by the end of 1991. EPA estimates that its proposed regulation would achieve the same emission reduction as the MAG Model.

Areas for Specific Comments on the Proposed EAMIP

While EPA requests comments on all parts of its proposed regulation, it would like specific comments on the following topics:

a. The trip reduction goal in this proposal requires all Major Employers, independent of their size or location, to reduce SOV commute trips to their worksite by 5 percent in the first year and an additional 5 percent in the second year. EPA would like to solicit comments on whether this goal is appropriate. Specifically:

—Are the proposed goals too stringent or too lenient? If either, what are more appropriate goals?

—Should the goal be the same for all Major Employers? Should larger employers be required to meet higher goals than smaller employers? Should the goals depend on the location of the employer? For example, should employers in the central business district of Phoenix be required to meet higher goals than employers in the outlying areas of Maricopa County? If goals should be based on employer size or location, how should employers be grouped and what are appropriate goals for each group?

—Should the trip reduction goal be based on reductions in single-occupant-vehicle commute trips? Should the measure for trip reduction be a required level of participation of all employees at a worksite in alternative modes such as in the Pima TRO or should the goal be expressed as the average occupancy of vehicles driven to the worksite as in the South Coast (Los Angeles) Air Quality Management District's Regulation XV?

—Finally, should the Major Employer be subject to possible enforcement action if he fails to achieve the trip reduction goal after attempting to do so after a given number of years? Should EPA only require an improved trip reduction plan as in the MAG model TRO? Or, as contained in S.B. 1181, should employers failing to achieve the goal be required to implement a specific number of trip reduction strategies?

b. Multi-tenant buildings and/or business parks are often major attracters of commute trips. Many of the employers in these developments though do not have more than 100 employees and would not be covered by this proposed regulation. Multi-tenant projects, however, because of their often sizeable employee populations and compact sizes are well suited to trip reduction programs such as the establishment of transportation management associations. EPA solicits comments on whether these multi-tenant developments should be covered in the final regulation and, if so, what methods could be used to regulate them.

c. Various other measures can be taken by employers to reduce air pollution from commute trips other than reductions in commute trips. Moving commute trips out of the peak commute periods or converting vehicles to clean fuels such as neat methanol or compressed natural gas are two examples.

EPA solicits comments on whether this proposed trip reduction regulation should also give credit to employer programs that do not directly reduce trips yet still reduce carbon monoxide emissions. Specifically, EPA would like comment on whether credit should be given to employer programs which shift commute trips out of the peak commute periods.

d. Are there other VMT reduction measures that EPA should be considering along with or in place of the EAMIP?

e. Should EPA replace the EAMIP in the Maricopa federal implementation plan with a higher oxygenation level in the oxygenated fuels program also proposed in this notice? Given the prospective benefits of the two measures, are the higher costs and cost-effectiveness ratios of the EAMIP (relative to the higher oxygenation program) justified? See section VIII on Economic Impact.

2. The Proposed Oxygenated Fuels Program

The approved SIP commitments and the federal trip reduction regulation, if promulgated, will provide a significant, but relatively small amount of the overall 22.0 percent emission reduction required for Phoenix to attain the CO NAAQS in 1991. Specifically, an additional 17.35 percent reduction (expressed as the reduction from a baseline which includes the effects of all other adopted controls) is needed from one or more control measures. As already mentioned, the only remaining federally available strategy that appears capable of this degree of control without potentially unacceptable social and economic effects is an oxygenated fuels program. This is not to suggest that the measure is devoid of social and economic implications, but relative to the other approaches it appears to be the only viable alternative. It can also be geographically and temporally targeted to address the Phoenix wintertime non-attainment problem. Therefore, EPA is proposing an oxygenated fuels program with a required level of equivalent oxygen content (defined below) of 2.57 percent. If EPA does not promulgate the proposed federal trip reduction regulation, the equivalent oxygen content requirement will be 2.79 percent as part of the FIP. The requisite equivalent oxygen content could be provided by a variety of oxygenated fuels. As an example, the 2.57% equivalent oxygen content would be met by an 11% methyl-tertiary-butyl-ether (MTBE) blend and a 10% ethanol blend (Gasohol) with 44% and 56% market shares, respectively. Similarly, the 2.79% content requirement would be met by 11% MTBE and Gasohol with market shares of 39% and 61%, respectively. (Various oxygenated fuel program options and EPA's proposed evaluation of any subsequent SIP submission are thoroughly described in Section VI.2.)

The specific use of oxygenated fuels to reduce the CO emissions from motor vehicles is a recent development in air pollution control strategies. To facilitate an understanding of the many issues involved in implementing this program, a brief background discussion of oxygenated fuels in general is presented next. This is followed by a description of the Agency's rationale for choosing a particular form of "oxygenated" fuels program and a discussion of the specific elements that comprise EPA's proposal. Also, the effects on the proposal of EPA's action on a pending application for a section 211(f) waiver for a particular oxygenated fuel are summarized. Finally, EPA's decision not to propose gasoline volatility controls as part of the FIP is stated and explained.

Background for Oxygenated Fuels

a. *Description of Oxygenated Fuels.* Gasoline is a complex mixture of many different hydrocarbon species or compounds. These hydrocarbons are extracted and modified from crude oil, and in some cases, from the liquids associated with natural gas production. Elemental constituents other than

hydrogen and carbon are present only in very low concentrations. Their presence is primarily a consequence of impurities in the crude oil, which are not completely removed in refining, or occurs because the refiner adds special compounds to the product to improve its detergency, corrosion characteristics, or chemical stability in storage. Vehicle manufacturers design their engines to operate satisfactorily on this fairly uniform and essentially pure hydrocarbon fuel.

The concept behind an oxygenated fuels program is to require that fuel sold in a CO nonattainment area contain a concentration of elemental oxygen that is well above that normally present in gasoline (e.g., an oxygen concentration in the range of 1.5 to 3.7 percent by weight). Such levels can only be achieved by adding chemical compounds that contain oxygen and are miscible in gasoline. The most suitable, available, and economical compounds for this purpose are low molecular weight alcohols and ethers, generically referred to as oxygenate compounds or oxygenates. Table 2 lists some oxygenating compounds commonly used in gasoline. As will become clear later, the amount (volume) of an oxygenate, or a mixture of two or more oxygenates, that must be added to gasoline to achieve a given concentration of oxygen in the final blend depends on the oxygenate's chemical composition, specifically the fraction of its mass which is oxygen.

b. *Federal Regulation of Oxygenated Fuels.* Section 211 of the Clean Air Act broadly provides for the regulation of fuels and fuel additives. Of particular interest with regard to today's action are two of the conditions which govern the content of fuels. The first is contained in section 211(f)(1), which prohibits the introduction into commerce of fuels for general use that are not "substantially similar" to the fuel used by EPA and the vehicle manufacturers in the emissions certification testing of 1975 and newer vehicles. The Agency interprets this section to limit the composition of unleaded gasoline only, as leaded gasoline is not for general use in 1975 and newer cars.

The meaning of "substantially similar" has been established by an EPA interpretative rule (46 FR 38582, July 28, 1981). The important aspect of this interpretation with respect to an oxygenated fuels program is that the fuel must contain no more than 2.0 percent oxygen by weight. Perhaps the most notable example of an oxygenated fuel that may be marketed under the substantially similar ruling is up to 11 percent MTBE by volume in unleaded gasoline. Low level blends using other ethers or various alcohols are also permissible.

TABLE 2.—OXYGEN-CONTAINING COMPOUNDS COMMONLY USED IN GASOLINE

Oxygenate	Chemical formula
Methanol (Methyl Alcohol).	CH_3OH
Ethanol (Ethyl Alcohol)	CH_3CH_2OH
Propanol (Propyl Alcohol).	$CH_3CH_2CH_2OH$ (and isomers)
Butanol (Butyl Alcohol)	$C(CH_3)_3OH$ (and isomers)
Methyl Tertiary Butyl Ether (MTBE).	$C(CH_3)_3OCH_3$

The second condition is contained in section 211(f)(4), which allows the above prohibition to be waived upon EPA's approval if specifically requested by a manufacturer, or provides for automatically granting a waiver application if EPA does not act to deny such a request within 180 days. A number of waivers for oxygenated fuels have been approved or automatically granted. Table 3 shows several of the more prominent waivers that are currently in effect, along with their corresponding oxygen content.

There are several important implications of EPA's substantially similar ruling and the section 211(f) waivers with respect to today's action. First, oxygen contents up to 3.7 percent are legal using ethanol as the oxygenate or using any of several mixtures of methanol and other alcohols. Second, blends containing more than 2.0 percent oxygen in any form except ethanol must comply with the otherwise voluntary limits on gasoline volatility established by the American Society of Testing and Materials (ASTM) for the location and time of year of their intended sale. These limits are expressed as the maximum Reid Vapor Pressure (RVP) of the fuel, which is a measure of the tendency of gasoline to evaporate at 100 degrees Fahrenheit:

TABLE 3.—EXAMPLES OF CURRENTLY APPROVED OXYGENATED FUEL WAIVERS

Common content name	Primary constituents in unleaded gasoline (volume percent)	Maximum oxygen (weight percent)
Gasohol	Up to 10% Ethanol by Volume.	3.7
DuPont	Up to 5% Methanol with at least 2.5% Other Alcohols.	3.7

TABLE 3.—EXAMPLES OF CURRENTLY APPROVED OXYGENATED FUEL WAIVERS—Continued

Common content name	Primary constituents in unleaded gasoline (volume percent)	Maximum oxygen (weight percent)
Oxinol-50	Up to 4.75% Methanol and 4.75% Tertiary Butyl Alcohol (TBA) (Ratio of Methanol: TBA <1).	3.5
Octamix	Up to 5% Methanol and a Minimum of 2.5% Higher Alcohols.	3.7

Third, ethanol blends are not currently subject to any Federal restrictions on RVP (although EPA published a Notice of Proposed Rulemaking on this subject on August 19, 1987). Fourth, and finally, MTBE may be used in gasoline only up to an oxygen content of 2.0 percent, because no waiver has been granted for MTBE blends beyond this level. A waiver request for MTBE up to concentrations corresponding to approximately 2.7 percent oxygen is now pending EPA action and is discussed later.

Questions have arisen concerning the composition of base gasoline for use in ethanol blending, particularly with respect to the use of MTBE. The gasohol waiver was granted in 1978 with conditions as stated by the applicant. Those conditions were that anhydrous ethanol may be added up to 10% by volume in the final blend. No mention of oxygenate composition in the base gasoline was made. However, MTBE was not in use at that time, nor were any other oxygenates, with the exception of small amounts of methanol used as a deicer. Consequently, the Agency's policy has been that the base gasoline used to blend ethanol must be oxygenate-free. However, in order to use in ethanol blending, the Agency has advised ethanol blenders (and methanol blenders) that they may use unleaded gasoline containing up to 2.0 percent MTBE by volume in ethanol blends (and DuPont and Octamix methanol blends) provided that the MTBE is present only as a result of unintentional commingling during transport and storage.

c. *Performance and Emission Qualities of Oxygenate Fuels.* Blends of gasoline and oxygenates have three important effects when used in vehicles designed for essentially pure hydrocarbon gasoline. First, they have a higher octane rating which tends to suppress engine knocking or pinging. This has no significant environmental effect, but it can partially offset the

additional cost to the refiner if the refiner takes advantage of the octane increase by decreasing the octane of the base gasoline. If the refiner does not, some late model cars with self-adjusting ignition timing may get a small fuel economy increase from the higher octane fuel and some cars that were knocking may stop. Otherwise, the extra octane has no practical effect.

Second, all oxygenates affect the volatility of the gasoline, i.e., its tendency to evaporate at various temperatures. In some cases, the changes in volatility are large enough that compensating changes in the base gasoline are needed so that the final blend meets the legal limits and/or the refiner's own standards for marketability. Unless completely compensated, these volatility changes may increase a vehicle's evaporative hydrocarbon emissions (i.e., fuel which evaporates and escapes to the air before it is burned in the engine). The implication of this phenomenon with regard to the potential CO reduction from various types of oxygenated fuels is discussed later.

Third, and most important in the case of Phoenix, the presence of chemically bound oxygen in the fuel affects the relative amounts of burnable fuel and oxygen reaching the combustion chambers of the engine, shifting the mixture to relatively more oxygen. This usually results in more complete oxidation of the fuel and lower exhaust emissions of unburned hydrocarbons (HC) and of carbon monoxide (CO). Of the two pollutants, CO is usually reduced by the larger percentage. Emissions of oxides of nitrogen are affected less strongly and may increase or decrease somewhat. Test results show that the CO reductions associated with oxygenated fuels vary significantly from vehicle to vehicle. This indicates that the CO benefits from these fuels depend on a vehicle's design and how well it has been maintained. Nonetheless, reasonably consistent reductions "on average" have been observed for groups of vehicles with similar engine designs and emission control systems. Also, for a given group of vehicles, the CO reduction appears to be dependent on the net oxygen content of the gasoline/oxygenate blend and on its volatility characteristics. There is no apparent correlation between size of CO reduction and the specific oxygenate used in the blend.

d. *EPA Guidance on Estimating Emissions from Oxygenated Fuels.* Because oxygenated fuels affect the CO emissions of different types of vehicles differently, and because the vehicle fleet in an urban area is a constantly changing mix of the different types of vehicles, a complicated calculation of their effect on overall fleet CO emissions is required to assess their contribution as a CO attainment strategy. The Agency's instructions for performing this analysis are contained in "Guidance on Estimating Motor Vehicle Emission Reductions From The Use of Alternative Fuels and Fuel Blends," which was published on January 29, 1988. [Reference 1] This report is the basis of the emission reduction estimates contained in today's notice. The assumptions, methods, and conclusions of the report have not been formally subjected to public comment prior to this notice. Comments on the analysis are specifically requested and will be considered in formulating EPA's final action. A copy of the document has been placed in the public docket for this action, and included in the Draft Technical Support Document, to facilitate this review. Previous informal comments on a draft of the document have also been included in the public docket.

While the intricacies of EPA's guidance document will not be discussed here, a few conclusions from the document are valuable as background for the description of the proposed Federal oxygenated fuels program. To begin, EPA finds that the CO emission reduction associated with using oxygenated fuels should be estimated by separating vehicles into three technology groups: Non-catalyst, catalyst with open-loop engine operation (i.e., non-computer controlled), and catalyst with closed-loop engine operation. Increasingly more of the Phoenix fleet falls into the last group, for which the average CO reduction is somewhat smaller (maximum of 21.4 percent versus 24.5 percent and 34.9 percent for the first and second groups, respectively). Therefore, the overall fleet CO reduction from an oxygenated fuels program, in percentage and absolute (tons per day) terms, will decrease somewhat over time.

For each of the three technology groups, the average CO reduction depends on the net oxygen content of the fuel, and on the difference between the RVP of the oxygenated gasoline and that of the oxygen-free gasoline that is used as the baseline for determining the emission reductions. (In the case of Phoenix, the baseline gasoline would be what is normally sold during 1991 in the absence of any change otherwise required by a SIP and/or FIP action. The MAG plan implicitly assumes this will be the same as the gasoline sold in 1985.) Any volatility differences in fuels, other than RVP, are treated as being so small in degree and/or in CO emissions effects, that they can be ignored. If an oxygenated fuel has a higher RVP than the baseline gasoline, its CO reduction will be less than a comparably oxygenated fuel (i.e., same oxygen content) with an RVP equal to the baseline gasoline.

Of the common oxygenates, only methanol and ethanol cause RVP to increase when added to gasoline. The RVP increase is not linear with alcohol content. Instead, any alcohol level above 2 percent by volume tends to have the same absolute effect on RVP. The average effect with ethanol is about 0.76 pounds per square inch (psi); the average methanol effect is about 2 psi. MTBE does not cause RVP to increase. Therefore, at equal oxygen contents, an alcohol blend will have a smaller CO reduction than an MTBE blend, unless the gasoline portion of the alcohol blend has been modified to compensate for the volatility increase. As noted above, however, unleaded alcohol blends may legally have a higher oxygen content than an MTBE blend. Therefore, the maximum potential CO benefit with a legal alcohol blend may be greater than that of any legal MTBE blend. (This is not true for blends of leaded gasoline, because the amount of oxygenate is not restricted.) If the RVP increase is fully compensated, the CO advantage of the alcohol blends is even greater.

e. *Driveability and Materials Compatibility.* Numerous studies have evaluated the driveability of alcohol blends compared to "clear" gasoline. Several symptoms such as hesitation, stalling, and hard starting have been reported to varying degrees. The Agency has evaluated these studies and believes the driveability of many vehicles on low level alcohol blends appears to be roughly equivalent to that of gasoline. However, some vehicles appear to be more susceptible to certain driveability-related problems with alcohol blends (and some owners are more perceptive of them). These are generally the older, carburetor equipped vehicles without electronic engine controls. Therefore, it cannot be ruled out that some drivers will experience changes in the operation of their vehicles, although EPA believes that the percentage of such individuals in the Phoenix area will be small.

To the extent that these problems do occur, they can be alleviated by switching to a lower oxygen content fuel. As discussed later in today's notice, the proposed Federal oxygenated fuel program would allow such fuels to be marketed in the Phoenix area.

There is also a concern regarding the compatibility of vehicle/engine materials and alcohol blends. The more important of these concerns falls into two basic areas. The first area involves the effect of alcohol blends on plastics and elastomers. At concentrations much higher than EPA waivered levels, some alcohol blends may cause these materials to swell or weaken. However, alcohol blends at EPA waivered levels are not expected to cause such problems.

The second area involves the loosening of rust and scale in service station and vehicle tanks, and the related problem of added corrosion. Regarding the suspension of corrosion products or sediment, this phenomenon has been found to occur with alcohol blends to some degree and may cause a vehicle's fuel filter to become plugged. This type of problem is most likely to occur when gasoline/alcohol blends are first used, but generally would not occur afterwards and is easily corrected by replacing the fuel filter. It should also be noted that ethanol blends have been widely used and fuel filter clogging has not been a serious problem.

Regarding impacts on corrosion rate, it has been shown that ethanol blends without any corrosion inhibitor additives are more corrosive than typical gasoline. This may be due in part to the fact that ethanol is often blended from unbranded gasoline that may lack even the level and types of additives normally found in branded gasoline, and not just because the ethanol poses an increased threat of corrosion. However, virtually all ethanol now supplied for blending with gasoline has special additives to control this effect. Again, non-alcohol blends do not appear to exhibit these phenomena. Therefore, to the extent that these problems occur, they can be completely alleviated by the use of a non-alcohol gasoline. The proposed Federal alternative fuels program discussed later would allow such fuels to be marketed.

A more detailed discussion of these, and other, aspects of using oxygenated fuels is contained in the Draft Technical Support Document for this action. The interested readers, therefore, should consult that document. The Agency has also included additional information on these subjects for public inspection in the rulemaking docket.

f. *Phoenix Gasoline Supply and Marketing.* Nearly all of the gasoline consumed in Maricopa County is supplied by two pipelines. Each delivers petroleum products from refiners outside the State to a large storage and distribution terminal in Phoenix. One pipeline originates from the Los Angeles, California area and is generally referred to as the "west line." The other originates from El Paso, Texas and is usually referred to as the "east line." Both pipelines are owned and operated by the Southern Pacific Pipe Line Inc. (SPPL). This company operates as a common carrier under the Interstate Commerce Act. As such, it functions solely as a transporter of petroleum products, and must treat all shippers in a non-discriminatory, equitable manner.

The west line is the larger of the two pipelines, accounting for about 90 percent of the Phoenix deliveries. It is also more complex in operation. Petroleum products are received into the pipeline system from ten refinery and terminal sources in the Los Angeles area. Upon receipt, the fuel is immediately placed in "breakout" storage tanks at SPPL's Watson, California terminal (near the Los Angeles harbor). This tankage is required to accumulate enough of each fuel type to provide scheduling flexibility and to accommodate the differences in the flow rates between the refineries and the first segment of the pipeline. The minimum quantity of any particular fuel accepted for transport is 420,000 gallons, but such small "batches" are rare. Regular customers may ship fuel of a given grade through the pipeline approximately four times each month.

From the Watson terminal, petroleum products are sent through the pipeline to Colton, California (between San Bernardino and Riverside). There it is handled in one of three ways depending on the ultimate destination. First, fuel may be diverted directly to local terminals serving the San Bernardino/Riverside, California area. Secondly, fuel may be delivered and stored in another pipeline company's breakout tankage for subsequent delivery to Las Vegas, Nevada. Third, and finally, fuel may be stored in separate SPPL breakout tankage for delivery by SPPL to either the Imperial Valley area of California or Phoenix. In this latter case, products are pumped from the breakout tankage into the Colton/Phoenix pipeline segment. SPPL must use breakout tankage in Colton even for fuel destined to the Imperial Valley and Phoenix because the pipeline segment east of Colton pumps at a slower rate than the segment between Watson and Colton.

Presently, only three types of gasoline have separate breakout tankage associated with the west line: Regular leaded, regular unleaded, and premium unleaded. Any gasoline which is substantially different with regard to lead content, octane, and volatility (or oxygen content) cannot be transported with the system's existing operating practices. Within certain bounds, however, adjustments in pipeline operations may be possible to compensate for some differences in fuels. For example, if a suboctane unleaded fuel is put through the regular unleaded breakout tank, the next batch of "normal" octane fuel would have to be refined to have a slightly higher than normal octane to accommodate the dilution with the heel of the suboctane fuel. Similar adjustments might also be possible for fuels with different RVPs and oxygen contents. In particular, SPPL has indicated that it could meet the maximum contamination level of 2 percent MTBE by volume that might be associated with MTBE blends, in unleaded fuel destined to be blended with ethanol.

Nonetheless, along the continuum of feasibility, the pipeline's operational flexibility may become increasingly compromised as more fuel types must be handled. At some point, the trade-off between accommodating different fuels and the associated cost of operation can become so burdensome that the time-consuming construction of new breakout tankage dedicated to this service becomes practically necessary or at least economically justified. This is a potentially significant consideration if reducing air pollution in Arizona were to require special gasolines. (The ramifications of such an event are discussed later in this section.)

The east line delivers about 10 percent of the gasoline received in Phoenix, and is relatively simple in its operation. Petroleum products enter the pipeline directly from the terminal storage areas of four refiners in El Paso. There are no breakout facilities associated with east line operations, since all pipeline segments flow at the same rate. The minimum quantity of any petroleum product accepted for shipment is 210,000 gallons. (This pipeline also supplies virtually all of Tucson's gasoline.)

As already noted, upon reaching Phoenix the petroleum products are delivered into a large terminal area where they are stored for later distribution and sale. The terminal is composed primarily of a central manifolding area for handling the various products, and a large number of individual storage tanks. The tanks themselves are owned by the following companies, utilities, or government entities: SPPL, Shell, Chevron, Unocal, Powerline, ARCO, Texaco, CALJET, City of Phoenix, Maricopa County, Salt River Project, and Arizona Public Service Company. These storage

facilities are either used exclusively by the owner or may be leased, in whole or part, to other companies. SPPL in particular does not own any of the fuel stored in its tanks, but instead leases them to others or charges a service fee for their intermittent use. The terminal is also accessible by railroad, although this service is apparently not being used at present.

Pipeline deliveries to Phoenix may change somewhat in the future. Fuel shipments through the west line are presently constrained by the pipeline's capacity. Also, gasoline delivered through the east line is somewhat more expensive, primarily due to differences in crude oil prices and refining economics. As a result, the west line is presently being expanded by SPPL (i.e., increased diameter and increased flow rates), with the new pipeline projected for completion in 1989. Once the expansion is complete, SPPL expects to supply nearly all of the gasoline to Phoenix and probably Tucson through this single line.

Turning to the marketing of fuels, approximately 1.12 billion gallons of gasoline products were delivered by pipeline to the Phoenix terminal in 1987. This represents about 3 million gallons per day. Because of the population distribution within the trading area of the Phoenix terminal, most of this fuel is assumed to be used within the Phoenix non-attainment area. However, some smaller communities in Arizona (e.g., Flagstaff) may receive virtually all their fuel by tank truck delivery from this Phoenix terminal.

The quality of all gasoline-type motor vehicle fuel consumed in Arizona is currently regulated by Section 41–2083 of the Revised Arizona Statutes. That section requires conformance with the specifications established by the American Society for Testing and Materials (ASTM), as contained in document D439–83. The specifications include maximum allowable limits on fuel volatility. (The potential significance of this specification will become clear later.) Additionally, the gasoline normally marketed in the Phoenix area reportedly contains no alcohol additives and only, a trace of Methyl Tertiary Butyl Ether (MTBE). [Reference 2] This latter compound is currently used by some U.S. refiners as an octane enhancer in concentrations of up to a few percent.

There are approximately 800 public refueling facilities in Maricopa County. Major oil companies, and their affiliates, dominate the Phoenix market both in number of service stations and total gasoline sales. The Phoenix area also appears to have about 38 gasoline wholesalers. Most are presumably in the business of delivering gasoline by tank truck to retail and other refueling facilities. Those that do not themselves import gasoline via the SPPL pipelines purchase it at the Phoenix terminal from companies which do.

Oxygenated Fuels Option Selection

The first step in implementing an oxygenated fuels program is to decide on its overall design. The predominant consideration in making this decision is that the CO benefit from these fuels is primarily dependent on the oxygen concentration of the gasoline consumed in the geographic area of concern. So in structuring the program to provide a certain emission reduction, the ultimate goal can be thought of as ensuring that a specific oxygen concentration target is attained. (The actual oxygen target for the Phoenix area is discussed later in this section.) There are three basic program designs that will accomplish this. Each is described below and EPA's preferred option for the proposal is identified.

The first option involves establishing a single minimum oxygen concentration for all gasoline. The minimum would be set at the level necessary to provide the required CO reduction. This concept is being used by the State of Colorado in its alternative fuels program, with a minimum specification of 2 percent oxygen by weight. At this low level, none of the current oxygenated fuel blends currently permissible under EPA unleaded gasoline waivers would be prohibited. The minimum specification for the Phoenix area currently would need to be greater than this value to provide the required CO reduction. Such a requirement has a significantly different effect on fuels availability, as noted below.

The advantage of this option lies in the consistency of the regulatory requirement for all octane grades of gasoline (i.e., regular leaded, regular unleaded, midgrade unleaded if present in the market, and premium unleaded). This consistency would minimize confusion by consumers over the level and type of oxygenate being marketed. The regulatory requirements also would be more straightforward for the affected business community and, similarly, enforcement would be greatly simplified. Compliance with the regulatory standard could be directly monitored through sampling and testing of gasoline in the control area, rather than relying on oversight of a self-reporting system. The principal disadvantage is that it can significantly limit the choice of fuels in the marketplace. For example, the availability of "clear" gasoline (i.e., oxygen-free) would be precluded. Also, as already mentioned, the oxygen target for the Phoenix area would be above 2.0 percent. This currently precludes the availability of alcohol-free, unleaded fuels. Specifically, the marketing of 11 percent MTBE with 2 percent oxygen by weight, which is universally recognized as a fully satisfactory fuel in all vehicle types, would be prohibited. (The implications of a recent waiver request for up to 15 percent MTBE is discussed later in this section.)

A limitation on the choice of fuels available is an important consideration in that a small percentage of owners may require (in their own perception if not in fact) an alcohol-free fuel for the satisfactory operation of their vehicles. Beyond this small group, the simple availability of various fuels may be critical in garnering public acceptance and support for an oxygenated fuels program. This limitation would also reduce the marketing flexibility of fuel suppliers as compared to other potential program designs. It could reduce or eliminate competition between blending agents and cause prices to artificially rise.

The second basic option involves establishing a minimun oxygen concentration by octane grade (or generally specifying oxygen content with an allowance for one unspecified grade to contain some other concentration). As an example, one grade could be specified with a minimum of 2 percent oxygen by weight to allow MTBE in the market. Other grades would be specified at a higher minimum requirement, which could be met with alcohol blends. The selection process, of course, must be governed by ensuring the required emission reduction is achieved.

This program option overcomes the principal problem associated with setting a single minimum oxygen concentration for all gasoline, in that an alternative blend could be made available for those consumers wishing to purchase gasoline containing no alcohol. Under certain scenarios it might be possible, though unlikely, to offer an oxygen-free fuel. Beyond this, much of the first option's advantage of simplified enforcement is retained, especially if the low-oxygen grade was specified by regulation rather than determined by free market conditions.

Unfortunately, such an action would continue to significantly affect consumer choice and free market activities. A further disadvantage of this option relates to the uncertainty of attaining the requisite oxygen concentration

target from the mix of fuels. The market shares for the various fuel grades, and the resulting oxygen content, will depend on the vehicle fleet composition (e.g., catalyst versus non-catalyst equipped vehicles), and the degree to which consumers switch fuels to obtain an alcohol-free or low-oxygen blend. Predicting these effects and setting oxygen requirements with certainty is problematic.

Of course, it may be possible to overcome this difficulty by either limiting in some way the availability of the low-oxygen blend, setting the required concentration of the high-oxygen blend at the maximum allowable level, or by using some combination of these approaches. Such a solution, however, further negates some of the potential advantages of this option. Also, by setting the oxygen requirements at a higher level than actually necessary, the cost of the program could be unnecessarily increased. Finally, if other types of oxygenates became available with oxygen contents between the low- and high-level specifications (e.g., 15 percent MTBE with 2.7 percent oxygen by weight) the program design may have to be reconsidered to allow for such new fuels.

The third, and final, basic option involves the concept of averaging. This type of program is used by EPA in the gasoline lead phasedown program. It can be adapted to an oxygenated fuels program by establishing an average oxygen target at the level needed to achieve the required CO reductions. Gasoline suppliers must, at a minimum, meet this average value over a specified time period. This can be done by always selling fuel with an oxygen content at or above the requisite value, or by adjusting the quantities and types of fuel sold over the averaging period to attain the requisite value.

The principal advantage of this program design is that the requisite emission reduction can be achieved with a minimum of regulatory intrusion into the marketplace. It also appears to retain the maximum degree of marketing flexibility, competition between blending agents, and consumer choice. These advantageous aspects of the averaging program can be further enhanced by allowing suppliers to trade "oxygen credits" among themselves, with a supplier of relatively low oxygen fuels being able to purchase such credits from a supplier of relatively high-oxygen fuel. The primary disadvantage of this approach is the associated increase in the amount of recordkeeping and reporting. A significant amount of additional data is required under this program design for suppliers to track their average oxygen concentrations, to allow for the trading of oxygen credits, and to provide a mechanism for program enforcement. Even with such reporting and recordkeeping requirements, however, program enforceability may be difficult.

In weighing the apparent advantages and disadvantages in the context of the relatively substantial CO reductions needed from an oxygenated fuels program in the Phoenix area, EPA believes that the averaging and trading approach on balance appears preferable to the other basic implementation options. Specifically, the advantages of maximizing consumer choice and marketing flexibility outweigh the disadvantages associated with the increase in recordkeeping and added enforcement burden.

Nonetheless, although EPA currently prefers to implement the proposed oxygenated fuels progran with an averaging and trading scheme, comments are specifically requested on the possibility of specifying a minimum oxygen content for "each batch" of gasoline or for each octane grade, or some variation of this approach, as an alternative to averaging. This simpler program design may be advantageous if the recent request by Sun Oil for a waiver permitting up to 15 percent MTBE blends is approved. Similarly, as discussed later, it may also be a feasible alternative if the State of Arizona adopts additional control measures that would reduce the emissions control necessary from an alternative fuels program, and allow an average oxygen concentration of 2 percent or less.

Description of the Oxygenated Fuels Program

As noted above, the Agency is proposing to implement an oxygenated fuels program for the Phoenix area with an optional averaging and trading compliance scheme. The specific elements of the overall program are described below.

a. *Program Duration.* The intent of the program is to provide the benefits of vehicular operation on oxygenated fuels during the time of year when the Phoenix area would otherwise experience exceedances of the CO NAAQS. In the last three years, the peak CO monitoring site in Phoenix recorded several exceedances of the CO 8-hour standard in the April to September period and the highest of these was recorded on April 23, 1985. (Actual air quality data can be found in the TSD). Although these exceedances fall outside of the proposed program duration dates for the oxygenated fuels program, EPA is concerned with the potential for gasoline volatility increases in the warmer months of April through September if the program were extended to cover those months and its potential effect of exacerbating ozone formation (described elsewhere in the notice). However, EPA believes that the control measures in the MAG plan, including the increasing effectiveness of the I/M program, along with the emission reduction benefit of the phasing in and out of oxygenated gasoline stock before and after the proposed program dates (an approximate two week period), will eliminate these higher concentrations found in the months outside of the program. EPA solicits comment on this issue.

To assure that the gasoline dispensed from a refueling facility contains the requisite oxygen content, some phase-in must be included in the program to allow for the normal "turnover" of fuel in the refueling facilities' storage tanks. The limited information currently available indicates that this phenomenon usually takes at most two weeks for refueling facilities that handle the large majority of the fuel used in an urban area. Therefore, EPA proposes that the mandatory compliance period begin on October 1 of each calendar year and end on March 31 of the subsequent calendar year, beginning with the effective date of the program. During this compliance period, all gasoline first introduced into commerce within the control area (including gasoline deliveries to public or private refueling facilities) must meet the requirements of the oxygenated fuels program as prescribed by regulation. Any other regulatory requirements that may specifically apply to refueling entities (e.g., labeling) must also be adhered to during this period.

Comments are specifically requested on the need for a longer compliance period, or the adequacy of a shorter period.

b. *Geographic Scope.* The requirements of the oxygenated fuels program would apply to all gasoline first introduced into commerce within the boundaries of the Maricopa County non-attainment area as prescribed in the Federal Register by EPA on March 3, 1978 (43 FR 8964). The area encompasses twenty-two cities and towns, including the City of Phoenix and portions of unincorporated area within Maricopa County. Comments are specifically requested on the need for and disadvantages of, enlarging the

geographic scope of the program to include more or all of Maricopa County.

c. *Oxygen Content Specification.* As discussed previously, the various oxygenated fuels may exhibit different clean air potentials. Current oxygenated fuels made with ether-based compounds as the blending agent yield equivalent CO reductions for each percent oxygen they contain. This is not necessarily the case, however, for oxygenated fuels made with alcohol-based compounds as the blending agent. These latter blends can increase the volatility of the gasoline, which offsets some of the potential benefit of their oxygen content in reducing CO emissions under at least some ambient conditions encountered in Phoenix. The degree of this offset varies with the composition and RVP of the base gasoline, and with the amount and type of alcohol used in the blend. For ethanol blends, the RVP increase is nearly always 1.0 psi or less, and averages about 0.76 psi. Presently, it appears that the only alcohol-based blends that are likely to be marketed in the Phoenix area are those using ethanol as the blending agent. Therefore, the following discussion will focus primarily on ethanol, although it generally pertains to other alcohol blending agents as well.

In practice, the only way to limit or avoid the CO offset described above for alcohol-based blends is to use a low volatility gasoline as the blending stock so that the resulting fuel is no more volatile than the non-oxygenated gasoline that normally would be marketed. Due to economic considerations this occurs only if the blend would otherwise exceed an applicable regulatory limit on gasoline volatility. Therefore, the CO offset would apply to alcohol blends in the Phoenix area, unless a regulatory constraint forced such fuels to be made with low volatility gasoline as the blending stock.

In making this determination, the potential regulatory constraint of immediate interest is Arizona's statutory requirement that prohibits all gasoline-type fuel, including ethanol blends, from exceeding the ASTM recommended limits on RVP. The maximum allowable RVP levels, as set forth in Section 41-2083 of the Arizona Revised Statutes, during the months encompassing the mandatory compliance period of the proposed oxygenated fuels program are: October, 10.0 pounds per square inch (psi); November, 11.5 psi; December, 13.5 psi; January, 13.5 psi; February, 13.5; and March, 11.5 psi. The issue at this point is whether the oxygen free gasoline supplied to Phoenix has a low enough volatility to accommodate all or most of the approximately 0.76 psi average increase in RVP of ethanol blends within the State maximum volatility limits.

The Agency currently has only a limited amount of data on the RVP levels of gasoline in the Phoenix area. The available information includes the average monthly RVP levels for one petroleum company's pipeline shipments into Arizona from September 1986 through August 1987. [Reference 1] The average monthly RVP values during the six months of interest range from 0.4-3.3 psi below the Arizona standards, with all but two months having levels at least 1.1 psi below the limits. The minimum monthly RVP values range from 1.3-6.0 psi under the standards, with only two months being less than 2.6 under the limits. This data is supplemented by a January 1987 survey of fuel from service stations in Phoenix that showed an average RVP of 12.5 psi. [Reference 1]

This indicates that the 0.76 psi increase in RVP, which is associated with the average ethanol blends, could be accommodated within the State limits by selecting normal gasoline shipments with an appropriately low volatility as the blending stock. Because of this, EPA proposes to account (as described below) for the CO offset associated with the higher RVP of alcohol blends in the oxygenated fuels program, unless it is conclusively demonstrated that the volatility of such fuels will on average match that of the alcohol-free gasoline that would otherwise be available in the Phoenix area. If Arizona subsequently adopts a volatility exemption for alcohol-based blends (e.g., an RVP margin of 1 psi), alcohol-based blends clearly will not match that of other gasoline. However, if Arizona also reduces the basic RVP limit for other fuels so that even with any exemption alcohol blends cannot exceed the average RVP of Phoenix's current gasoline supply (which EPA believes is about 1 psi below the legal limit), the accounting procedure described below will not apply in the final rule.

The Agency finds the relative difference anong the various oxygenated gasolines in reducing CO emissions is easily accounted for by expressing the "actual" oxygen content of each fuel in terms of its "equivalent" oxygen content. These values are then used, as described subsequently, to determine compliance with the program. Specifically, the equivalent oxygen content for non-alcohol blends is simply equal to the actual oxygen content (e.g., 11 percent MTBE equals 2.0 percent equivalent oxygen content). For ethanol blends of 1 to 10 percent by volume, the actual oxygen content is converted to the equivalent as illustrated in Table 4.

TABLE 4.—OXYGEN EQUIVALENCE OF VARIOUS FUEL BLENDS IN THE ALTERNATIVE FUELS PROGRAM

Actual		Equivalent		
Nominal		Oxygen content (percent) [1]		Oxygen content (percent)
Concentration of oxygenate (volume percent)	MTBE blend	Ethanol blend [2]	MTBE blend	Ethanol blend [3]
0	0.00	0.00	0.00	0.00
1	0.18	0.37	0.18	0.11
2	0.36	0.74	0.36	0.22
3	0.54	1.11	0.54	0.60
4	0.73	1.48	0.73	0.98
5	0.91	1.85	0.91	1.37
6	1.09	2.22	1.09	1.75
7	1.27	2.59	1.27	2.14
8	1.45	2.96	1.45	2.52
9	1.63	3.33	1.63	2.90
[3] 10	1.82	3.70	1.82	3.29
[4] 11	2.00		2.00	
12	2.18		2.18	
13	2.36		2.36	
14	2.54		2.54	
15	2.72		2.72	

Notes:
[1] As determined by the proposed measurement procedure.
[2] Methanol blends in the Phoenix market would be treated similarly under current Arizona RVP limits.
[3] 3 Ethanol greater than 10 percent by volume in unleaded gasoline is prohibited. Ethanol exceeding this level in leaded gasoline is not expected.
[4] MTBE blends greater than 11 percent by volume in unleaded gasoline are prohibited. A waiver application for up to 15 percent by volume is currently under EPA review.

EPA proposes that the same conversion as for ethanol blends will be made (at matched actual oxygen content) for methanol/cosolvent based blends if such blends will be marketed in the Phoenix nonattainment area. The actual oxygen content will also be used as the entry point to Table 2 for ethanol blends containing small amounts of other oxygenate compounds. Additional information relating to the volatility increase associated with methanol blends, as well as ethanol and MTBE blends, is contained in an EPA technical report on estimating the potential emission reductions associated with alternative fuels. [Reference 1]

In the past, for the most waivered unleaded gasoline blends containing alcohol (specifically, gasohol and Texas Methanol and DuPont methanol/cosolvent blends), EPA has not pursued enforcement action if up to two percent MTBE were present in the blend as a result of unintentional commingling of the base gasoline during transport and storage. The purpose behind this enforcement discretion was to make

blendstock for alcohol blending more available, but not to encourage the purposeful mixing of unwaivered oxygenate blends. To avoid encouraging such purposeful mixing, the Agency is considering not allowing the contribution of oxygen from MTBE in the calculation of actual (or equivalent) oxygen content in such waivered alcohol blends, even when the MTBE is present as a result of unintentional commingling in the base gasoline and is under two percent. The Agency requests comments on this approach.

With the oxygen concentrations of each blend consistently expressed on the basis of their equivalent oxygen contents, overall compliance with the program is measured against attainment of an "equivalent oxygen content target." This target is equal to the concentration of equivalent, or non-offset, oxygen required in all gasoline in order to provide the necessary CO reduction. Using this approach, the required 17.35 percent CO reduction that must be provided by the alternative fuels program translates into an equivalent oxygen content target of 2.57 percent. EPA, therefore, proposes 2.57 percent as the required level of equivalent oxygen.

Demonstrating conformity with the 2.57 percent (or 2.79 percent if no TRO is promulgated) will be a matter of weighting the individual equivalent oxygen content values by the volume of the respective fuels first introduced into commerce within the control area during the prescribed period. If oxygen free fuel is allowed in the program, it would be similarly included in the calculations as having an equivalent oxygen content of zero. If trading is allowed and equivalent "oxygen credits" are available, they would also be accounted for in the calculations. The Agency's proposal in these areas is discussed later in this section.

Comments are specifically requested on the feasibility of marketing such fuels under the existing ASTM, federal, and Arizona limits, the appropriateness of including a CO benefit offset for alcohol-containing gasoline such as that described for ethanol blends, the feasibility and cost implications of supplying special volatility adjusted gasoline to the Phoenix area in order to avoid the CO offset, and the likelihood that methanol blends will be marketed in the Phoenix area.

d. *Effective Date.* The Agency believes, and the Clean Air Act requires, that the oxygenated fuels program should be implemented on a schedule that represents reasonable further progress towards attainment prior to full attainment of the CO NAAQS in 1991. In practical terms, the program should start on the earliest date that will not disrupt the supply of gasoline or cause unreasonable cost increases. The Agency's review of the most pertinent factors in making this determination shows that the effective date for the program is related to the leadtime required in three critical areas: Supplying the requisite gasoline and blending agents to the Phoenix terminal complex, terminal storage and handling, and final distribution of the various blended fuels.

Turning first to the issue of final distribution, no changes in tank trucks or associated equipment, which is used to deliver the fuel from the terminal complex to the service stations, should be required. Some modifications to the service station equipment (e.g., storage tank cleaning and the installation of fuel filters) will be generally required for locations marketing alcohol blends. Such modifications are not regarded as requiring a significant amount of lead time to accomplish.

As for the supply of the requisite fuel products, this issue involves the consideration of both production and transportation. There currently appears to be enough MTBE, a low-oxygen blending agent, either produced in the United States or available by importation to satisfy the Phoenix market without significantly elevating its cost from current levels. The same appears to be basically true for ethanol, a high-oxygen blending agent. [Reference 4] With regard to transportation or supply to the Phoenix area, MTBE is most likely to be transported via pipeline in final blended form in the gasoline shipped from the refineries in the Los Angeles area. The Southern Pacific Pipe Line, Inc. (SPPL), which owns and operates the pipeline, has stated there are no technical obstacles in handling MTBE blends within its current capacity, due to the compatibility of these blends with normal gasoline. [Reference 5] (It is possible that MTBE blending may take place in Phoenix, although the extent of this event is currently uncertain.)

Ethanol-based gasoline, on the other hand, will be blended in the Phoenix area. The pure ethanol apparently will be shipped by railcar from production facilities outside the State. This rail capacity appears to already exist. [Reference 4] The oxygen- free gasoline required for blending can also be supplied by pipeline deliveries from California, even if the pipeline is also handling MTBE blends. As noted earlier, ethanol blends for the Phoenix market should be able to be made from present oxygen-free gasoline supplies from the Los Angeles area pool. This is true now even with Arizona's RVP limits on ethanol blends, because the gasoline now being delivered to Phoenix appears to average about 1 psi below the Arizona limits. It will certainly be true if Arizona relaxes its RVP limit during the CO season. This is important due to the added cost and complexity otherwise associated with using a special, low RVP oxygen-free gasoline. (The possible effect of using such a fuel is described below.) Therefore, delivering the necessary fuels and blending stock to the Phoenix terminal complex does not appear to be a critical issue.

The last element of potential concern is storage and handling of the fuels and blending agents within the Phoenix terminal itself. Here again, the compatibility of MTBE blends and existing gasoline means that this type of oxygenated blend could basically displace such gasoline without any significant changes to the terminal facilities.

Dealing with ethanol blends, however, is a more complicated issue. Limited rail service and "off loading" facilities exist, which can be used for the pure ethanol, but may need expansion and improvement. A more substantial obstacle involves the practice of blending the gasoline and ethanol as the fuel is loaded into the tank truck or actually in the tank truck. This requires the segregated storage of the alcohol-free gasoline and the ethanol. The tankage can be made available by displacing other products within the terminal facility, or by building new storage facilities. The latter seems most likely, especially for the pure ethanol, given the volume of ethanol blends that may be used to comply with the proposed oxygenated fuels program. In fact, one ethanol company already appears to be following this approach in response to some of the program options being considered by the Arizona legislature. [Reference 4] Also, the actual blending of gasoline and ethanol may require special equipment.

Therefore, the introduction of ethanol blends into the Phoenix area, at the level which appears necessary, will at a minimum likely require new storage and handling facilities in Phoenix. Such additional facilities have been estimated by SPPL to take about one year to complete. [Reference 6] One year should also be technically adequate for various changes in equipment and operating procedures. Assuming this leadtime starting from publication of the final rulemaking on August 10, 1988, as required by the Court Order, EPA

proposes that the oxygenated fuels program take effect October 1, 1989.

The preceding discussion focused on technical requirements. While one year's leadtime may technically permit compliance, it may limit refiners' options for compliance relative to a longer period. It may also require costly changes in refinery operations that could also be avoided. For example, with only one year's leadtime a Los Angeles refiner would likely not be able to construct new tankage to segregate Phoenix-bound MTBE blends or components. This may require preemption of tankage now used for other purposes and may mean that a refiner cannot recover the octane value associated with the high MTBE content. Similarly, a refiner might have to forego recovering the octane value of its planned ethanol blending in Phoenix. Methanol blends may also be precluded, since reduced-RVP base stock would certainly need to be segregated. SPPL may also not be able to build new breakout tankage which would simplify and reduce the costs of simultaneously handling both MTBE blends and oxygen free gasoline destined for ethanol blending. To allow it to consider cost versus schedule tradeoffs and any unexpected technical difficulties caused by an October 1, 1989 effective date, EPA requests comments on the need for and cost impact of providing greater flexibility in establishing the effective date of the oxygenated fuels program. This flexibility could be provided by delaying the actual effective date or gradually phasing-in the equivalent oxygen content specification. Comments should be specific to a refiner's own plans for compliance and its own current infrastructure for production, storage, transport, and distribution of gasoline.

e. *Regulated Parties and Activities.* Regulatory requirements would apply to all parties in the gasoline and oxygenate distribution networks in the Phoenix CO nonattainment area during the control season. Four types of regulatory requirements are proposed:

1. *Registration.* All persons in the control area gasoline distribution network would be required to submit a registration form to the Agency no later than one month before the start of each control season. Parties subject to the regulatory standard, as defined below, would be required to provide information on how they intend to comply with such standard. Other parties (e.g., most retailers) would have to submit generally less specific information on their planned role in distributing, transporting, selling, or dispensing oxygenated fuel during the control season. In addition, persons selling or supplying oxygenates (e.g., alcohols and ethers in pure, diluted, denatured, or additive- improved form) to be used within the control area would be required to register.

2. *Regulatory Standard.* The 2.57 percent (2.79 percent if no trip reduction program is promulgated) equivalent oxygen content standard would apply to all persons who first introduce gasoline into commerce within the Phoenix CO nonattainment area. This would include persons who first sell, supply, offer for sale, or offer for supply gasoline within such area (e.g., distributors). The standard would also apply to persons who produce gasoline (e.g., refiners) or who alter its quality and/or oxygen content (e.g., alcohol blenders), and then; sell or supply such product, within the control area. Finally, the standard would apply to any person who "imports" product into the control area for direct sale or supply (e.g., a party who transports or causes to be transported gasoline by truck from outside the control area to a retail station or wholesale purchaser-consumer within the area).

3. *Reporting and Recordkeeping.* All persons subject to the equivalent oxygen content standard would be required to submit monthly reports containing information on their compliance with the standard. Persons transporting gasoline into the control area (e.g., pipelines) and those selling or supplying oxygenates within the control area would also be required to submit monthly reports on such activities. Persons subject to reporting requirements would have to maintain adequate records to support the information contained in their reports. Other persons in the control area gasoline distribution network would be required to maintain specified records on their activities during the control period and make them available for EPA review, but would not be required to submit monthly reports.

4. *Labelling.* Retailers and wholesale purchaser-consumers (parties purchasing gasoline in bulk for their own ultimate use) would be required to label pump stands from which gasoline is dispensed with the type of oxygenate used in the gasoline and its oxygen content. Invoices and similar documents which accompany the shipment of gasoline in the control area would also have to be labelled.

These regulatory requirements are discussed in more detail below.

f. *Registration.* As noted above, all persons in the gasoline distribution network in the control area would be required to register with EPA at least one month prior to the starting date of each control season. Persons subject to registration would include refiners, pipeline and terminal operators, distributors, resellers, carriers, retailers and wholesale purchaser-consumers.[4] Such persons would have to supply basic information on their facilities and on their activities during the previous one-year period. Persons subject to registration but not subject to the equivalent oxygen content standard (e.g., most retailers) would be required to submit information on their plans regarding oxygenated fuel during the coming control season.

Persons subject to the equivalent oxygen content standard would be required to provide information on how they intend to comply with the standard during the coming control season. Such parties would have two compliance options. Under the first option, each batch of gasoline sold, supplied, or offered for sale or supply during the control season would have to have a minimum equivalent oxygen content of 2.57 percent by weight. Under the second option, all gasoline sold or supplied during each monthly compliance period would be required to have an average equivalent oxygen content of 2.57 percent. Monthly compliance periods would be on a calendar month basis. In meeting this monthly average standard, regulated parties would be allowed to trade equivalent oxygen credits during the monthly compliance period (as discussed more fully below).

Parties who elect the second compliance option would be required to submit a statement indicating their agreement that any violation of the monthly average standard would be treated as violations committed on each and every day of the averaging period (e.g. if the monthly averaging period is December 1 to December 31, a violation of the standard for this period constitutes 31 days of violation). Parties selecting the second option would also have to submit detailed information on their planned product mix during the control period (e.g., 60 percent of product will contain 11 percent MTBE with 2.0 percent oxygen content, 35 percent will contain 10 percent ethanol with 3.7 percent actual oxygen content

[4] Persons adding oxygenates to gasoline for the first time (includng persons who mix oxygenated and non-oxygenated fuels that have already been introduced into commerce as gasoline by other hands) are also required to register as fuel manufacturers under the regulations at 40 CFR Part 79. Persons entering the gasoline distribution network during a control season would have to register at least 15 days before starting operations.

and 3.29 percent equivalent oxygen content, 5 percent will not contain oxygenates) and on how any shortfall in meeting the average standard will be met through the purchase of equivalent oxygen credits or a change in product mix.

It is the Agency's intent that generally only one party in the distribution network would be responsible for compliance of any particular quantity of gasoline with the equivalent oxygen content standard. Problems may arise, however, where a second party alters the equivalent oxygen content of a quantity of gasoline first introduced into commerce within the control area by another party (e.g., a carrier adds ethanol to a truck load of finished gasoline purchased from a distributor). The Agency requests comments on the best means to prevent such "double reporting".

Persons who intend to sell or supply oxygenates that are used within the control area during the coming control season would also be required to register with the Agency. They would be required to submit detailed information on their planned activities within the control area, including location of storage and dispensing facilities, type(s) of oxygenate(s) to be sold or supplied, and the names and addresses of known customers within the control area.

All parties will be required to revise their registration forms within 15 days of a significant change in operations. Significant changes requiring a revision of registration would include any change in location or ownership of a facility, commencing or ceasing use of a particular oxygenate, a significant change in planned product mix or in use of equivalent oxygen credits, and other circumstances to be specified in the regulations.

g. *Equivalent Oxygen Content Determinations, Sampling and Testing.* Under both compliance options, it will be necessary to determine the equivalent oxygen content of gasoline subject to regulatory requirements. As discussed above, the Agency will specify the equivalent oxygen content of various oxygenated fuels (including an "RVP penalty" for ethanol). To measure compliance, a representative sample of gasoline first will be tested for its oxygenate content (e.g. percent ethanol, percent MTBE). For parties choosing the first compliance option (determined per batch without averaging or trading), the oxygenate content will be converted to equivalent oxygen content and then compared to the regulatory standard. Compliance measurement and calculation procedures for the second compliance option are discussed in the next section of this notice.

The sampling methodologies would be identical to those proposed for the Agency's gasoline volatility control program. *See* proposed 40 CFR Part 80 Appendix D, set forth at [52 FR 31318–30, August 19, 1987]. The methodologies are also essentially identical to those used by the California Air Resources Board (CARB) in its gasoline volatility control program (Cal. Admin. Code Tit. 13, R. 2261). The proposed methodologies include the ASTM sampling methodologies for gasoline products and a service station nozzle sampling procedure developed by CARB.

The ASTM methodologies would be used by the Agency in sampling gasoline and oxygenated fuels at facilities such as refineries, blending facilities, pipelines, bulk terminals, and bulk plants. These sampling procedures include bottle sampling, tap sampling, and manual line sampling. The nozzle sampling procedure would be used at service stations and similar dispensing facilities (e.g., fleets).

The Agency is also considering adoption of two alternative nozzle sampling techniques: (1) Instead of placing the sample container in a chilling medium while being filled and stored (as in the CARB procedures), the container would remain at ambient temperatures prior to pre-testing cooling; and (2) sampling would be done using certain EPA developed equipment and procedures.

The August 19, 1987 notice of proposed rulemaking (52 FR 31274) for the gasoline volatility control program, which contains the specific proposed methodologies and a detailed description of both the proposed and alternative sampling methodologies, has been placed in the rulemaking docket for this FIP.

h. Alternative Compliance Demonstration: Averaging and Trading. As noted above, persons subject to the equivalent oxygen content standard would have the option of meeting this standard on a monthly average basis provided certain registration requirements are met. Under this option, compliance would be based on a weighted average of the equivalent oxygen content of all gasoline sold or supplied within the control area during a monthly period. The following procedures are proposed for the determination of such a monthly average:

1. The equivalent oxygen content (by weight) of each discrete quantity of gasoline in the possession of the regulated party (e.g., each storage tank at a bulk terminal) at the beginning of each compliance period would be sampled and tested according to the procedures described in this notice.

2. The equivalent oxygen content of gasoline would also be tested each time there is a change in its quantity and/or quality that would tend to affect its oxygen content. This would require testing upon addition of any quantity of gasoline to a storage tank, but not upon removal of product for sale. It would also require testing upon the addition of any amount of oxygenate(s) to the gasoline.[5]

3. The amount of gasoline sold or supplied within the control area between the dates and times of equivalent oxygen content tests would be recorded.[6]

4. At the end of the compliance period, the quantities of gasoline recorded per (3) above would be multiplied by the relevant equivalent oxygen content. The resulting "total equivalent oxygen" amounts would then be added together and divided by the total amount of gasoline sold or supplied during the compliance period to determine the monthly average equivalent oxygen content.

In the case of in-line or in-truck blending of oxygenates, the equivalent oxygen content of each discrete quantity of final blended product (e.g., a truck load) would have to be determined and included in the monthly average calculations. Similarly, when gasoline is "imported" from outside the control area for direct sale or supply (e.g., a tank truck load brought from Los Angeles directly to a service station in Phoenix) the equivalent oxygen content of each such discrete quantity of product must be determined and included in monthly average calculations.

The following example illustrates how this averaging mechanism would work. Assume that Distributor A receives gasoline via pipeline from outside the Phoenix control area, stores the product in storage tanks at its Phoenix terminal, and sells the product to retail stations within the control area.

On Day 1 of the compliance period Distributor A tests the equivalent oxygen content of product in its storage tanks and finds the following results:

[5] The Agency requests comments on other changes to gasoline quantity or quality that should (or should not) trigger the testing requirement.

[6] The Agency is considering a requirement that the oxygen content of gasoline be known and provided to the purchaser (or person supplied) prior to sale or supply, and requests comments on such a requirement. This would facilitate compliance with labelling and other regulatory requirements.

Tank X (leaded regular)—2.9 percent; Tank Y (unleaded regular)—2.0 percent; and Tank Z (unleaded premium)—2.0 percent. Distributor A receives other shipments of product in each grade from the pipeline on Day 16 of the compliance period and tests each tank promptly with the following equivalent oxygen content results: Tank X—3.0 percent; Tank Y—2.2 percent; and Tank Z—0 percent. No other shipments were received during the compliance period. Compliance is calculated as follows, using the gallonage of gasoline sold during relevant periods:

A. Days 1 to 16 (until testing):

[Oxygen contents below are expressed as decimals, e.g. 2.9 percent=0.029]

Tank	Equivalent oxygen content		Gallonage		Total equivalent oxygen
X	0.029	x	25,000	=	725
Y	0.020	x	55,000	=	1,100
Z	0.020	x	20,000	=	400
Totals			100,000		2,225

B. Days 16 (after testing) to 30:

Tank	Equivalent oxygen content		Gallonage		Total equivalent oxygen
X	0.030	x	30,000	=	900
Y	0.022	x	60,000	=	1,200
Z	0.0	x	25,000	=	0
Totals			115,000		2,100

C. Monthly Average:

Days	Total equivalent oxygen	÷	Total gallonage	=	Average equivalent oxygen content
1 to 16	2,225		100,000		
16 to 30	2,100		115,000		
Totals	4,325		215,000	=	0.0201

In this simple example, Distributor A's monthly average equivalent oxygen content would be 2.01 percent. In order to meet the standard of 2.57 percent, he would have to purchase (or otherwise obtain) equivalent oxygen credits from another regulated party.

Under the proposal, equivalent oxygen credits would be allowed to be sold or traded among regulated parties. Equivalent oxygen credits would be earned by parties to the extent that the average equivalent oxygen content of gasoline sold or supplied during a monthly compliance period exceeds 2.57 percent. Equivalent oxygen credits could only be traded and used during the compliance period in which they are earned. Equivalent oxygen credits are calculated by first computing the total equivalent oxygen content of the regulated party's monthly gallonage. The product of the party's monthly gallonage and 0.0257 (2.57 percent) is then subtracted from the party's monthly total equivalent oxygen content, and the difference is the amount of equivalent oxygen credits available for sale or trade (if the difference is zero or a negative number, the party has no equivalent oxygen credits available for sale or trade).

The trading mechanism is illustrated by the following example. Assume Distributor B complies with all sampling and testing requirements, and determines that all gasoline sold or supplied during a monthly compliance period has a uniform equivalent oxygen content of 3.29 percent.

The amount of product sold/supplied during the compliance period is 200,000 gallons. Distributor B's total equivalent oxygen content for this period is 6580, determined by multiplying its gallonage (200,000) by its average oxygen content (0.0329). In order to meet the 2.57 percent regulatory standard, its total equivalent oxygen content must be 5140 (200,000×0.0257). Thus, Distributor B has 1440 oxygen credits (6580–5140) available for sale or trade during the compliance period. If 1210 of these equivalent oxygen credits were traded or sold by Distributor B to Distributor A in the above example, Distributor A could then demonstrate compliance with the 2.57 percent standard by adding these credits to the total equivalent oxygen content of his product (4325) and dividing the sum (5535) by his gallonage (215,000), resulting in an average monthly equivalent oxygen content (with trading) of 0.0257 (2.57 percent).

i. *Labelling.* The proposed regulations would require the labelling of pumps from which gasoline is dispensed at retail outlets and wholesale purchaser-consumer facilities during the control season. The pump label would have to include the type of oxygenate which is contained in the fuel being dispensed from that pump, as well as its actual oxygen content (by weight to the nearest 0.1 percent). Such labelling would allow consumers to know what type of oxygenate they are purchasing and provide them with flexibility in choosing a product most compatible with the operation of their vehicles. Labelling will also aid enforcement by allowing the Agency to monitor whether parties are selling product in accordance with their registration statements. It could also provide a partial cross-check on compliance with the regulatory standard, if adequate numbers of inspections can be carried out. The proposed regulations would also require that invoices and other gasoline delivery documents be similarly labelled. Such documents would have to be retained by regulated parties for at least two years and be available for inspection by EPA personnel or contractors during that period.

j. *Reporting and Recordkeeping.* All persons subject to the oxygen content standard would be required to submit monthly reports containing compliance information. Reports would be due no later than 15 days after the close of each compliance period. Parties who have selected the option of meeting the standard on a "per batch" basis would be required to submit test results and other information relevant to determining compliance (e.g., gallonage introduced into commerce in the control area during the month, and type and quantity of purchased oxygenates).

Parties who have selected the option of meeting the standard on a monthly average basis (with or without trading) would be required to submit more detailed information because of the greater complexities of determining compliance. Information to be submitted would include data on product received by the party (e.g., date, source, type, gallonage), test results, and sale/supply of product by the party (e.g., date, type, gallonage, person to whom sold/supplied, and oxygen content). The party would also be required to calculate the monthly average equivalent oxygen content of its product based on such information and according to the procedure outlined above.

Parties engaged in trading equivalent oxygen credits during a monthly compliance period would be required to supply additional information in their monthly reports. Such information would include the name and address of the other party in each trade and the quantity of equivalent oxygen credits traded. The party selling or otherwise transferring equivalent oxygen credits would have to demonstrate how such credits were calculated. The party buying or otherwise receiving equivalent oxygen credits would be required to calculate its compliance with the regulatory standard through the use of these credits. Both parties to an equivalent oxygen credit trade would

have to submit supporting documentation adequate to demonstrate the agreement of the other party to the trade and to transfer the credits during the compliance period for which the trade is reported (e.g., a contract signed by both parties no later than the last day of the compliance period). EPA will not recognize a purported trade as valid unless both parties report and adequately document it. As in the lead phasedown program, the requirement that credits be traded by the end of the compliance period is based on the Agency's view of trading as a planning tool rather than a means to cure violations. Comments on any special hardships this would create are requested. Only parties subject to the monthly average compliance option would be allowed to trade equivalent oxygen credits.

Persons who sold or supplied oxygenates for use within the control area during a compliance period would also be required to submit monthly reports to the Agency. These reports would have to include information on the type of oxygenate sold (e.g., ethanol), date of sale, and the party to whom sold. Such reports would provide a partial cross-check on reports submitted by regulated parties.

Persons who transport gasoline into the control area but who are not subject to the regulatory standard (e.g., pipelines) would also be required to submit monthly reports to the Agency. These reports would have to include information on the type (e.g., unleaded regular) and gallonage of gasoline transported during each compliance period, the party and location (and the specific tank, if known) to which transported, and the type (and concentration, if known) of oxygenate(s) contained in the gasoline transported. Such reports would provide a partial crosscheck on reports submitted by persons subject to the regulatory standard.

All parties subject to monthly reporting requirements would also be required to maintain adequate records (including oxygen content test results) to support the information contained in their reports. Such records would have to be retained for at least a two-year period.

For all reports, EPA would have the authority to determine whether any report should be recognized as meeting regulatory requirements.

Other persons who must register (e.g., retailers who do not transport or cause to be transported gasoline from outside the control area) are not subject to monthly reporting. However, as noted above, all parties in the gasoline distribution network would be required to retain (and make available for EPA inspection) invoices and other gasoline delivery documents for a two-year period. Comments are requested on the need for other recordkeeping requirements for such parties.

k. *Violations and Defenses.* The regulations will specify what constitute violations of the regulatory requirements. Such violations are proposed to include:

1. Failure to submit a registration statement by the date due;
2. Failure to submit a revised registration statement (when required to do so) by the date due;
3. Submittal of an incomplete or incorrect initial or revised registration statement;
4. Failure to sample or test gasoline in accordance with prescribed regulatory methodologies;
5. Failure to sample or test gasoline when required to do so;
6. Selling, supplying, offering for sale, offering for supply or otherwise first introducing into commerce within the control area gasoline whose oxygen content exceeds the regulatory standard after any allowable averaging and trading calculations (by a party subject to such standard);
7. Failure to properly label a retail outlet or wholesale purchaser-consumer pump stand;
8. Failure to properly label an invoice or other gasoline delivery document;
9. Failure to submit a required monthly report by the date due;
10. Submittal of an incomplete or incorrect monthly report;
11. Failure to maintain required records for the applicable time period;
12. Transfer of equivalent oxygen credits which have not been created in accordance with regulatory requirements;
13. Use of improperly created or transferred equivalent oxygen credits to demonstrate compliance with regulatory requirements;
14. Transfer of equivalent oxygen credits after the end of the monthly compliance period in which they are created; and
15. Failure to comply with any other regulatory requirement.

The Agency believes that the large majority of violations listed above are within the power of regulated parties to control and thus should not be subject to specific regulatory defenses. The regulations do not provide a defense for exceedances of the regulatory equivalent oxygen content standard, since the availability of monthly averaging and equivalent oxygen credit trading provides a great deal of flexibility to regulated parties in meeting this standard.[7]

Certain violations, however, may not be fully within the control of a regulated party. This group may include violations of pump and document labeling requirements where a party has reason to believe fuel provided to him by another party complies with the label. It may also include the use of transferred equivalent oxygen credits where the using party does not know (or could not reasonably be expected to know) that the credits were not lawfully generated. The Agency requests comments on what defenses (if any) should be provided for these types of violations.

1. *Federally Assumed Enforcement.* Federal enforcement of air quality implementation plans generally commences with issuance of a notice of violation (NOV) to the violator and the state under section 113(a)(1) of the Clean Air Act. If the violation extends beyond the 30th day after the date of the NOV, EPA may issue a compliance order or bring a civil action under section 113(b) of the Act. Section 113(b) provides for temporary or permanent injunctive relief, or a civil penalty of up to $25,000 per day of violation, or both.

The Act also provides for "federally assumed enforcement." Section 113(a)(2) provides that whenever "the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State." If EPA finds that such failure extends beyond the 30th day after notification, the Agency is required to issue a public notice of such finding. Beginning with the date of such public notice, EPA may issue compliance orders to, or bring civil actions against, violators without prior issuance of individual NOV's under section 113(a)(1).

The Agency is concerned that the requirements of section 113(a)(1) of the Act, in combination with proposed program design elements, may limit enforcement of the proposed federal oxygenated fuels program. The combination of a seasonal control program, a monthly averaging compliance demonstration alternative, report submittal and processing times, and the requirements that individual NOV's be issued to violators and that violations extend beyond the 30th day

[7] Of course, the purported violator will have all of its traditional defenses, including denial, to a claimed violation (e.g. it might show that no violation occurred).

after NOV issuance before compliance orders can be issued or civil actions brought may mean that only violations which occur early in the control season and extend beyond the 30th day after the NOV (and if the 30th day is also within the control season) would be subject to effective enforcement action. In normal SIP enforcement EPA's enforcement authority under section 113(a)(1) operates in conjunction with a state enforcement program that generally is not subject to requirements concerning NOVs. However, in this case the state appears to have no authority to enforce EPA's oxygenated fuels program.

Furthermore, the Agency believes that the conditions for "federally assumed enforcement" under section 113(a)(2) of the Act will in all likelihood exist in the Maricopa area. EPA is not aware of any plans by the State of Arizona to enforce any FIP regulations nor is it apparent what legal authority the State could use even if it wanted to do so. In the absence of State enforcement the Agency anticipates that widespread violations of the FIP provisions will occur, particularly if federal enforcement is based only on the section 113(a)(1) individual NOV requirements.

EPA therefore intends to carefully scrutinize compliance reports during the first few months of the oxygenated fuels program. If EPA sees violations that are so widespread as to appear to result from the absence of any state enforcement program, it will promptly notify the state as required by section 113(a)(2). If such violations are continuing 30 days later, EPA will give public notice that it is initiating a period of federally assumed enforcement. EPA will then enforce the requirements of the oxygenated fuels program directly against violators without prior issuance of NOVs (and hence without the 30-day post-NOV waiting period) as provided by section 113(a)(2).

This period of federally assumed enforcement will continue until such time as the state satisfies EPA that it will enforce the oxygenated fuels program. EPA does not anticipate that the state will be able to do this since it apparently has no authority to enforce a federal program that is not supported by any state legislation.

m. *Minimum Oxygen Content (In Addition to Averaging/Trading Compliance).* The Agency is concerned that it may be difficult to effectively enforce the proposed oxygenated fuels standard under the averaging/trading compliance alternative. Although the Agency is proposing detailed registration, reporting and recordkeeping requirements, the program essentially relies on the honest reporting of regulated parties to assure compliance. While this is a concern in any self-reporting scheme, it is of particular concern because multiple sources of oxygenates do not provide an effective cross-check on reports submitted by regulated parties. In some cases, the sources of oxygenates (e.g., refineries for MTBE) may be part of the same corporate entity as regulated parties subject to the oxygenated fuels standard.

EPA's experience with the lead phasedown program shows the types of problems that can occur in a self-reporting enforcement scheme. The lead phasedown standard is based on quarterly averaging of lead use in gasoline by refiners and importers. From November 1982 through 1985 inter-refinery averaging of lead usage (trading of lead rights) was allowed. From 1985 through 1987 the banking of lead rights (for use in later compliance periods) was allowed. Although a number of violations were self-reported in the lead phasedown program, recent audits of refiners and importers by EPA (and others) have uncovered a significant number of unreported violations. Means of cheating included overreporting of gasoline gallonage, misclassification of gasoline and gasoline blending stocks, and underreporting of lead usage. The latter type of abuse occurred despite the availability of an effective crosscheck in the form of quarterly reports of lead shipments to refiners by the handful of lead additive manufacturers in the country (who have no apparent incentive to misreport). While such unreported violations can be detected in the lead phasedown program, it generally requires review of a very large quantity of paperwork by a number of EPA investigators. The trading and (particularly) banking components of the lead phasedown program made the job of compliance monitoring much more complex while, at the same time inadvertently creating additional inducements to cheat.

The Agency anticipates that some amount of cheating may occur under the proposed FIP regulation, albeit in the opposite direction from that under the lead phasedown program (i.e., under- rather than overreporting gallonage, overreporting the use of oxygenates rather than underreporting the use of lead). Because of the lack of an effective cross-check like lead additive manufacturer reports, the uncertainty as to whether enough resources will be available to adequately conduct audits of regulated parties' records, and other potential enforcement problems, the Agency is considering as an adjunct to the averaging/trading alternative promulgation of a minimum "per sample" oxygen content standard of 2.0 percent that would apply to all gasoline sold or supplied (or offered for sale or supply) in the Phoenix CO nonattainment area. If such a requirement were adopted, each person choosing to use the averaging/trading alternative to demonstrate compliance with the 2.57% equivalent oxygen content standard would have to meet that standard on average as well as ensure that each batch of gasoline first introduced into commerce during the control period contains at least 2% equivalent oxygen content. Such a requirement could be directly enforced by the Agency at retail outlets, terminals, and other distribution points in the area without the need to audit records of regulated parties. While a minimum standard of 2.0 percent would preclude the sale of nonoxygenated fuel, it would still allow regulated parties the choice of 5.4 percent ethanol, 11 percent MTBE or any other allowable oxygenate with a 2 percent oxygen content as a means to comply.

The Agency anticipates that if such a minimum standard is promulgated as part of the final rulemaking, it will also promulgate a liability regulation very similar to that proposed as part of the recent gasoline volatility rulemaking, under which the location of the violation would determine the presumptively liable parties and which would provide certain defenses for such parties. *See* proposed 40 CFR 80.28 (52 FR 31317–8 (August 19, 1987)).

Comments are requested on such a minimum standard.

n. *Oxygenation Measurements.* Three alcohol content laboratory testing methods are proposed as a new Appendix B to 40 CFR Part 52, Subpart D. Under Method 1, gasoline samples are extracted with water prior to analysis on a gas chromatograph (GC). The extraction eliminates hydrocarbon interference during chromatography. A known quantity of isopropanol is added to the fuel prior to extraction to act as an internal standard. Results are calculated and reported by data reduction software in the GC using peak area, retention times and other data obtained during the run. Method 1 is not valid for MTBE determination, so if there is any possibility of MTBE in the fuel, Method 2 or 3 must be used. EPA is not aware of any interference caused by MTBE if Method 1 is used, so it proposes to allow use of Method 1 in any situation in which MTBE content is not

relevant to the compliance determination at issue.

Method 2 is a direct GC injection technique utilizing a single column (30 to 60 meter length) which is capable of resolving the individual alcohols without interference from hydrocarbon fuel components. Little sample handling is necessary, resulting in potentially more accurate results. The GC run time per sample is approximately 30 minutes, but it might be possible to reduce this time depending on running conditions.

Method 3 is a two-column backflush method in which the sample is injected and loaded onto a primary column. This column retains the alcohols but does not retain the lighter weight hydrocarbon fractions of the fuel. After the lighter fractions are rinsed out of the primary column, the carrier gas flow through the column is reversed, the alcohols and heavier hydrocarbon fractions are loaded onto a secondary column and are individually separated for analysis. This method may take approximately 20 minutes of GC run time per sample, as opposed to four minutes for an indirect GC sample run time, and also requires careful carrier gas flow time switching.

The specific procedures for Method 1 are set forth in detail in Appendix F of the proposed rule for volatility control of gasoline and alcohol blends, as published in the **Federal Register** on August 19, 1987 (52 FR 31340). Specific Method 2 and 3 procedures have not been developed at this time but the Agency has placed in the rulemaking docket a copy of proposed ASTM P-176 Appendices X9 and X11: "Proposed Test Method for Determination of Oxygenates in Spark Ignition Engine Fuel by Gas Chromatography". It is expected that any final Agency procedures adopting direct injection test methods will be similar to these proposed ASTM procedures, and comments are requested on the ASTM proposals.

It should be noted that none of the above three methods may be valid for alcohols with greater than four carbon atoms. However, a fuel waiver was recently granted by EPA for the methanol- cosolvent blend Octamix, which may contain small amounts of alcohols above C_4 (i.e., pentyl-, hexyl-, heptyl-, and octyl-alcohols). Since such a fuel could be used to comply with fuel oxygen content requirements, comments are requested regarding possible suitable techniques for measurement of these higher alcohols (or the oxygen content thereof), along with the C_1–C_4 alcohols that would be present in such a fuel. Furthermore, comments are requested on the test-to-test repeatability and lab-to-lab reproducibility of any of the above methods, including any methods suggested for measurement of the C_5–C_8 alcohols.

Once the mass concentration of each oxygenate in the fuel has been determined using these methods or others approved at a later date, it is necessary to calculate the equivalent oxygen content of the fuel as a whole. This requires multiplying the oxygen content of each oxygenated component by the concentration of that component in the fuel and summing these results for all oxygenates present in the fuel to get the actual oxygen content. If ethanol and methanol are not present (above a trace level of about 0.1 percent), the equivalent oxygen content equals the actual oxygen content. If ethanol and/or methanol are present, the "ethanol" (or alcohol) entries in Table 4 are used to find the equivalent oxygen content that corresponds to the respective oxygen content. Values between the specific points listed in the Table are found by linear interpolation. (Mathematical equations are used to make this conversion in the regulation accompanying this notice.)

Table 5 shows the oxygen contents by mass of the most common oxygen containing compounds that have either been approved in EPA waivers or are considered substantially similar to gasoline at concentrations less than 2.0 percent oxygen.

TABLE 5.—OXYGEN CONTENTS OF COMMON COMPOUNDS IN GASOLINE

Molecular oxygenate	Oxygen mass formula	Fraction
Methanol	CH_4O	0.4993
Ethanol	C_2H_6O	0.3473
Propanols	C_3H_8O	0.2662
Butanols	$C_4H_{10}O$	0.2158
Pentanols or MTBE	$C_5H_{12}O$	0.1815
Hexanols or TAME [1]	$C_6H_{14}O$	0.1566

[1] TAME: Tertiary Amyl Methyl Ether.

As an example, suppose the GC analysis of a leaded gasoline sample finds an ethanol mass concentration of 9.85 percent and an MTBE mass concentration of 1.10 percent. The fuel oxygen content would then be:

Fuel Oxygen Content = (0.0985)(0.3473) + (0.0110)(0.1815)

Fuel Oxygen Content = 0.0362

Fuel Oxygen Content = 3.62 mass percent oxygen

From Table 4, the equivalent oxygen content is between 2.90 and 3.29 percent. Interpolation yields a final value of 3.21 percent.

Potential Effect of Sun Waiver Request for 15 Percent MTBE

As mentioned elsewhere in this notice, Sun Refining and Marketing Company has requested a waiver under section 211(f) for a blend of 15 percent MTBE with unleaded gasoline (52 FR 11701, (April 8, 1988)). A waiver is not legally required for such a blend with leaded gasoline. If the Agency does not act to approve or disapprove the waiver by the end of September 12, 1988, the request will be automatically granted under section 211(f)(4). A blend of 15 percent MTBE by volume with gasoline has an oxygen content of 2.7 percent. Therefore, if the Agency does not deny Sun's waiver, blends of up to 15 percent MTBE could be used to comply with the proposed FIP's requirement for 2.57 percent equivalent oxygen content.

The court-ordered deadline for final promulgation of the FIP is August 10, 1988. If the Sun request has not been granted (or deemed granted) when EPA promulgates the FIP, the final FIP will not differ from the proposal in order to incorporate elements of the pending Sun request. Subsequent granting of the Sun request would provide regulated parties additional flexibility in complying with the FIP, however.

If the Sun request is granted (or deemed granted) prior to final promulgation of the FIP, a new FIP alternative would arise, namely that the FIP require all fuel introduced into commerce to contain 2.57 percent equivalent oxygen, without the opportunity for demonstrating compliance through monthly averaging and trading of oxygen credits and without the associated reporting requirements. It should be noted that EPA's proposed enforcement approach under the averaging/trading system would already allow each party subject to the equivalent oxygen content requirement, as proposed, to elect to comply on a "per batch" basis.

There would be some disadvantages of a uniform oxygen requirement, however, including the lack of public access to gasoline with levels of oxygen below the requisite level. Also, ethanol blenders would have no market for their excess oxygen credits. Compliance monitoring, however, would be significantly enhanced, as fuel could be directly sampled at service stations and other facilities. EPA therefore, is considering the option of a "per batch" approach as an alternative to averaging/trading if the Sun request is approved before the FIP is promulgated (just as it proposes elsewhere in this notice if further SIP controls reduce the required

oxygen content to 2 percent or less). Similarly, if the FIP is promulgated before a waiver is issued to Sun, the Agency would consider revising the FIP to rescind the averaging/trading alternative. EPA requests comments on these alternatives. As with the proposed 2 percent minimum oxygen content standard discussed above, if this alternative is adopted, the Agency anticipates promulgation of a liability regulation very similar to that described in the recent fuel volatility proposal (52 FR 31274).

Gasoline Volatility Control Not Proposed

Arizona statute requires all gasoline-type motor vehicle fuels to comply with the quality specifications in the American Society for Testing and Materials (ASTM) document titled D439–83. Among these specifications is a schedule for Reid Vapor Pressure (RVP), a measure of the tendency of gasoline to evaporate at 100 degrees Fahrenheit (°F). The ASTM RVP maximum for Arizona for the months of October through March are 10.0, 11.5, 13.5, 13.5, 13.5, and 11.5 pounds per square inch (psi), respectively. Proposals have been advanced by several parties to require reductions in these limits as a means to reduce CO emissions. EPA does not propose to include any such reductions in the FIP for Maricopa County, for reasons explained immediately below. As will be mentioned again further below, EPA also proposes not to grant any CO emission reduction credits for any RVP reductions which may be adopted by Arizona and included in a subsequent SIP revision.

EPA believes that it has been well demonstrated that gasoline RVP does affect vehicle CO emissions for some vehicles and under some conditions. Specifically, an RVP decrease from 11.5 psi to 9.0 psi has been shown by tests on over 500 vehicles to decrease the CO emissions of 1981–82 model year passenger cars by about 16 percent and of 1983 and newer cars by about 22.0 percent when these cars are tested according to the official Federal Test Procedure (FTP) (*See* 40 CFR Part 86 for a full description) for measuring vehicle emissions. A sample of nineteen pre-1981 model cars has shown a reduction of about 8 percent under similar testing. Awareness of these test results is what prompted the interest in RVP control in Arizona.

During the FTP testing programs that produced the results quoted above, the vehicles were kept at room temperatures between 75 °F and 80 °F, and the fuel in the vehicles was at about 86 °F at the time measurement of CO emissions began.

EPA's decision not to propose RVP reductions in the FIP stems from the fact that these temperature conditions are not representative of all the ambient conditions under which serious CO exceedances occur in Maricopa County. There have been far fewer vehicles tested for RVP effects on CO at lower ambient temperatures, and the effects have been far less in magnitude than the reductions observed at 75–80 °F. Specifically, fifteen 1983 and newer vehicles tested at 50 °F showed a reduction of only about 5 percent when tested at 9.0 psi RVP versus 11.7 psi. Twelve 1981 to 1983 vehicles tested by Chevron at 43 °F had CO emissions at 9.0 psi RVP that were about 4 percent higher than at 12.0 psi. Scientific theory is consistent with these observations of smaller CO reductions at these cooler temperatures.

In the October through March period, monthly average daily minimum temperatures in Phoenix range between 37.6 °F and 56.8 °F, well below the 75–80 °F temperature of the FTP. In December, January, and February, even the average daily maximums are below 70 °F, (66.4 °F, 64.8 °F, and 69.3 °F, respectively). Warmer days than these averages do occur, and in fact the MAG CO Plan uses a warm day (daily high of 78 °F) as its "design day." However, CO exceedances occur on average days and on cooler than average days as well as on such unusually warm days, and the FIP (or SIP) must provide for attainment on all days. Furthermore, while many of the CO exceedances in Phoenix occur in the evening and seem likely to be heavily influenced by emissions from vehicles that are at temperatures similar to that day's high reading, exceedances also occur in the morning when temperatures are about 20 °F cooler. In EPA's opinion, the CO reductions at the cooler temperatures that are important in Phoenix are too small and too uncertain to cause EPA to rely on RVP reductions in its proposed FIP, or to propose to approve emission reduction credits for any RVP reductions in a SIP revision. EPA has not investigated in much depth the cost and practicability of RVP reductions in Phoenix, and takes no position on these aspects at this time.

While EPA is not proposing any RVP reductions for the FIP, EPA believes that the concept merits further investigation and consideration as a later supplement or substitute for other measures in the SIP and FIP. The CO benefits may be more significant than they may seem at first from the above discussion. For one thing, the exact distribution of temperature conditions under which CO violations occur has not been thoroughly documented. Also, Arizona's RVP limit of 13.5 psi in December, January, and February (and Phoenix's survey-determined average January RVP of about 12.5 psi) is higher than the 11.7 psi test fuel used in the available 50 °F tests and the 12.0 psi test fuel used in the 43 °F tests. At 75–80 °F and no doubt at cooler temperatures the CO response to RVP is non-linear and becomes stronger at higher RVP levels. A reduction from a starting point typical of Phoenix gasoline may yield larger reductions than observed in the testing done to date. EPA intends to continue to investigate the RVP, CO, and temperature relationship. Comment and additional test data are invited.

Finally, while EPA is not proposing to promulgate or grant emission reduction credits for RVP reductions from current levels because of their uncertain effects at cooler temperatures, EPA is concerned about the negative effects of RVP increases. Some CO exceedances—the design exceedance in the MAG CO Plan in particular—occur during periods when the ambient temperature is 75 °F or higher, and any RVP increase will definitely cause CO emission increases during such exceedances. In fact, the RVP effect on CO theoretically should become even more adverse at temperatures about 75 °F; tests on four vehicles at 95 °F confirm this. As discussed above, EPA therefore proposes to account for and compensate for the RVP increase which it expects will be a side effect of the oxygenated fuels regulation that is included in the proposed FIP.

Implementation of the Proposed Federal Oxygenated Fuels Program

EPA believes that the proposed federal oxygenated fuels program has been structured so that it may be implemented by EPA without interfering with any state or local regulatory activities. There may, however, be some duplication of activity and the associated higher costs to industry and businesses. EPA requests comments on how federal, state, and local programs can be coordinated most efficiently, including whether and how implementation of the federal requirements might be delegated.

The federal oxygenated fuels regulations will not prevent Arizona from testing for and enforcing compliance with its existing standards for fuel quality. In particular, Arizona's existing limits on the volatility of gasoline, including ethanol blends, will not be overridden by the federal

program. If Arizona adopts a State oxygenated fuels program which is not effective enough to allow EPA to approve it as a complete replacement for the federal program, Arizona may legally enforce it except to the extent that it would physically preclude industry compliance with the federal requirements. Such interference seems unlikely, at least for the State proposals under discussion at present.

The oxygenated fuels program will require regulated businesses to submit plans and various reports to EPA. In the final FIP, EPA will provide a name and address for the submissions.

C. Demonstration of Attainment of the Combined State and Federal Plans

EPA's evaluation of the air quality modeling analysis in the *MAG 1987 Carbon Monoxide Plan for the Maricopa County Area* indicates that a 22.0 percent reduction in the 1991 baseline carbon monoxide emissions is needed to demonstrate attainment of the 8-hour CO standard by December 31, 1991. The State of Arizona submitted the MAG Plan as a revision to the Maricopa County portion of the state implementation plan. As discussed earlier, EPA is approving emission reduction credits for nine measures in the proposed SIP revision. Two of these measures will not be in place before 1992. The remaining seven measures will reduce the 1991 carbon monoxide baseline inventory by a total of 3.9 percent by the end of 1991. The two federal control measures that EPA is proposing for promulgation in this notice will reduce the 1991 baseline inventory by 1.8 percent from the Employer Alternative Modes Incentives Program and by 17.35 percent from the Oxygenated Fuel Program (without the trip reduction program, all the required emission reduction would be achieved with an oxygenated fuels program). All measures being proposed for either approval or promulgation in today's notice are listed in Table 6.

TABLE 6.—PROPOSED CONTROL MEASURES AND EMISSION REDUCTIONS IN THE ATTAINMENT DEMONSTRATION FOR MARICOPA COUNTY

Control measure	1991 Emission reduction [1] (percent)
State Plan:	
I/M Program—1987 Legislation	2.1
Short-Range Transit Improvements	0.1
Expanded MAG Regional Ridesharing Program	0.3
Increase Bicycle Usage	0.2
Pedestrian Travel	0.1
Conversion of Buses to Alternative Fuels	0.1
Alternative Work Hours	1.1
Federal Plan:	
Employer Alternative Modes Incentives Program	1.8
Oxygenated Fuel Program	[2] 17.35
Total	22.0

[1] As a percent of the 1991 Baseline.
[2] Without the trip reduction program, the oxygenated fuels program would achieve all the required reduction needed in addition to the state measures to attain in 1991.

The proposed oxygenated fuels program with a scheduled start date of October 1989, will provide emission reductions in the 1989–90 and 1990–91 winter CO seasons. Likewise, the trip reduction program with a start date in late 1989 will provide emissions during those seasons. By the end of 1991, the total control strategy including both SIP and FIP measures provides a carbon monoxide reduction from the 1991 baseline of 22.0 percent. This emission reduction is sufficient to demonstrate attainment of the carbon monoxide standard in Maricopa County by December 31, 1991, and Reasonable Further Progress in each year until the end of 1991.

EPA's evaluation of the MAG Plan indicated that an emission reduction of 7.8 percent in the 1995 baseline emissions will be sufficient to show attainment of the 8-hour CO standard in 1995. The control measures in the MAG Plan being proposed for approval today would achieve a 4.3 percent reduction in 1995. EPA's proposed Employer Alternative Modes Incentives Program will achieve at least 2.1 percent in 1995 and the proposed Oxygenated Fuels Program will achieve 16.4 percent in the same year. The combined emission reduction from all of these control measures is estimated to be 21.0 percent in 1995. This emission reduction is more than sufficient to show continued attainment of the CO standard through 1995. If a motor vehicle oxygenated fuels program with a higher oxygen requirement (2.79 percent) is promulgated, the emission reduction will be 21.3 percent in 1995, more than enough to show continued attainment of the CO standard through 1995.

VI. Effect on Proposal of Any Future SIP Submitted by Arizona

A. Overall Approach to Revising the FIP

It is possible that Arizona may adopt and submit as SIP revisions additional CO control measures prior to final promulgation by EPA of the FIP measures proposed above. If additional controls are submitted and if EPA determines that they are approvable for CO emission reduction credit, EPA will modify the final FIP from today's proposal. The purpose of the modifications will be to rely as much as possible on state controls rather than federal, and to provide via the FIP only as much control as needed to satisfy the 1991 attainment target.

If a legally enforceable trip reduction ordinance is adopted by the State, County, or local governments which is substantially equivalent to the MAG model ordinance and the proposed federal trip reduction regulation, and covers all or virtually all employers of more than 100 persons in the CO nonattainment area, EPA will not finalize its own trip reduction regulation. Any minor difference in the anticipated CO emission reductions from the FIP and SIP versions will be accommodated by adjusting the required average "equivalent oxygen" content in the oxygenated fuels regulation.

If creditable CO controls in addition to a TRO are approved as a SIP revision, but not including a State fuels program, EPA will lower the average "equivalent oxygen" requirement from the 2.57 percent level proposed today, so that overall only a 22.0 percent reduction in 1991 is provided by the combination of the SIP and FIP measures. For example, if no local TRO is submitted but legislation for loaded I/M testing is passed and signed, and assuming EPA decides to promulgate the proposed federal TRO, EPA would either lower the oxygen requirement to 2.33 percent or drop the TRO requirement, based on the evaluation of the benefits of loaded I/M proposed below for public comment. Generally, each additional percentage point of CO reduction from other measures will reduce the average oxygen requirement by 0.065 percentage points. If the oxygen requirement is reduced to 2.0 percent through this process, EPA proposes to use any further new SIP control credit to reduce the coverage or severity of the federal trip reduction regulation, rather than to set an oxygen content less than 2 percent.

If additional SIP controls are large enough to allow the average oxygen requirements to be reduced to 2.0 percent or less, much of the rationale for an averaging program—to achieve a level above 2.0 percent without prohibiting all sales of MTBE blends of 11 percent or less—would disappear. A simple requirement that all gasoline meet the appropriate percent oxygen level would suffice to meet both air quality and consumer choice goals, without the administrative burden to EPA of supervising an averaging program and with more certainty of effective enforcement. It would, however, prevent sales of oxygen-free gasoline during the mandate period, and it would reduce the financial incentive for ethanol blending due to the elimination of salable oxygen credits. EPA proposes this "per batch" approach as an alternative to averaging and trading in the situation described, and requests comments on which approach it should follow.

A final possibility is that Arizona will adopt its own oxygenated fuels program and submit it as a SIP revision. If it does, EPA will assign it credit in the FIP final rule, or other subsequent rulemaking, using the methods and assumptions described elsewhere in this notice. If the revised SIP achieves 22.0 percent or more, and EPA approves it, EPA will not promulgate any FIP. If the revised SIP does not provide enough CO reduction to make a federal oxygenated fuels program unnecessary but does contain some State oxygenated fuels program, EPA will face a potentially complex issue. EPA requests comment on whether it legally can and should set aside the inadequate State fuels program (for example by making a finding that it is pre-empted under section 211(c)(4) and not necessary for attainment given EPA's own program), whether the two programs should operate simultaneously except when the State program would prohibit compliance with the FIP, or whether and how EPA could fashion its program around the State's so that the required CO reduction is met with least conflict and duplication (for example, EPA might require one grade to have a higher "per batch" oxygen level than in the State's program).

B. Measures Under State/Local Consideration

The Arizona State Legislature has under consideration a number of bills which contain a variety of carbon monoxide control measures. Table 7 is a list and a description of bills currently under consideration.

TABLE 7.—AIR QUALITY BILLS CURRENTLY UNDER CONSIDERATION IN THE ARIZONA STATE LEGISLATURE AS OF FEDERAL REGISTER PUBLICATION

Oxygenated fuels	Features
HB 2206: Clean Burning Fuel Tax Bill (amended per H.B. 2014 and Senate oxygenated fuels bills; originally tax incentive bill for compressed natural gas fuel use.	2.8 percent averaged oxygen content; 10/1-3/31; begins October 1988. 1.9 percent averaged oxygen content April 1 through Sept. 30. 1 psi. RVP exemption for alcohol-blended fuel. RVP limits of 9 psi. for the summer months; 10 psi. for winter months.
Trip reduction ordinance	Features
SB 1181: Trip Reduction Ordinances (as amended by House Transportation Committee).	15 percent participation of all employees in alternative models the first year; 20 percent 2nd year. Employers of 100 employees or move per worksite are covered. Maricopa County would implement for nonattainment area.

1. Inspection and Maintenance Program Changes

Loaded-Mode Inspection and Maintenance Testing

H.B. 2014 has been introduced in the Arizona House of Representatives. A provision of this bill would require that, effective January 1, 1989, vehicles subject to the inspection and maintenance (I/M) program be tested in the loaded condition, as well as in the idle mode, to determine pass/fail status. Loaded-mode testing is not practiced in any other I/M program in the United States. EPA believes, however, that sufficient research has been done to indicate that loaded mode testing will be workable and effective for 1981 and newer model year vehicles. MOBILE 3, EPA's emission factor model, has standard emission credits for loaded-mode testing for 1981 and newer passenger vehicles and 1984 and newer light duty trucks. With respect to loaded-mode testing for older vehicles, uncertainties remain as to how many more vehicles would fail the test, what kinds of repairs they would need, and whether the current cost limits would allow those repairs to be performed. If the Arizona legislature adopts the loaded-mode test requirement, EPA may go directly to final approval at the MOBILE 3 level of credit (i.e. for 1981 and newer model year vehicles). This revision to the Arizona I/M program will achieve a 3.7 percent CO emission reduction. EPA will likely repropose emission credits for older vehicles in a separate rulemaking after the State specifies certain parameters for the older vehicles such as loaded cutpoints, failure rate targets and waiver targets.

Boundary Expansion

Two bills, S.B. 1176 and S.B. 1390, have been introduced in the Arizona Senate. Each bill would expand the I/M program coverage area from the nonattainment portion of Maricopa County to the entire County, making a greater number of vehicles subject to the program. Should this revision be adopted by the legislature, EPA would propose approval in a separate rulemaking after evaluating the State's estimate of the benefit to be obtained from the expansion.

Repair Cost Limit Increase

H.B. 2014 and S.B. 1390 would increase the repair cost limit to obtain a waiver from $50 to $100 for vehicles manufactured in or before the 1974 model year. This change would result in more vehicles in this age category being repaired to standard. Since older vehicles generally make a smaller contribution to the total vehicle miles traveled (VMT), however, the emission benefit of this change would be small. EPA would propose approval in a separate rulemaking after evaluating the estimate the State submits of the emission benefit to be obtained, should this revision to the I/M program be adopted.

Model Year Expansion

S.B. 1176 would increase the number of vehicles subject to the I/M program by removing the exemption for vehicles manufactured in or before the 1966 model year. The benefit obtained from adding these vehicles to the program is likely to be small, because vehicles of this vintage make a small contribution to the overall VMT. If adopted, EPA would propose approval in a separate rulemaking after reviewing the evaluation that the State submits of the emission reduction to be achieved by this revision.

2. Alternative Fuel

EPA would prefer that Arizona adopt and implement an oxygenated fuels program itself, rather than EPA carry this FIP proposal to completion. EPA is therefore pleased that the Arizona Legislature is actively considering new

legislation. In order to lay the procedural foundation for EPA to take action on any new legislation with as little delay as possible, EPA here proposes the method and assumptions that it will use in approving or disapproving new legislation and in assigning CO emission reduction credit to it. Unless the final legislation raises issues that are not adequately noticed for public comment in the following discussion, EPA intends to take action without further proposal and opportunity for public comment. If an additional proposal is essential, the proposed FIP may be finalized on schedule rather than delayed, but EPA would then continue the rulemaking process on the SIP and if appropriate rescind the FIP if and when it approves the SIP. EPA requests comment on this proposed approach and on all of the following methods and assumptions:

a. The bills containing mandates for oxygenated fuels (H.B. 2014 and S.B. 1174, 1386, 1388, and 1348) are all in principle eligible for CO reduction credits. The bills which would create tax incentives for use of oxygenated fuels (S.B. 1385 and 1453) are not eligible due to uncertainty about how they would affect sales of each type of oxygenated fuel.

b. The basis for calculation of CO emission reductions will be the EPA report "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," January 29, 1988, EPA-AA-TSS-PA-87-4. The guidance in this report must be supplemented with some additional information and assumptions to address all of the features of the Arizona bills. These additional items are listed below.

c. Unleaded gasoline sales in the Maricopa CO nonattainment area are and will be assumed to continue to be split 76 percent regular and 24 percent premium, for attainment demonstration purposes.

d. If the final legislation mandates different oxygen levels for specific grades, EPA will calculate the overall CO reduction by assuming that catalyst vehicles and other vehicles labeled for unleaded fuel only will use unleaded regular and unleaded premium at the 76/24 split. Vehicles designed for leaded fuel will be assumed to use mostly leaded fuel, but 8.4 percent of pre-1975 passenger cars and light-duty trucks under 6,000 pounds gross vehicle weight rating (GVWR), 8.4 percent of pre-1979 light-duty trucks over 6,000 pounds GVWR, and 27.6 percent of later model leaded fuel cars and trucks (of which there are few) will be assumed to voluntarily use unleaded fuel at the 76/24 split. The 8.4 percent and 27.6 percent figures come from an EPA Report "Size Specific Total Particulate Emission Factors for Mobile Sources," which will also be the source for the production share of unleaded and leaded fuel vehicles by model year. [Reference 7]

e. If the final legislation mandates one unspecified grade of high oxygen fuel (e.g., 3.4–3.7 percent) and allows the other grades to have a lower oxygen content (e.g., 1.9 percent), EPA will assume that the high oxygen grade is unleaded regular for all fuel suppliers. If two unspecified grades must be high oxygen, EPA will assume that these are leaded and unleaded regular.

f. EPA will assume no switching between the three grades of gasoline due to changes in relative price or consumer desire to use or avoid one type or level of oxygenate.

g. For any grade for which the minimum oxygen content is 1.9 percent, EPA will assume that all (except as described immediately below) fuel sold of that grade is on average 11 percent MTBE (2 percent oxygen). For any grade with a minimum of 1.8 percent, the fuel will be assumed to be 10.45 percent MTBE (1.9 percent oxygen). If the Sun Refining and Marketing Company's request for a waiver for 15 percent MTBE (53 FR 11701 (April 8, 1988)) is not approved, any grade with a minimum oxygen content above 2.0 percent will be assumed to be met by the concentration of ethanol that provides 0.1 percent more oxygen than the minimum specification not to exceed 10 percent ethanol (3.7 percent oxygen). If the Sun request is granted, this assumption will apply above 2.7 percent, but between 2.0 percent and 2.7 percent EPA will assume that MTBE is used with a 0.1 percent oxygen safety margin. These assumptions rely on the premise that Arizona will not allow an enforcement tolerance for oxygen content, so that refiners must blend to a slightly higher oxygen level by their measurements to allow for measurement variability.

If a SIP submittal indicates an intent to allow an enforcement tolerance or is not specific on this question, EPA will assume that average actual oxygen content is exactly equal to the minimum requirement. Comments are requested on both approaches.

h. The exceptions to Assumption (g) immediately above concern possible sale of 10 percent ethanol blends in a grade for which the oxygen content requirement is only 2.0 percent or less. If a major oil company, other sizable gasoline marketer, or other investor indicates in comments that it will purchase and import via pipeline from California oxygen-free gasoline of that grade and offer it for resale to distributors for use in ethanol blending, EPA will assume that 5–10 percent of sales of that grade will be gasohol (10 percent ethanol, 3.7 percent oxygen). The 5–10 percent range reflects the market share gasohol being achieved in states that do not offer State tax subsidies, mostly due to the action of independent marketers. EPA will select a value within this range based on all available comments and information. Also, if a major oil company indicates that it will itself sell an ethanol blend at its branded stations, that information will be used to determine market share also.

i. If the final legislation creates a system of oxygen credit averaging above 2.0 percent actual oxygen, but without the adjustment feature for ethanol blends which appears in EPA's own FIP proposal, EPA will assume that the gasoline industry will overall supply a product slate that in the aggregate requires the least purchase of ethanol but meets the average oxygen requirement. This implies that all ethanol blends will have 10 percent ethanol and that the industry will maintain an oxygenate sales mix of ethanol blends and MTBE blends that just meets the average oxygen requirement. EPA requests comment on whether any marketers would, on the contrary, sell ethanol blends below 10 percent. The effect of any sales of ethanol blends below 10 percent concentration, e.g., 6.7 percent ethanol blend to meet a 2.5 percent oxygen content requirement, would be to reduce the overall CO reduction achieved by a given actual oxygen content requirement, due to the RVP CO penalty being incurred for more gallons of fuel.

j. The bills now before the Arizona legislature allow ethanol blends to have a higher RVP than other gasoline. Ethanol blends will be assumed to suffer an average RVP increase of 0.76 psi and the associated CO penalty described above in the FIP proposal, even if the final legislation does not provide them such a margin on RVP. However, if ethanol blends are effectively constrained to be no higher in RVP than 1 psi less than the current ASTM limits for Arizona by month, no CO penalty will be assumed. For example, the current ASTM (and Arizona) RVP limit in January is 13.5 psi, but the average RVP of the fuel sold is about 12.5 psi. If new legislation sets a limit of 12.5 psi or less for ethanol blends for January (or if it exempts them from any RVP limit if made from gasoline which cannot exceed 11.5 psi), no CO penalty will be

assumed for ethanol blends relative to their oxygen content.

k. General reductions in RVP limits will not be given CO emission reduction credit, beyond the possible exclusion of the ethanol RVP/CO penalty that would otherwise apply as just described.

l. Any averaging period of one month or less will be assumed to yield equal oxygen levels and CO reductions on all days. An averaging period of three months would be acceptable only if the oxygen content requirement applies year round. EPA's rationale for this proposal is that in a program with a mandate period of only about six months there may be significant start-up transients in fuel composition and monthly averaging is needed to control these transients. In an annual program fuel composition should stabilize and quarterly averaging should be adequate. EPA does not recommend a full year mandate for oxygenated fuels.

m. The CO season in which control is needed will be taken to be October 15 through March 31. Retail service station storage tanks will be assumed to require two weeks to "turn over." Thus, service stations' in-tank inventories and sales must either be required to comply with the oxygen content program as of October 15 of each year or all new deliveries starting October 1 must comply. All program requirements must apply through March 31.

n. The effective dates of the program must not allow unnecessary delay in implementation.

o. The SIP must contain a commitment and resources for enforcement.

Table 8 presents estimates of the CO emission reduction credits that would be granted to each of the bills under these assumptions. The range of reductions is 12.8 percent to 20.5 percent.

TABLE 8.—PROPOSED CO EMISSION REDUCTION CREDITS FOR 1991 ATTAINMENT FOR OXYGENATED FUELS BILLS NOW UNDER CONSIDERATION BY THE ARIZONA LEGISLATURE

Bill	CO reduction	
	No declared plan to facilitate ethanol blending (percent)	With a declared plan to facilitate ethanol blending [1]
H.B. 2014 (original)	12.8	13.3–13.7 pct.
S.B. 1174 (original)	13.5	13.9–14.4 pct.
S.B. 1386 (original)	20.7	Not applicable.

TABLE 8.—PROPOSED CO EMISSION REDUCTION CREDITS FOR 1991 ATTAINMENT FOR OXYGENATED FUELS BILLS NOW UNDER CONSIDERATION BY THE ARIZONA LEGISLATURE—Continued

Bill	CO reduction	
	No declared plan to facilitate ethanol blending (percent)	With a declared plan to facilitate ethanol blending [1]
S.B. 1386 (as amended in Health and Welfare Committee).	22.3	Do.
S.B. 1388 (original)	18.6	Do.
S.B. 1348 (original)	12.8	13.3–13.7 pct.

[1] The reductions shown in this column assume that 5–10 percent of gasoline sales are 10 percent ethanol blends despite the requirement being only for 1.8 percent or 1.9 percent oxygen. EPA would accept reductions this large only if some party has declared its intent to facilitate ethanol blending by selling Los Angeles-refined oxygen-free gasoline to ethanol blenders in Phoenix.

3. Trip Reduction Ordinances

The Maricopa Association of Governments has developed a draft model trip reduction ordinance. If adopted by the MAG jurisdictions, the TRO would require employers with more than 100 employees at a worksite to reduce single-occupant commute trips by 10% within two years. A further discussion of the model is in the Employer Alternative Modes Incentives Program section (section V.B.1.) of this notice. In March of this year, the MAG Regional Council tabled approval of the model TRO until after a transit funding election tentatively scheduled for the spring of 1989. The cities, towns, and the County of Maricopa will not consider individual adoption of the TRO until the MAG Regional Council approves it.

Should the Regional Council decide to approve the model TRO and the local jurisdictions adopt it prior to final promulgation of the FIP, EPA proposes to grant a carbon monoxide emission reduction credit of 1.8% to the measure. Further, because the model TRO is similar to and would achieve the same emission reduction as the trip reduction regulation being proposed by EPA today, the Agency proposes to substitute the locally-adopted TRO for the federal trip reduction regulation. If local jurisdictions adopt the model TRO after final promulgation, EPA would propose to amend the FIP either to eliminate unnecessary federal measures or reduce the severity of those measures.

4. Other Measures

Winter Daylight Savings Time and/or Alternative Work Hours

During the fall and winter months, the Maricopa region experiences evening temperature inversions. These temperature inversions reduce the normal upward mixing of the atmosphere thereby reducing the dispersion of pollutants and exacerbating CO ambient concentrations. These inversions generally begin to form at sunset which is also the peak commute period during the winter. Measures like winter daylight savings time (shifting the time back one hour) or alternative work hours that move the commute period to a time before the onset of the inversion may reduce ambient carbon monoxide levels.

In its omnibus 1987 air quality legislation (S.B. 1360), the Arizona State Legislature requested the Department of Health Services (DHS) to study the impact on air quality of winter daylight savings time and alternative work hours. The report on this study, which was prepared by the Department of Environmental Quality for DHS, was delivered to the Legislature on April 1, 1988. EPA's preliminary review of that report shows that both winter daylight savings time and alternative work hours can reduce the severity of evening-time CO violations and the number of total violations. The report also indicates that both programs can increase the severity of morning-time violations and increase carbon monoxide emissions. It should be noted that the majority of violations of the CO standard in Maricopa occur during the evening.

Because winter daylight savings does not reduce CO emissions, EPA is unsure at this time how such a program would be credited as part of an attainment demonstration. EPA requests comments on whether such a program should be credited and on methods to credit it. As discussed earlier in this notice, EPA is proposing to credit the current alternative work hour program in Arizona with a 1.1% emission reduction. In addition to shifting commute trips to periods before the onset of the evening inversion, alternative work hour programs can reduce emissions by reducing traffic congestion during the commute period. EPA requests comments on methods to credit additional alternative work hour programs in the Arizona SIP.

Voluntary No Drive Day Program

During the 1987/88 winter season, the Maricopa Regional Transportation

Authority and the Phoenix Chamber of Commerce jointly conducted a voluntary no drive day program. The "Don't Drive One Day in Five" program requested commuters to use alternatives to their single-occupant vehicle one day per week in order to improve air quality. Behavioral and VMT studies made during the program indicated that some change in commute habits were occurring.

In its CO Plan, MAG took substantial emission reduction credit for this measure. In reviewing the program to determine if credit should be given, EPA was concerned about the institutional features and future funding of the program and decided that it should not grant emission reductions for the measure until the State made changes to the program. EPA's concerns are discussed in more detail earlier in this notice.

Should the State make the necessary changes to the program, EPA would need to evaluate the program's performance before determining an appropriate reduction credit. At that time, EPA would propose modifications to the FIP to account for the new reductions from the SIP.

VII. Proposed Findings Under Section 211(c)(4)(C)

As noted above, EPA proposes to promulgate an oxygenated fuels requirement applicable to portions of Maricopa County. EPA also proposes to approve as part of the Maricopa CO SIP the oxygenated fuel provisions of any legislation which substantially resembles H.B. 2014, S.B. 1174, S.B. 1386, S.B. 1388, or S.B. 1348 if signed by the Governor and submitted as a SIP revision, and to grant CO emission reduction credit towards the attainment target according to the method and assumptions stated above. One question arises whether EPA must make the finding described in section 211(c)(4)(C) of the Clean Air Act prior to promulgating the proposed FIP program on oxygenated fuels and/or prior to any approval of new legislation as part of the Maricopa SIP.

For the reasons discussed below, EPA believes that such a finding is not required before EPA can promulgate the proposed FIP or approve a new SIP revision with legislation on Reid Vapor Pressure limits and/or oxygen content. Assuming, however, that a section 211(c)(4)(C) finding is required, EPA proposes today to make such findings as to provisions concerning oxygen content. With respect to the FIP, the proposed finding is simply that the specific proposed oxygenated fuel regulations are "necessary" under the meaning of section 211(c)(4)(C). The proposal with respect to new State legislation is made with certain limitations, and does not include all provisions of all of the bills now before the Arizona legislature. The proposal covers only an oxygenated fuels program, and only within the bounds described below. The proposed finding does not cover new State limits on Reid Vapor Pressure.

Section 211(c)(4)(A) states:

> Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the **Federal Register**, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless (the) State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

Section 211(c)(4)(C) states:

> A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

In the ANPRM for this FIP action (52 FR 45468, November 30, 1987) EPA indicated that section 211(c)(4) would allow the Administrator to promulgate an implementation plan containing a fuel-related control only if he makes this finding of necessity. After further consideration, EPA believes that this finding is required only when EPA promulgates a plan containing a State adopted fuel-related control, not when EPA promulgates a federal fuel-related control. This construction comes directly from a literal reading of the statutory language. Section 211(c)(4)(C) states first that a State may prescribe a fuel-related control in certain circumstances, and then provides that the Administrator may promulgate an implementation plan containing "such a provision," referring to the State prescribed fuel-related control mentioned above, only if he first finds that "the state control or prohibition" is necessary to achieve the NAAQS. Thus, by the express terms of the statute, this provision applies only to State-adopted fuel control measures and not to fuel-related controls promulgated directly by the Administrator.

This construction of section 211(c)(4)(C) is also consistent with the purposes of section 211(c)(4) as a whole. In drafting the section Congress was apparently concerned that where EPA had adopted (or expressly decided not to adopt) generally applicable fuel-related controls, conflicting State fuel controls should not be added to implementation plans unless necessary to achieve the NAAQS. Where EPA promulgates a federal fuel control as part of an implementation plan, however, this concern about conflicting controls from various jurisdictions would not arise, even if EPA had previously promulgated other types of generally applicable fuel-related control.

Although EPA generally tends to discuss a section 110(c) FIP in terms of only those gap-filling provisions EPA promulgates itself, it is apparent that Congress in this case thought of the FIP as the full complement of measures applicable to an area, including any State measures EPA approves for the area. This semantic difference does not in any way affect the legal construction of this provision.

Although EPA believes this interpretation of section 211(c)(4)(C) is the better reading, another reading of the section is possible that would require EPA to make a finding that any fuel-related control, even one promulgated directly by the Administrator, was necessary to achieve the NAAQS if EPA had previously pre-empted the area by adopting certain types of generally applicable fuel-related controls. Under the latter statutory interpretation (which EPA does not believe is correct) and in case EPA decides to approve new legislation in Arizona, the threshold question is whether EPA has pre-empted such a measure in either of the two ways described in section 211(c)(4). The Agency wants to stress that it does not believe that either form of pre-emption has occurred in this case.

First, EPA has not made the finding, described in subparagraph (i) of paragraph (A), that no fuel control or prohibition under paragraph (1) of section 211(c) is necessary; and clearly has not published any such findings in the **Federal Register**.

Second, EPA does not believe that it has prescribed the type of fuel control contemplated in subparagraph (ii) of paragraph (A). EPA believes subparagraph (ii)'s reference to "a control or prohibition applicable to such

fuel or fuel additive" was intended to include only the same type of fuel control that the regulation in question is attempting to prescribe. Under this approach, section 211(c)(4)(A)'s prohibition of the adoption of a particular type of fuel control would be triggered only if EPA had already prescribed, by regulation under section 211(c)(1), the same type of fuel control as at issue in the case at hand—in this case, controls on Reid Vapor Pressure (RVP) and/or the oxygen content of fuels. Since EPA has not prescribed any control on the RVP or oxygen content of any fuel by section 211(c) rulemaking,[8] the Agency believes that the pre-emption described in subparagraph (ii) has not yet occurred and that Arizona is free to adopt its own RVP and/or oxygen content control, and EPA is free to approve a SIP which includes them without making the special finding described in section 211(c)(4)(C). For the same reasons, EPA also believes it may promulgate oxygen content controls of its own without this finding even if section 211(c)(4)(C) applies to Federally promulgated fuel-related controls.

Even if preemption has occurred,[9] however, EPA believes that it may still promulgate the proposed FIP controls and approve certain types of State provisions for limits on oxygen content because the Agency can make the finding under section 211(c)(4)(C), which would authorize promulgation/approval and, thus, eliminate the preemption problem. As set forth above, section 211(c)(4)(C) authorizes EPA to promulgate/approve into the SIP a State-adopted fuel control measure that has otherwise been pre-empted by EPA action if EPA finds that the State control "is necessary to achieve the standard" that the SIP implements. EPA interprets this language to require the Agency to find that the fuel control requirement is essential to achieve timely attainment of the standard. EPA believes that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable. Otherwise, no fuel control would ever be "necessary", since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the CO NAAQS. It is doubtful that Congress would have intended to bar EPA from promulgating/approving State fuel controls into a SIP based on the availability of such drastic alternatives.

It is clear that the reductions achievable by an oxygenated fuels program are essential to bringing about timely attainment of the CO standard in the Maricopa CO nonattainment area. Maricopa needs a reduction in CO emissions of 22.0 percent (relative to the MAG plan's baseline control program) to attain in 1991. The other measures that are being proposed for approval and emission reduction credit will provide only a small portion of those reductions. The SIP as it stands now has an unmet reduction need of almost 19 percentage points of this 22.0 percent target. Even with a locally adopted or federally implemented trip reduction program for large employers, a further reduction of about 17 percent would be needed. A portion of this could be obtained from the loaded I/M test provision of H.B. 2014, leaving an unmet reduction need of about 14 percent.

It is apparent that the unmet reductions needed to attain by 1991 must be largely satisfied by a fuels modification program of some sort. The alternative CO control measures that would achieve the emission reductions necessary to bring about attainment in that time frame without a fuels program—e.g., gas rationing, severe road tolls, substantial gas taxes, enforced curtailment of driving—would impose unreasonable costs and burdens on the local population. Some other, longer-term measures, such as further implementation of existing strategies (e.g., bus lanes and other mass transit improvements) and new measures like a light rail transit system, might ultimately become available for implementation in Maricopa, but not by 1991. EPA, therefore, believes it can find that a fuels program is "necessary" for attainment. EPA proposes to make such a finding for the specific program contained in the proposed FIP. However, attention must be paid to the limits of the possible finding with respect to specific requirements which might appear in new State legislation.

First, because EPA (1) believes that a properly crafted oxygen content requirement can provide for 1991 attainment under both warm and cool ambient conditions but (2) is uncertain of the CO emission reduction effectiveness of RVP reductions at cooler temperatures that are important in Phoenix, EPA does not believe it can make the required finding of necessity for any CO-related State program of more stringent RVP limitations. EPA does not have before it for action an ozone or other SIP revision which might support a finding with respect to RVP limitations outside the CO season. Therefore, EPA does not propose a section 211(c)(4)(C) finding with respect to more stringent State RVP controls. If, contrary to EPA's belief, pre-emption with respect to RVP has occurred, EPA's future approval of a CO SIP revision containing new fuels legislation will not authorize Arizona to enforce such RVP controls.

Again, the Agency wants to stress that it does not believe Federal pre-emption of a State oxygenated fuels and/or RVP program has occurred. Nonetheless, EPA believes it can make a section 211(c)(4)(C) finding for State controls on oxygen content and wishes to do so today. The Clean Air Act, however, may not intend that EPA approve expansive State programs that exceed the requirements for attainment just because some lesser program is "necessary." Some of the bills now before the legislature clearly do exceed the requirements for attainment in that they extend farther beyond the boundaries of the Maricopa CO nonattainment area than reasonably needed to affect CO emissions in the CO nonattainment area, they extend into months of the year in which CO violations do not occur (or in which the CO exceedances are at low enough concentrations that they would be eliminated by 1991 without oxygenated fuels), or they have the possible effect of requiring a higher level of oxygenation than required for attainment. The Agency requests comments on these and any other potential State program elements that might exceed the requirements for attainment.

To address these issues and to lay the procedural foundation for final approval of new legislation without need for another **Federal Register** notice and period for public comment, EPA lists the following as conditions or restrictions on its proposed finding that an oxygenated fuels program is "necessary" within the meaning of paragraph (C) of section 211(c)(4). These would only apply if pre-emption exists.

[8] EPA has established limits on oxygen content for certain new fuels that have been granted waivers under section 211(f) of the Act for introduction into commerce, but has taken no such action under section 211(c).

[9] One court, in *Exxon* v. *City of New York*, 548 F.2d 1088 (2d Cir. 1977), has suggested that EPA'S regulation of the lead content of gasoline amounts under subparagraph (ii) to the preemption of State controls of any aspect of the content of gasoline (unless identical to the federal lead content control). As described in the text above, EPA does not agree with that holding and hence does not believe that the reasoning of the decision should apply in other cases. Nevertheless, the discussion in the text below addresses the hypothetical case in which a court construing subparagraph (ii)'s application to the Maricopa SIP/FIP were to agree with the result in *Exxon*.

EPA requests comments on the appropriateness of these conditions. To the extent that the provisions of new legislation by Arizona conform to these conditions, a final finding by EPA will allow Arizona to enforce those provisions. If there is actual legislation submitted as a SIP revision that poses issues of approvability that are not adequately addressed by these conditions, EPA will repropose its finding and provide further opportunity for comment. (The Agency may modify some of the specific details described below based on comments received in response to the proposed FIP.)

1. The State program may restrict only fuel introduced into commerce in the Maricopa CO nonattainment area. Fuel in other areas may fall under restriction only as reasonably necessary to allow for an enforceable program for the benefit of Maricopa County. This might, for example, require the regulation of all fuel passing through the pipeline terminal tank farm in Phoenix, or an expansion of the program boundaries to incorporate all of Maricopa County.

2. The oxygen content restriction may apply to fuel first introduced into commerce between October 1 of one calendar year and March 31 of the next calendar year. It may apply to fuel actually dispensed from refueling stations only between October 15 and March 31.

3. The level of the oxygen content requirement or specification(s) may only be such that in combination with other CO controls that have been adopted the CO reduction achieved is no larger than needed to complete the 22 percent reduction target for 1991 attainment, within a reasonable limit. This consideration allows Arizona to select between, for example, a loaded I/M test and a higher level of stringency for the oxygen content requirement. EPA will exclude any Federally promulgated trip reduction program in judging satisfaction of this condition.

EPA also request comments on two remaining issues in the area of preemption. The first is what EPA can and should do in a final SIP approval action if the actual fuels legislation submitted in a SIP revision conforms in part to the above three conditions but not entirely. For example, Arizona might adopt an oxygen content law that applies only in the Maricopa CO nonattainment area, but runs year round. EPA requests comment on whether the provisions of new State legislation can be considered separable for purposes of a section 211(c)(4)(C) finding. This would allow EPA to make a finding only with respect to October through March, for example. Comment is requested on the separability issue generally and on what the State's obligation would be, if any, to repeal provisions that are not approved by EPA. Since EPA believes preemption does not apply at all in this case, EPA believes that no obligation exists.

The second remaining issue concerns the exact wording of the section 211(c)(4)(A) restriction on State action: "no State * * * may prescribe or attempt to enforce * * *". EPA believes that this does not require Arizona to obtain a final EPA finding under section 211(c)(4)(C) before enactment of legislation, even though the enactment might be in some sense a prescription in itself. If legislation is enacted and a finding is made after enactment, the single issue of timing should not in EPA's opinion be an obstacle to EPA approval and should not leave the legislation open to challenge in court.

VIII. Economic Impact

The Agency has estimated the cost of the proposed alternative fuels program based primarily on the results of existing economic analyses that evaluated such a requirement as a CO reduction strategy. Most of these studies were done for the Denver area, because that region was the first to mandate the use of oxygenated fuels beginning with the winter of 1988. [Reference 8, 9, 10] However, there has also been one study by Energy and Environmental Analysis, Inc. (EEA) for the Maricopa Association of Governments (MAG) that focused specifically on Maricopa County. [Reference 11]

The cost of the oxygenated fuels program for the Phoenix area is comprised of many elements. Several of the most important are: (1) The cost of the pure oxygenate compound (e.g., MTBE or ethanol), including delivery charges if blending is performed locally rather than at the refinery or if the refinery is remote from the source of the oxygenate compound; (2) the amount of the oxygenate used in the blend; (3) whether a special low volatility gasoline must be used for blending; (4) whether cost-saving refinery adjustments can be made to reduce the octane of the oxygen-free base gasoline; (5) the cost of any necessary fuel distribution equipment changes and maintenance, including storage tank cleaning for ethanol blends: (6) credits for any federal tax incentives that may apply to ethanol blends (e.g., the six cent per gallon federal excise tax exemption); (7) the possibility of a small fuel economy penalty that may accompany the use of oxygenated fuels relative to gasoline; and (8) the amount of fuel consumed during the mandated compliance period.

The overall cost of the program can be expressed as the expected increase in gasoline prices during the mandatory compliance period. These values are readily available, or can be computed, from the above referenced studies for Gasohol (10 percent ethanol) and 11 percent MTBE. The estimated increase for Gasohol ranges from 0.7 to 7.4 cents per gallon. For 11 percent MTBE, the estimated increase ranges from 0.05 to 3.4 cents per gallon. Using the upper and lower end of these cost estimates, the total annual cost for oxygenated fuels in the Phoenix area can be roughly approximated. Based on a six month compliance period, fuel consumption in the Phoenix area of approximately 3 million gallons per day, and a program consisting of a 50 percent market share for Gasohol and 11 percent MTBE, respectively, the annual cost of the program is estimated at between $8 million and $31 million. More complete information on EPA's economic analysis is available in the Technical Support Document.

EPA has estimated the cost to the regulated community of the proposed Employer Alternative Modes Incentives Program (EAMIP) based on the information developed for MAG by K.T. Analytics, Inc. [10] K.T. Analytics looked at the costs of implementing trip reduction programs at several employers in the San Francisco Bay Area. Most of the employers surveyed are located in the suburban sections of the Bay Area and not in San Francisco proper; therefore, the primary commute mode of their employees is the single-occupant vehicle, a condition which is mirrored in Maricopa County.

K.T. Analytics found a wide range in the cost of trip reduction programs. Factors influencing the total cost included number of employees, location of the worksite, full- or part-time transportation coordinator position, and most importantly the number and type of trip reduction incentives offered. The most expensive programs were those that had full-time transportation coordinators and offered shuttle buses from or to transit stations and/or subsidized vanpools.

From its survey, K.T. Analytics estimated the average cost to employers for trip reduction programs. These costs are shown in Table 9. Average costs are broken down by employee size—"large" employers (more than 1,000 employees) and "small" employers (less than 500

[10] K.T. Analytics, Inc., "Review of TSM Ordinances and Parking Management Programs for the Maricopa Association of Governments," August 24, 1987, pp. 19–20.

employees)—and by program complexity—"moderate" and "extensive." Moderate programs typically have part-time (i.e. half-time or less) transportation coordinators, company rideshare matching programs, but no carpool or vanpool subsidies. Moderate programs can include bus pass subsidies. Extensive programs have full or nearly full-time coordinators, car or vanpool subsidies,[11] and/or shuttle bus services.

TABLE 9.—ANNUAL COST RANGES FOR EMPLOYER TRIP REDUCTION PROGRAMS

Level of effort	Employer size	
	Small	Large
Modest	$10,000-$20,000.	$30,000-$60,000
Extensive	$30,000-$60,000.	$100,000-$250,000

Before describing the total cost to employers in Maricopa County of implementing the proposed Employer Alternative Mode Incentives Program, two points should be made. First, the costs described below are to the employer not to the individual commuter. Second, it is the employer who selects the incentives that he will offer his employees. While the proposed EAMIP has some fixed costs, the greatest determining factor in the cost of the regulation to the individual employer is the package of the incentives he offers. Because the proposed EAMIP does not dictate what incentives must be offered, the employer is free to choose from among the myriad of incentives the ones that are appropriate to his worksite and his employees.

Fixed costs to the employer under the proposed EAMIP are the dissemination of alternative mode information,[12] conducting and analyzing an employee survey, preparing a trip reduction plan and annual report, and appointing a transportation coordinator. EPA believes that the greatest fixed cost to most employers will be appointing a transportation coordinator. EPA estimates that an employer with up to 500 employees will need to staff the transportation coordinator position for a maximum of one day per week and in most cases less, especially after the program is up and running, and if a coordinator is shared by a group of employers. The staffing required at larger employers will depend on the complexity of the trip reduction program.

While EPA has estimates of the cost of trip reduction programs for individual employers, it is difficult to calculate the cumulative employer costs because little data is available on the number of employers with more than 100 employees at a worksite. This information is not routinely collected, and when it is, it is generally considered confidential. Regional profiles of employer sizes, which are readily available, are misleading because many employers (e.g. supermarket chains, school districts, banks) have dispersed workforces. While K.T. Analytics estimates that there are over 1100 employers of more than 100 employees in the MAG region,[13] the MAG Transportation Planning Office (MAGTPO) estimated when modeling the impact of the model MAG trip reduction ordinance that there are approximately 700 worksites with more than 100 employees, 125 of which have more than 350 employees.[14] EPA used MAGTPO's figures on the numbers of worksites to determine the regional costs of the EAMIP.

Because the MAGTPO numbers are not broken down any further than between 350 or more and 100 or more employees at a worksite, EPA assumed that costs for a "large" employer in Table 6 are applicable to all employers with 350 or more employees at a worksite and that the cost for a "small" employer are applicable for employers with 100 to 349 employees at a worksite. Based on this assumption and the upper and lower ends of K.T. Analytics' figures, the range of the total cost of complying with the proposed EAMIP can be approximated as between $9.5 and $65.8 million. Given the relatively low trip reduction goals in the proposed EAMIP, EPA believes most employers will need only modest programs to comply with the regulation. Under this assumption, total regional costs for employers for the proposed EAMIP range from $9.5 to $19.0 million. Finally, these costs should not be evaluated in isolation, but should be weighed against the broader benefits that TROs provide to all commuters, employers, transit/rideshare programs, local governments, and taxpayers. These benefits include decreased congestion, decreased trip times for non-affected commuters, delayed infrastructure investment, reduced employer parking requirements, and increased transit/rideshare usage.

In assessing whether to implement (1) a trip reduction program in combination with an oxygenated fuels program or (2) an oxygenated fuels program with a higher oxygen requirement, EPA intends to examine the relative costs of each program. More specifically, the costs of raising the oxygen requirement from 2.57 percent to 2.79 percent will be compared to the costs of implementing the trip reduction ordinance. Should evidence become available that raising the oxygen requirement can be implemented effectively with lower costs, EPA would consider this result along with other advantages and disadvantages of the measures in its decision on the nature of the final promulgated rule. The Agency is seeking information and comments on the costs of these approaches for attaining the necessary CO reduction in Maricopa County.

The two alternative control strategies considered in this package have differing cost effectiveness. The alternative fuels program is likely to have cost effectiveness values from $100 to $700 per ton of CO reduced. For the TRO, the cost effectiveness is likely to range roughly from $1000 to $5000 per ton of CO reduced. These values are based on very preliminary information. EPA will be undertaking a more detailed analysis of the costs and cost effectiveness of this program between the proposal and final promulgation. EPA requests comments on the costs and cost effectiveness of the alternative control strategies proposed today, and on the utility of considering costs and cost effectiveness in making the final decision.

IX. Secondary Environmental Effects

An increase in emissions of volatile organic compounds, a precursor to ozone, may be associated with the use of oxygenated fuels in the fall and winter months. This would result if the oxygenated fuels have a higher volatility than existing gasoline fuels. Arizona regulated gasoline volatility during the spring and summer months. EPA's proposed oxygenated fuels program will not affect these limits on gasoline volatility.

[11] A car or vanpool subsidy can range from free or subsidized parking to employers covering the entire cost of operating the car or vanpool (purchase of the vehicle, maintenance, gasoline, and insurance). A typical "subsidy" is the employer leasing or purchasing the vehicle, providing maintenance and insurance, but recovering all or part of the cost by charging the car- or vanpool members a monthly fee.

[12] Under the proposed method of implementing the EAMIP, much of this information would be prepared by EPA or its contractor and provided to the employer. The employer would then need to copy it for dissemination to his employees.

[13] Memorandum Kiran Bhatt (K.T. Analytics, Inc.) to Lindy Bauer (MAG), on "summary of Regional and Local Data," November 16, 1987, p.5.

[14] Maricopa Association of Government Transportation Planning Office, *Documentation of Traffic Modeling and Transportation Control Measure Analysis for Use in the Air Quality Modeling for the Maricopa County Nonattainment Area* (April, 1987), pp. 5-6.

In order to determine whether a potential increase in volatile organic compounds emissions could cause violations of the ozone NAAQS, EPA reviewed the historic ozone data for Maricopa County. During the fourth quarter of 1981, one exceedance, just slightly above the ozone NAAQS, was recorded in the region. Since that time, EPA's air quality data shows no ozone exceedances at any monitoring station within Maricopa County between October 1 and March 31. Indeed, the typical maximum observed concentration for this six month period since 1980 is substantially below the ozone NAAQS of 0.12 ppm.

Ambient concentrations above the standard typically occur between June and August with the highest number and levels of ozone exceedances occurring in August. Based on this analysis of seasonal ozone data, EPA does not expect that the oxygenated fuels program will cause or contribute to any violations of the ozone standard in the Maricopa area. [Reference 12]

The use of oxygenated fuels may also affect the emissions of other exhaust pollutants such as formaldehyde. This pollutant is of concern because laboratory animal testing and limited epidemiological studies have shown this compound has the potential to cause cancer in humans. An EPA-sponsored study showed that total aldehydes can increase 20–45 percent with the use of ethanol blends. [Reference 12] The increase with MTBE blends was similar. However, very little of this increase for the ethanol blends studied was caused by changes in formaldehyde emissions. Instead, most of the increase in total aldehydes is believed to be associated with a greater production of acetaldehyde. This compound has been found to be carcinogenic in some animal studies, but there is inadequate evidence of its carcinogenicity in humans. The animal data that is available indicated acetaldehyde would have a carcinogenic potency of at most four percent that of formaldehyde. It is also important to note that mobile source emissions of formaldehyde and total aldehydes in general will continue to decrease as exhaust hydrocarbons continue to decrease with more newer model year vehicles in the fleet. Therefore, the use of gasoline oxygenate blends will not reverse the trend towards lower formaldehyde and total aldehyde emissions as older vehicles are replaced with newer ones.

X. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposal does not constitute a major proposed regulation, as defined in section 1(b) of Executive Order 12291. Specifically, the proposed rule will cost less than $100 million annually, will cause no major price increases, and should not have a significant adverse effect on competition, productivity, or investment. Accordingly, no Regulatory Impact Analysis is necessary. However, the Agency has prepared a Technical Support Document that contains a detailed assessment of the Arizona SIP revisions for Maricopa County, as well as additional technical information supporting the FIP proposal as described in today's **Federal Register.** It also contains an analysis of the public comments received in response to an Advanced Notice of Proposed Rulemaking on the Arizona FIP, which was published in the **Federal Register** on November 30, 1987 (52 FR 45466).

The Technical Support Document has been placed in the public docket and is available for review in the City of Phoenix, at the locations referenced in the beginning of today's notice. In addition, interested parties may obtain single copies through a written request to the public contact listed previously.

This proposed regulation also was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and EPA response to those comments have been placed in the public docket for this rulemaking.

XI. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify regulations that do not have a significant impact on a substantial number of small entities. I certify that this proposed regulation will not have such an effect for three primary reasons. First, many of the entities affected by the proposed rule are not "small." Refiners, large distributors, service stations owned by major oil companies or large independent companies (accounting for about 25 percent of public refueling facilities), and employers with 100 or more employees do not constitute small entities. Second, the geographic scope of the proposed regulation as it may affect small entities is limited to a portion of Maricopa County, Arizona. Third, compliance with the alternative fuels program generally will not have a significant impact on a substantial number of small entities because of the limited capital investment required. Fourth, and finally, there are no significant reporting requirements for service stations under the averaging scheme of the proposed alternative fuels program. Nonetheless, the Agency request comments on the economic effects of this proposed rulemaking on small businesses in the Phoenix area.

XII. Reporting and Recordkeeping Requirements

The information collection provisions relating to the proposal have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from the Information Policy Branch; EPA 401 M Street SW., [PM–223] Washington, DC 20460 or by calling (202) 382–2706. Comments may be submitted to EPA at the above address, but should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7462.

Date: May 10, 1988.

Lee M. Thomas,

Administrator.

Arizona FIP NPRM Federal Register References

1. "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," U.S. EPA, OAR, OMS, EPA–AA–TSS–PA–87–4, January 29, 1988.

2. "Selected Gasoline Survey Results for Arizona as Conducted by the Motor Vehicle Manufacturers' Association," Memorandum to P. Lorang from C. Harvey, U.S. EPA, OAR, OMS, May 5, 1988.

3. Letter to Senator P. Corpstein, Arizona State Senate from D. B. Smith, Chevron U.S.A., Inc., February 17, 1988.

4. Letter to Representative J. Jewett, Arizona House of Representatives, from E. A. Harjehausen, Archer Daniel Midland Ethanol Sales, March 3, 1988.

5. Personal Communication to P. Lorang, U.S. EPA from B. R. Pearl, Southern Pacific Pipe Lines, Inc., March 8, 1988.

6. "Statement of Southern Pacific Pipe Lines, Inc. on the Omnibus Air Quality Act to the Arizona House Transportation Committee," B. R. Pearl, Southern Pacific Pipe Lines, Inc., February 2, 1988.

7. "Size Specific Total Particulate Emission Factors for Mobile Sources," U.S. EPA, OAR, OMS, EPA 460/3–85–005, August 1985.

8. "Economic Impact Analysis and Marketing Assessment of a Colorado Oxygenated Fuels Program," Browne, Bortz and Coddington, Inc., January 1987. (Prepared for the Colorado Department of Health.)

9. "Impact of a Mandate Oxygenated Fuels Program on Product Supply, Economics, and Consumer Costs," Rocky Mountain Oil and Gas Association, February 20, 1987.

10. "Colorado's Oxygenated Fuels Program: Economic Evaluation of the First Year," U.S. EPA, OPPE, OPA (PRELIMINARY DRAFT), April 1988.

11. "Feasibility of Using Alternative Fuels as an Air Pollution Control Strategy," Energy and Environmental Analysis, Inc., October 1987. (Prepared for the Maricopa Association of Governments, Phoenix, Arizona.)

12. "Gasohol, TBA, MTBE Effects on Light-Duty Emissions," B. Buikowski, Southwest Research Institute, EPA 460/3-79-012 (NTIS TB80224082), October 1979. (Prepared for U.S. EPA, OAR, OMS.)

For the reasons set out in the preamble, Subpart D, Part 52, Subchapter C, Chapter I of Title 40, Code of Federal Regulations, is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart D—Arizona

1. The authority citation for Part 52 will continue to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. A new § 52.136 is proposed to be added to read as follows:

§ 52.136 Oxygenated fuels program.

(a) *Regulatory standard.* No person shall first introduce into commerce within the Maricopa CO nonattainment area ("control area") during the period October 1, 1989, to March 31, 1990, and each period of October 1 to March 31 thereafter ("control period") gasoline whose equivalent oxygen content is less than 2.57% (by weight), as determined pursuant to paragraphs (b) and (c) of this section.

(b) *Sampling, testing and equivalent oxygen content calculations.* (1) For the purpose of determining compliance with the standards listed in paragraphs (a) and (h) of this section, the equivalent oxygen content of gasoline shall be determined by:

(i) Use of one of the sampling methodologies specified in Appendix A of this subpart to obtain a representative sample of the gasoline to be tested;

(ii) Use of one of the testing methodologies specified in Appendix B of this subpart to determine the mass concentration of each oxygenate in the gasoline sampled;

(iii) Calculation of the actual oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen mass concentration of the oxygenate set forth in paragraph (b)(2) of this section; and

(iv) Calculation of the equivalent oxygen content of gasoline sampled according of the methods set forth in paragraph (b)(3) of this section.

(2) For purposes of this section, the oxygen mass concentrations of oxygenates are the following:

Oxygenate	Oxygen mass
Methanol	0.4993
Ethanol	0.3473
Propanols	0.2662
Butanols	0.2158
Pentanols	0.1815
Methyl Tertiary-Butyl Ether (MTBE)	0.1815
Hexanols	0.1566
Tertiary Amyl Methyl Ether (TAME)	0.1566

(3) For purposes of this section, the equivalent oxygen content of gasoline which does not contain any alcohol oxygenate(s) is equal to the actual oxygen content of such gasoline. The equivalent oxygen content of gasoline which contains any alcohol oxygenate(s) and which has an actual oxygen content of 0.74% or greater is equal to the value derived from the following formula:

Equivalent Oxygen Content (%)
$= -0.551 + 1.037$ (Actual Oxygen Content (%))

The equivalent oxygen content of gasoline which contains any alcohol oxygenate(s) and which has an actual oxygen content less than 0.74% is equal to the value derived from the following formula:

Equivalent Oxygen Content (%) $= 0.2924$ (Actual Oxygen Content (%))

(4) *Examples*—(i) *Example 1.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A and tested by use of one of the test methodologies set forth in Appendix B. The gas chromatograph analysis indicates that the gasoline sampled contains an ethanol mass concentration of 9.85% (0.0985). The equivalent oxygen contents of the gasoline sampled is calculated as follows:

Actual Oxygen Content
= (Ethanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Ethanol)
= (0.0985) (0.3473)
= 0.0342
= 3.42%

Equivalent Oxygen Content
= −0.551 + 1.037 (Actual Oxygen Content)
= −0.551 + 1.037 (3.42)
= −0.551 + 3.547
= 2.996
= 3.00%

(ii) *Example 2.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A and tested by use of one of the methodologies set forth in Appendix B. The gas chromatograph analysis indicates that the gasoline sampled contains an MTBE mass concentration of 7.80% (0.0780). The equivalent oxygen content of the gasoline sample is calculated as follows:

Actual Oxygen Content
= (MTBE Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of MTBE)
= (0.0780) (0.1815)
= 0.0142

Actual Oxygen Content
= 1.42%

Equivalent Oxygen Content
= Actual Oxygen Content
= 1.42%

(iii) *Example 3.* Assume that a batch of gasoline is sampled by use of one of the methodologies set forth in Appendix A and tested by use of one of the methodologies set forth in Appendix B. The gas chromatograph analysis indicates that the gasoline sampled contains a methanol mass concentration of 4.50% (0.0450) and an ethanol mass concentration of 2.25% (0.0225). The equivalent oxygen content of the gasoline sample is calculated as follows:

Actual Oxygen Content
= (Methanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Methanol) + (Ethanol Mass Concentration in Gasoline Sample) (Oxygen Mass Concentration of Ethanol)

Actual Oxygen Content
= (0.0450) (0.4993) + (0.0225) (0.3473)
= 0.0225 + 0.0078
= 0.0303
= 3.03%

Equivalent Oxygen Content
= −0.551 + 1.037 (Actual Oxygen Content)
= −0.551 + 1.037 (3.03)
= −0.551 + 3.142
= 2.591
= 2.59%

(c) *Alternative compliance options.* (1) Each person subject to the standard specified in paragraph (a) of this section shall comply with such standard by means of the method set forth in either paragraph (c)(2) or (c)(3) of this section. Such person shall select the method he will use to determine compliance by means of the registration statement submitted pursuant to paragraph (d) of this section. A person subject to such

standard who fails to submit a timely and complete registration statement as required by paragraph (d) of this section shall be deemed to have selected the compliance method set forth in paragraph (c)(2) of this section.

(2) As one alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during the control period shall have an equivalent oxygen content of at least 2.57% (by weight), as determined by calculating the equivalent oxygen content of each discrete quantity of such gasoline according to the procedures set forth in paragraph (b) of this section.

(3)(i) As the second alternative means of demonstrating compliance with the standard specified in paragraph (a) of this section, all gasoline first introduced into commerce by a person within the control area during each calendar month of the control period shall have an average equivalent oxygen content of at least 2.57% (by weight).

(ii) The average equivalent oxygen content of gasoline first introduced into commerce by a person during a calendar month shall be calculated as follows:

(A) The equivalent oxygen content of each discrete quantity of gasoline in the possession of such person at the beginning of the calendar month shall be calculated according to the procedures set forth in paragraph (b) of this section.

(B) The equivalent oxygen content of each discrete quantity of gasoline in the possession of such person shall also be calculated according to the procedures set forth in paragraph (b) of this section each time during the calendar month that there is a change in its quantity and/or its characteristics that would tend to affect its equivalent oxygen content. Such changes shall include, but not be limited to, the addition of any quantity of gasoline or of any quantity of an oxygenate to gasoline in the possession of such person.

(C) The number of gallons of gasoline first introduced into commerce within the control area during the calendar month at each equivalent oxygen content level determined according to paragraph (c)(3)(ii) (A) or (B) of this section shall be multiplied by such content to determine the total equivalent oxygen content of each such quantity of gasoline.

(D) The total equivalent oxygen content of all gasoline first introduced into commerce within the control area during the calendar month shall be determined by adding together the total equivalent oxygen content amounts determined in paragraph (c)(3)(ii)(C) of this section.

(E) The total equivalent oxygen content determined in paragraph (c)(3)(ii)(D) of this section shall be added to any equivalent oxygen credits lawfully transferred to such person pursuant to paragraph (c)(3)(iii) of this section.

(F) The total equivalent oxygen content determined in paragraph (c)(3)(ii)(E) of this section shall be divided by the total number of gallons of gasoline first introduced into commerce within the control area during the calendar month, resulting in the average equivalent oxygen content of such gasoline.

(iii) A person subject to the standard specified in paragraph (a) of this section who elects to demonstrate compliance under paragraph (c)(3) of this section may create equivalent oxygen credits, and may transfer such credits to another person for use in demonstrating compliance under this paragraph, in accordance with the following requirements:

(A) The amount of equivalent oxygen credits created by a person shall be equal to the difference between:

(1) The total equivalent oxygen content of all gasoline first introduced into commerce within the control area during the calendar month by such person, as determined according to paragraph (c)(3)(ii) (A) through (D) of this section; and

(2) The total equivalent oxygen content required by paragraph (a) of this section, determined by multiplying the number of gallons of such gasoline by 0.0257.

(B) No transfer or use of equivalent oxygen credits shall be made by any person later than the final day of the calendar month in which such credits are created.

(d) *Registration [Reserved].*

(e) *Labelling.* (1) Each gasoline pump stand from which gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility in the control area shall be affixed during the control period with a legible and conspicuous label which states the type(s) of oxygenate contained in such gasoline and the equivalent oxygen content of such gasoline (percentage by weight). If the gasoline being dispensed from a pump stand does not contain any oxygenate, the pump stand shall be so labelled.

(2) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of gasoline within the control area during the control period shall contain a legible and conspicuous statement which states the type(s) of oxygenate contained in such gasoline and the equivalent oxygen content of such gasoline (percentage by weight). If the gasoline being shipped does not contain any oxygenate, the document accompanying the shipment shall be so labelled. Such documents shall be retained by distributors, resellers, carriers, retailers and wholesale purchaser-consumers for at least two years, and shall be available for inspection by the Administrator or his authorized representative during such period.

(f) *Reporting and Recordkeeping [Reserved].*

(g) *Prohibited Acts [Reserved].*

(h) *Minimum Equivalent Oxygen Content Standard [Reserved].*

(i) *Definitions [Reserved].*

Appendix A—Sampling Procedures [Reserved]

Appendix B—Testing Procedures [Reserved]

3. A new § 52.137 is proposed to be added to read as follows:

§ 52.137 Employer Alternative Modes Incentives Programs.

(a) *Definitions.* (1) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his designee.

(2) "Alternative Modes Incentives Program" means the set of incentives offered by a Major Employer to his Employees to encourage the use of Alternative Modes. These incentives may include but are not limited to

(i) Formation of Carpools and Vanpools through the matching of Employees through internal matching services or active use of regional rideshare programs; partial or full subsidization of Carpools and/or Vanpools including the leasing of vehicles or use of company-owned vehicles; provision of preferential parking for Carpools and Vanpools, or partial or full subsidization of parking for Carpools and Vanpools;

(ii) Encouraging the use of transit through the provision of transit passes at full, discounted, or no cost; provision of shuttle services; provision of route and schedule information; provision of transit stops and shelters; provision of subscription bus services; and/or working with local transit providers to improve routes and scheduling of transit services to the Worksite;

(iii) Encouragement of bicycling and walking through the use of promotions; provisions of showers, lockers for clothing, and secure bicycle parking facilities; and/or cooperation with local

jurisdictions to construct or connect walkways or bicycle routes to the Worksite;

(iv) Implementation of parking management including preferential parking for Carpools and Vanpools; parking price discounts for Carpools and Vanpools; and/or elimination or reduction of parking subsidies provided to Employees that do not use Alternative Modes;

(v) Implementation of either full-time or part-time telecommuting or other work-at-home programs;

(vi) Implementation of alternative work schedules including compressed work weeks such as "4/40" or "9/80" schedules and/or Variable Work Hours which allow Employees to use transit or rideshare more conveniently; and

(vii) Provision of on-site or close-by services such as banking, dining, postal, etc. that reduce the need for vehicles during the workday; and/or provision of taxi service or company-owned vehicles for Employee emergencies.

(3) "Alternative Mode or Alternative Transportation Mode" means any mode of transportation including Carpooling, Vanpooling, transit, bicycling, or walking but not including Single Occupant Vehicles.

(4) "Approvable Trip Reduction Plan and Annual Reort" mean an annual plan and report submitted by a Major Employer that meets the requirements of paragraph (b)(3)(i)(D) of this section.

(5) "Carpool" or "Vanpool" means two or more persons commuting together in a single vehicle.

(6) "Commute Trip" means a trip taken by an Employee from home to the Worksite or from the Worksite to home. A Commute Trip may include intermediate stops.

(7) "Date of Promulgation" means the date on which the final notice of rulemaking containing this section is published in the **Federal Register**.

(8) "Director" means the Director of the Air Management Division of the U.S. Environmental Protection Agency, Region 9, or his designee.

(9) "Effective Date" means the date that a Major Employer becomes subject to the requirements in paragraph (b) of this section.

(10) "Employee" means any person hired by a Major Employer including part-time, temporary, or contract workers.

(11) "Employer" means a person, firm, association, organization, partnership, business, trust, corporation, company, district, city, town, county, the state, any of the agencies or political subdivisions of such entities, or any agency or department of the federal government which employs workers within the Program Area.

(12) "Implementation Guidelines" means a set of guidelines to be published by the Administrator as an Appendix to this section which will explain in more detail the requirements of this regulation.

(13) "Major Employer" means an employer who employs 100 or more Employees at a Worksite.

(14) "Maricopa Regional Advisory Committee (MRAC)" means a committee of Arizona and Maricopa County government, business, and citizen representatives who meet regularly to advise the Director on the Employer Alternative Modes Incentives Program.

(15) "Preferential Parking" means parking spaces designated for Carpool and Vanpool use which are located conveniently to the entrances of buildings where Employees work, are provided at reduced cost, and/or have other amenities that are not offered to Single Occupant Vehicles, such as covering.

(16) "Program Area" means the Maricopa Association of Governments' Urban Planning Area as defined as of January 1, 1988.

(17) "Regional Administrator" means the Regional Administrator of the U.S. Environmental Protection Agency, Region 9.

(18) "Single Occupant Vehicle (SOV)" means a motor vehicle occupied by one Employee for commute purposes, excluding motorcycles, mopeds, or other two-wheeled vehicles.

(19) "Trained Transportation Coordinator" means the person(s) designated by a Major Employer as the lead person(s) in carrying out the requirements of paragraph (b)(3) of this Section. The Trained Transportation Coordinator(s) complete a training course on Alternative Mode Incentives Programs which has been certified by the Director or demonstrate equivalent experience and knowledge. The Trained Transportation Coordinator may be either a full or part-time employee of the Major Employer or a contract service hired to operate the Major Employer's program.

(20) "Trip Reduction Goal" means the reduction in Single Occupant Vehicle Commute Trips which a Major Employer shall target in his Trip Reduction Plan or shall achieve each year.

(21) "Variable Work Hours" means a program of scheduling Employee arrivals and departures at the Worksite so as to enhance ridesharing, transit, and other alternative commute mode opportunities.

(22) "Worksite" means a building or any grouping of buildings which are located within the Program Area which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-ways and which are owned, operated, or leased by the same Major Employer.

(b) *Requirements for Major Employers*—(1) *Notification Requirements.* (i) Within six (6) months of the Date of Promulgation, all Major Employers in the Program Area shall notify the Director that they are subject to the requirements of this regulation and provide the Director with the company name, address, phone number, contact person, and the number of Employees per Worksite.

(ii) Employers in the Program Area who become subject to this regulation after the initial six (6) month period shall notify the Director within three (3) months of becoming subject and provide the Director with the company name, address, phone number, contact person, and number of Employees per Worksite.

(iii) If an Employer in the Program Area who became subject to this regulation during a calendar year but failed to notify the Director within the periods required in paragraphs (b)(1) (i) and (ii) of this section notifies the Director that they are subject to the regulation between October 1 to 31 of that year, the Employer shall not be considered in violation of this regulation. However, if the failure to notify occurred in a previous year the employer may be subject to enforcement actions for that year.

(2) The Effective Dates for Major Employers of the paragraph (b)(3) of this section requirements are:

(i) For the fifteen (15) month period after the Date of Promulgation:

(A) For Employers of 500 or more at a Worksite, the Effective Date of this regulation is nine (9) months after the Date of Promulgation;

(B) For Employers of 200 to 499 at a Worksite, the Effective Date of this regulation is twelve (12) months after the Date of Promulgation; and

(C) For Employers of 100 to 199 at a Worksite, the Effective Date of this regulation is fifteen (15) months after the Date of Promulgation.

(ii) For Employers which become subject to this regulation after six months from the Date of Promulgation but before June 1, 1989, the Effective Date is fifteen (15) months after the date of promulgation. For Employers who become subject to this regulation after June 1, 1989, the Effective Date is six months from the date that they become subject to the regulation.

(iii) The Director may at his discretion assign a Major Employer an alternative

Effective Date later than the dates in paragraphs (b)(2) (i) and (ii) of this section. If a Major Employer is assigned an alternative Effective Date he shall be notified in writing at least three (3) months prior to his original Effective Date.

(3) Requirements.

(i) All Major Employers shall take the following actions:

(A) *Trained Transportation Coordinator.* A Major Employer shall appoint a Trained Transportation Coordinator within two (2) months of his Effective Date. He shall then notify the Director of the Trained Transportation Coordinator's name, work address and telephone number. The Major Employer shall maintain the position of a Trained Transportation Coordinator thereafter.

(B) *Employee Survey. (1)* Within three (3) months of his Effective Date and annually thereafter on the same date, a Major Employer shall perform a survey of his Employees' commute modes. The employee survey shall meet the requirements for employee surveys as described in the Implementation Guidelines.

(*2*) The Director may request that a Major Employer use a neutral third party to perform or certify the Employer's survey.

(*3*) A Major Employer shall maintain records of his employee surveys for a minimum of three (3) years and shall provide them to the Director within thirty (30) days of request.

(C) *Annual Trip Reduction Promotion Program.* (*1*) Within three (3) months of his Effective Date and annually thereafter, a Major Employer shall disseminate to all his Employees information on Alternative Transportation Modes with specific information on the employer-sponsored Alternative Modes Incentives Program.

(*2*) A Major Employer shall provide information on Alternative Transportation Modes and the employer-sponsored Alternative Modes Incentives Program to all new Employees upon hiring.

(*3*) A Major Employer shall post in prominent locations information on Alternative Transportation Modes and the employer-sponsored Alternative Modes Incentives Program.

(D) *Trip Reduction Plan and Annual Report.* (*1*) Within four months of his Effective Date and annually thereafter on the same date, a Major Employer shall submit to the Director on Approvable Trip Reduction Plan and Annual Report. To be approvable, the Trip Reduction Plan and Annual Report shall contain the following information:

(*i*) A description of the Trip Reduction Promotion Program which is required in paragraph (b)(3)(i)(C) of this section;

(*ii*) A report as outlined in the Implementation Guidelines of the latest annual employee survey;

(*iii*) A current and accurate estimation of the number of Single Occupant Vehicle Commute Trips made by Employees to the Worksite as determined by the latest annual employee survey;

(*iv*) A description of the Alternative Modes Incentives Program, if any, the Major Employer committed to offer in the previous year's Trip Reduction Plan including any revisions made to the Alternative Modes Incentives Program during the year;

(*v*) A description of the incentives actually offered and the Employee response to the incentives, and if any incentive contained in the Trip Reduction Plan was not offered or awarded, an explanation why it was not;

(*vi*) A discussion of the Trip Reduction Goal and if that Trip Reduction Goal was not achieved, an explanation as to why; and

(*vii*) A discussion of the coming year's trip reduction goal and a detailed description of the additional Alternative Mode Incentives, if any, that the Major Employer will offer during the coming year that are reasonably expected to achieve the Trip Reduction Goal.

(*2*) The Trip Reduction Plan and Annual Report must be signed by a representative of the Major Employer who is authorized to approve the expenditures necessary to carry out the Alternative Modes Incentives Program and who certifies the accuracy of the information contained in the Annual Report.

(*3*) The Director shall either approve or disapprove the Trip Reduction Plan and Annual Report within sixty (60) days of submittal. The employer shall be notified of the approval or disapproval. If a Plan and Annual Report is disapproved, the reasons for disapproval shall be given in writing to the Major Employer. A Plan and Annual Report disapproved by the Director shall be revised by the Major Employer within thirty (30) days of the notice of disapproval. A Major Employer may appeal the disapproval of his Trip Reduction Plan and Annual Report following the procedures in paragraph (f) of this section.

(*4*) An Approved Plan may be revised by a Major Employer between Plan submittal dates by submitting a Plan revision to the Director. The revision shall not be effective until approved by the Director. If a Major Employer finds that he is unable to provide an Alternative Transportation Mode Incentive that he has in his Trip Reduction Plan, he shall notify the Director as soon as possible but in all cases before his Trip Reduction Plan and Annual Report is due. In order to obtain approval for a Trip Reduction Plan revision, the Major Employer must show that the revised Trip Reduction Plan will still achieve the Trip Reduction Goal.

(ii) In the event that a Major Employer reasonably needs more time to appoint a Trained Transportation Coordinator, perform an employee survey, undertake a Trip Reduction Promotion Program, prepare and submit an Approvable Trip Reduction Plan and Annual Report, or implement any part of his Alternative Modes Incentives Program, additional time may be sought in writing from the Director. Additional time may be granted for good cause, but such extensions shall only be effective if given in writing, with the new submittal date specified. The Director shall notify the Major Employer whether or not the extension has been granted within 15 days of receipt of the request for extension. No extension request will be granted for any of the requirements in paragraph (b)(3)(i) of this section unless the request is received at least one week before the applicable due date of the requirement. No more than one extension per year will be granted per requirement in paragraph (b)(3)(i) of this section. The Director, at his discretion, may assign a Major Employer alternative due dates for the requirements of paragraph (b)(3)(i) of this section. If a Major Employer is assigned an alternative due date for any requirement, he shall be notified in writing at least three (3) months prior to his original due date for the requirement.

(iii) A Major Employer shall maintain for a minimum of three years from the due date, records substantiating information in his Trip Reduction Plan and Annual Report and provide the information to the Director within thirty (30) days of request. The Major Employer may assert a business confidentiality claim covering part or all of the information provided the Director. Such a claim shall be made in the manner described in 40 CFR Part 2, Subpart B.

(4) Trip Reduction Goals.

(i) The Trip Reduction Goal to be achieved by a Major Employer within one year of his Effective Date is a 5% reduction in the number of Single Occupant Vehicle Commute Trips determined in his initial survey.

(ii) The Trip Reduction Goal to be achieved by a Major Employer within

two years of his Effective Date is a 10% reduction in the number of Single Occupant Vehicle Commute Trips determined in his initial survey.

(iii) After June 1, 1991, the Director may set Trip Reduction Goals. A Major Employer shall be required to meet the new goals no earlier than one year after the Director revises the goal.

(c) *Violations.* Failure of a Major Employer to meet any of the requirements of this regulation may subject the Major Employer to enforcement actions by the Director pursuant to section 113 of the Clean Air Act (42 U.S.C. 7413). In addition the following actions may also subject the Major Employer to enforcement action:

(1) Falsifying or misreporting information in the Trip Reduction Plan and Annual Report including result of the annual employee survey.

(2) Failure to implement any part of an approved Trip Reduction Plan.

(3) Failure to meet the Trip Reduction Goal which was the same in the previous three consecutive approved annual Trip Reduction Plans.

(d) *Exemptions.* (1) A Major Employer may apply for an exemption from the requirements of this regulation which may be granted at the descretion of the Director on the following grounds:

(i) A Major Employer that has an Alternative Modes Incentives Program as of the Date of Promulgation that is either required by a condition of development or is voluntary which achieves at least a participation rate of 30% of all Employees at the Worksite in Alternative Modes. In order to obtain this exemption the Major Employer must document the effectiveness of the program annually by performing an employee survey that meets the requirements for employee surveys in the Implementation Guidelines and providing the Director with the results of the survey.

(ii) A Major Employer who hires 100 or more Employees at a Worksite for less than 3 months during a calendar year.

(iii) A Major Employer who is subject to a city or county ordinance which requires the implementation of a Trip Reduction Plan by the Employer. In order for a Major Employer to obtain this exemption, the Director shall first determine that the requirements of the ordinance are at least as effective as this regulation in decreasing SOV Commute Trips to the Major Employer's Worksite.

(2) Requests for exemptions shall be submitted in writing to the Director thirty (30) days after the Effective Date of the regulation for the Major Employer requesting the exemption. All exemptions shall be renewed annually by the same date.

(e) *Maricopa Region Advisory Committee.* (1) The Director may establish a Maricopa Regional Advisory Committee (MRAC).

(2) The MRAC, if established by the Director, may be composed of a maximum of seventeen (17) representatives of Maricopa County jurisdictions, Employers, and citizens and representatives of the Arizona State government. The members may be appointed as below. The Director may appoint members if vacancies are not filled.

(i) The Regional Council of the Maricopa Association of Governments may appoint two members who may be either elected or appointed officials or staff members of the jurisdictions. One member may represent the Cities of Glendale, Chandler, Tempe, Scottsdale, and Mesa and one member may represent the Maricopa jurisdictions with populations of less than 70,000 excluding Maricopa County.

(ii) The Maricopa County Board of Supervisors may appoint one member who may be either an elected or appointed official or staff member of Maricopa County.

(iii) The Phoenix City Council may appoint one member who may be either an elected or appointed official or staff member of the City of Phoenix.

(iv) The chairmen of the Transportation Committees of the Arizona State Legislature may appoint two members, one each, who may be members of the general public who are citizens of the Program Area.

(v) The Governor may appoint two members who may be either an appointed official or staff member of a State agency.

(vi) The Board of the Regional Public Transportation Authority may appoint one member who may be either an appointed official or staff member of the Authority.

(vii) Major Employers and Project Developers and Managers subject to this section may appoint eight members. Three of these eight members may be appointed by the Phoenix Metropolitan Chamber of Commerce. Five of these eight members may be appointed by the other Chambers of Commerce in the Program Area. The Chambers may select the members in any manner that they choose.

(3) Duties of the MRAC, if established, shall be to advise the Director on implementation of the regulation, on modifications to the regulation as appropriate, on new Trip Reduction Goals after June 1, 1991, and on alternative enforcement procedures and to provide the Director with additional liaison with Maricopa officials, businesses, and citizens on this regulation.

(4) The MRAC, if established, shall meet at a minimum once every other month in Maricopa County or more frequently at its own discretion.

(5) All MRAC meetings shall be open to the public and the committee may from time to time allow members of the general public to address it.

(6) The Chairman of the MRAC shall be elected annually by the members of the MRAC.

(7) Members of the MRAC, if appointed, serve at the pleasure of their appointing bodies. The Director may request the appointing body that a member be removed. Members who fail to attend or fail to send an alternate for two consecutive meetings may be removed and the appointing body may be requested to appoint another member.

(8) Committee members shall receive no reimbursement of their expenses.

(f) *Appeals.* (1) A Major Employer may appeal the following determinations of the Director to the Regional Administrator:

(i) Disapproval of a Trip Reduction Plan and Annual Report after submission as required by paragraph (b)(3)(i)(D)(*1*) of this section;

(ii) Denial of a request for exemption made under paragraph (d) of this section.

(2) Appeals shall be made in writing and shall be made within fifteen (15) days of the receipt of the notice of disapproval or denial specified in paragraph (f)(1) of this section. The appeal shall include a statement of the reasons supporting the appeal and a demonstration that any issues being raised in the appeal were raised to the Director prior to his decision to disapprove or deny. Within a reasonable time following receipt of an appeal, the Regional Administrator shall either grant or deny the appeal.

(3) An appeal to the Regional Administrator pursuant to paragraph (f) of this section is, under 5 U.S.C. 704 and 42 U.S.C. 7607, a prerequisite to the seeking of judicial review of the final agency action. For purposes of judicial review, final agency action occurs when:

(i) The Regional Administrator denies an appeal;

(ii) The Regional Administrator issues a decision on the merits of an appeal that does not include a remand to the Director; or

(iii) Where there has been a remand to the Director, upon completion of remand proceedings, unless the Regional

Administrators remand instructions specifically provide that appeal of the remand decision be required to exhaust administrative remedies.

(g) *Delegation.* The Administrator shall have the authority to delegate his responsibility for implementing and enforcing the Employer Alternative Modes Incentives Program pursuant to this section to an agency of the State of Arizona, to a regional agency in Maricopa County, or to a local government of Maricopa County or to Maricopa County for implementation and enforcement within its jurisdictional boundary.

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Monday
May 16, 1988

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act; Controlled Business Provisions and Miscellaneous Changes; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-88-1256; FR-1942]

Real Estate Settlement Procedures Act; Controlled Business Provisions and Miscellaneous Changes

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations for the Real Estate Settlement Procedures Act of 1974 (RESPA) in response to Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181). Section 461 defined a "controlled business arrangement", added an exemption under Section 8 of RESPA for certain controlled business arrangements, amended provisions on enforcement of Sections 8 and 9 of RESPA and gave the Secretary of HUD specific investigative authority including subpoena authority. HUD proposes a mortgage broker exemption for voluntary payments by a borrower to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such voluntary payment is disclosed on both the good faith estimate of settlement costs and HUD-1 settlement statement and is not a condition of the loan or other settlement service. HUD also proposes other changes to improve the clarity of the current regulations and to cover provisions of RESPA (*e.g.*, Section 10) which are not covered in the current regulations.

DATE: Comment due date: July 15, 1988.

ADDRESSES: Comments on rule: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and date of publication. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

Comments on information collection: Comments on the information collection requirements contained in this proposed rule should be submitted both to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. They should contain the docket number and date of publication.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Office of General Counsel, (202) 755-6550, Room 10248, or Morris E. Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, (202) 755-6720, Room 9278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The current 24 CFR Part 3500, also known as Regulation X, was issued on June 4, 1976. It covers most provisions of the Real Estate Settlement Procedures Act of 1974 (RESPA) (Pub. L. 93-533), as amended by the Real Estate Settlement Procedures Act Amendments of 1975 (Pub. L. 94-205).

RESPA contains certain disclosure requirements and restrictions for settlements involving "Federally related mortgage loans." Most sales of one- to four-family residential buildings involve Federally related mortgage loans. For RESPA-covered transactions, a lender must provide to a loan applicant a special information booklet and good faith estimate of certain settlement charges. One day prior to settlement, the person conducting the settlement must, if requested, provide the borrower with a HUD-prescribed settlement statement, known as the HUD-1 settlement statement, completed with information on settlement costs known to such person at that time. At settlement, a fully-completed HUD-1 settlement statement showing actual settlement costs must be made available to borrower and seller. These requirements are in Sections 4 and 5 of RESPA. HUD has used its statutory authority to create narrow exceptions from these sections. RESPA also prohibits a seller from requiring a buyer to use a particular title company (Section 9) and limits the size of lender-held escrow accounts for taxes, insurance and other charges (Section 10). Finally, Section 8 of RESPA prohibits kickbacks for referral of business incident to or part of a settlement service and also prohibits splitting of a charge for a setttlement service other than for actual services rendered (*i.e.*, no payment of unearned fees). Violations of Section 8 are enforceable by criminal penalties and injunctions, and Sections 8 and 9 are each enforceable by private actions for damages in Federal or State courts. RESPA has no specific provisions for enforcement of other sections.

Regulation X has not been amended since it was issued in final form on June 4, 1976, except for one change in 1977 regarding an equal opportunity notice (42 FR 19327). HUD needs to conform Regulation X to the most recent amendment of RESPA which is contained in Section 461 of the Housing and Urban-Rural Recovery Act of 1983 ("HURRA") (Pub. L. 98-181). HUD proposes to use this opportunity to make certain other clarifying and editorial changes and to cover provisions of RESPA (*e.g.*, Section 10) which are not covered in the current regulations. The proposed rule should be considered an updating of Regulation X rather than a complete revision.

II. Controlled Business

A. Background

Section 8(a) of RESPA reads:

> No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

Hence, a Section [8] violation requires: (1) Transfer of a thing of value; (2) the transfer must be *pursuant to* an agreement or understanding to refer business incident to or part of a real estate settlement service; and (3) implicitly, there must be an actual referral pursuant to the agreement or understanding. A Section 8 violation can be readily determined where a specific payment [2] is made for a specific referral and there is no other apparent reason (such as rendering of actual services) for the payment. Where a transaction is not identifiably related to a payment, or only to a payment which ordinarily has some other legitimate purpose, such as a corporate dividend, determination of a Section 8 violation is more difficult. Also, where the party receiving the payment is an owner of the party making the payment, as in the case of a corporate dividend, any referral agreement or understanding is unlikely to be expressly stated but may be implicit in the ownership relationship.

[1] Since the "controlled business" issue arises only with respect to Section 8(a), subsequent references in this Section II to "Section 8" generally are references only to Section 8(a).

[2] In this discussion and in the proposed rule, "payment" is synonymous with the statutory term "thing of value" and does not necessarily mean a transfer of money.

These difficulties in applying Section 8 to so-called "controlled business arrangements" were the principal impetus for the 1983 amendment of RESPA through Section 461 of HURRA.

As defined in Section 3(7) of RESPA (added by Section 461 of HURRA), a "controlled business arrangement" is an arrangement in which a person "who is in a position to refer business incident to or a part of a settlement service involving a Federally related mortgage loan" (or an "associate" of that person) refers such business to a provider thereof in which the referring person (or an "associate" of that person) has either an "affiliate relationship" or a 1% or larger "direct or beneficial" ownership interest. "Associate" is defined in a new Section 3(8) of RESPA and includes various personal and business relationships.

HUD currently has no regulatory position concerning the legality of controlled business arrangements under Section 8 of RESPA, except to the extent that Regulation X indicates that payment of dividends or distribution of partnership profits may constitute the transfer of a "thing of value" required for a Section 8 violation (§ 3500.14(b) and Appendix B, Illustration No. 10). Illustration No. 10 gives specific examples of illegal dividend schemes or partnership distribution schemes: if the dividends, amount of stock or share of partnership profits varied in proportion to actual or anticipated referrals by the owner/partner, or if funds were retained for subsequent distribution in proportion to the amount of referred business. However, there is no stated HUD position on the legality of controlled business arrangements where payments are less obviously part of referral agreements or understandings. A purpose of this proposed rule is to propose such a position in conformity to Section 461 of HURRA.

B. Legislative Response

The Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs held hearings on the "controlled business" question on September 15–16, 1981. By May 1982 the House Committee had reported H.R. 6296 which contained "controlled business" amendments to RESPA (Section 518); Section 518 of H.R. 1 introduced in 1983 was identical.[3] The eventual provision (Section 461 of HURRA) is similar to this Section 518.

As amended, RESPA now defines a controlled business arrangement in the definitions section (Section 3(7)) and contains a new exemption to Section 8 for controlled business arrangements which meet certain tests (Section 8(c)(4)). Nothing in RESPA explicitly states that controlled business arrangements are barred by RESPA, but the structure of the legislative amendment and the accompanying House Report language compels the conclusion that Congress regards the existing prohibition in Section 8 as a sufficient legal basis for HUD sanctions against controlled business arrangements, so that a compensated referral agreement can be inferred from the mere fact of a controlled business arrangement and an ordinary dividend structure. The question which HUD had left open regarding controlled business arrangements where the "return on capital" did *not* vary in proportion to referrals is addressed in only the third of three required elements of the new exemption. Irrespective of the nature or method of calculation of payments in a controlled business arrangement, the other two elements usually must be satisfied to benefit from the exemption. Unless failure to comply with one or both of the other elements is itself sufficient to raise a question of a Section 8 violation, the exemption would have no point.

C. Issues

Two basic questions are posed by the controlled business arrangement amendment. First, are controlled business arrangements *per se* Section 8 violations unless all tests for the exemption are met (*i.e.*, is the new Section 8(c)(4) exemption merely a "safe harbor" ensuring legality, or a statement of the *only legal form* of controlled business arrangement?). Second, should HUD provide an explicit regulatory exemption broader than the statutory one?

While the existence of a controlled business arrangement probably must raise the *presumption* of a Section 8 violation for the controlled business arrangement exemption to make sense, it is HUD's view that there is little legal or factual justification for viewing a controlled business arrangement which fails to meet all elements of the new exemption as a *per se* Section 8 violation (*i.e.*, legal only if the elements of the new exemption are satisfied). Under that approach, no factual showing by either the provider of settlement services or incidental business or the owner of the provider could defeat the conclusions that, given any referral by the owner or an "associate" of the owner, a referral agreement exists and any dividend or similar return on ownership interests is a payment pursuant to that agreement. These conclusions would be enshrined in the regulations no matter how minor the proportion of referral business, the actual circumstances leading to the referral, the relation in time between referral and period of business on which any dividends or other payments were based, whether there are any dividends or other payments, whether the referring party (if an "associate") knew of the controlled business arrangement, or other factors. If Congress wanted this result it could easily have modified Section 8(a) or otherwise stated directly that some or all controlled business arrangements were always illegal without regard to Section 8(a). The RESPA amendments passed in 1983 do not compel this reading.

HUD is proposing in this rule to interpret and clarify the statute and not significantly expand the statutory exemption or reverse Congress' presumptions. HUD will rely heavily on public comments in making its final determination on whether the regulation should differ from the statute in more respects. Specific comments are solicited concerning the need and justification for any additional exemptions beyond the scope of the statutory exemption, or for narrower scope for the presumption of illegality stated in proposed § 3500.15(a) and discussed below. Of course, HUD has no discretion to narrow the statutory exemption.

Definitions are proposed (in § 3500.15(c)) for these terms: "associate" (using the statutory definition), "affiliate relationship" (using the definition suggested in the 1983 House Report), "beneficial ownership" (using the definition suggested in the 1983 House Report), "control" (a term used in the "associate" definition, with a proposed definition similar to the definition in Section 604(1) of the Condominium and Cooperative Abuse Relief Act of 1980, 15 U.S.C. 3603(1)), "direct ownership" and "franchise"/"franchisor"/"franchisee" (using as proposed definition the Federal Trade Commission definitions in 16 CFR 436.2). HUD also considered the need to define the term "controlled

[3] House Reports were issued in 1982 and 1983 which shed some light on the RESPA amendment (H.R. Rep. No. 532, 97th Cong. 2d Sess. (1982), pp. 51–57; H.R. Rep. No. 123, 98th Cong., 1st Sess. (1983), pp. 75–8, 131–2). They are referred to as the "1983 House Report" and the "1982 House Report" in the text. The hearings transcript also contains valuable background material. The only other legislative history is an exchange on the House floor regarding the "good faith" defense to a failure to make disclosures required for the new controlled business arrangement exemption, 129 Cong. Rec. H10514 (daily ed. November 18, 1983).

business arrangement" in Regulation X but does not propose to define such term. Because illegal activity under Section 8 consists of the giving and receipt of certain "things of value", rather than the existence of certain business "arrangements", HUD believes that it may be misleading to focus on the presence or absence of arrangements. The controlled business arrangement statutory definition is quite expansive and includes arrangements which may involve payments which raise no apparent Section 8 issues. The current regulation would be more usefully amended by specifying which *payments* which would occur in a controlled business arrangement should be presumed Section 8 violations. Comments are invited concerning these and any other "definitions" questions which should be addressed in the "controlled business" amendments to Regulation X.

HUD proposes to implement the "controlled business" statutory provisions in a new § 3500.15 of Regulation X.

Section 3500.15(a) Controlled business arrangements. In lieu of using the term "controlled business arrangement", this new paragraph would state a presumption of violation of Section 8 whenever a thing of value (*e.g.*, a dividend) is paid by a business entity to any person with which it has an "affiliate relationship" or to an owner of greater than a 1% interest *if* (1) the person receiving the payment is a real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent or other person deriving a significant portion of the person's gross income from providing settlement services or business incident thereto or a part thereof, and (2) if the person receiving the payment or an associate of such person has referred settlement business to the person making the payment. As well, payments in these circumstances to a franchisee by a franchisor ("downstream" payments such as cash advances) or to a franchisor by a franchisee (*e.g.*, royalties) would be presumptive violations. This approach involves a paraphrase of the statutory "controlled business arrangement" definition with a focus on the payment rather than on the "arrangement". Questions raised by the proposed § 3500.15(a), on which comment is invited, are—

1. Who is a "person in a position to refer business incident to or part of a real estate settlement service"? As indicated above, such a person (or an associate of such a person) would need to make a referral in order for the statutory definition of "controlled business arrangement" to apply. While the phrase could literally mean any person, this would make the statutory language unnecessary. Congress apparently intended to address a limited class of "controlled business" referrals. The 1982 House Report (p. 53) indicates that the phrase referred to a real estate broker or agent, lender, builder or developer, or attorney—all persons whom homebuyers often might approach for referrals to settlement services providers and therefore persons more likely to have dividends and similar payments which might be related to referrals. For purposes of the "presumption" approach adopted in the proposed rule, HUD has elected not to use the phrase "person in a position to refer settlement services," but rather to limit the broadly worded statutory class to real estate brokers or agents, lenders, mortgage brokers, builders or developers, attorneys, title companies, title agents, or other persons deriving a significant portion of their gross income from providing settlement services. Comment is invited on this approach, as well as on the question of what is a "significant portion of gross income".

2. What is an "ownership interest" of more than 1%? The statutory definition of controlled business arrangement does not apply if the "person in a position to refer" (or associate) does not have an ownership interest greater than 1% in the settlement services provider receiving the referral. Since the focus of Section 8 is on illegal payments, the proposed rule would apply this test to payments (*e.g.*, more than 1% of total dividends) rather than using other possible tests such as control or voting rights. HUD has some concern that the 1% figure used in the statute may be unnecessarily low and invites comment on the possible use of HUD's exemptive authority to state a higher threshold ownership interest.

3. Is it necessary to cover "affiliate relationships"? The statutory controlled business arrangement definition covers referrals by persons with "affiliate relationships" with the provider receiving referrals in addition to ownership relationships. The 1983 House Report describes these relationships (p. 76) and indicates that the phrase covers situations of "control" among business entities, which are also included in the "associate" definition. Because of the overlap with the definition of "associate", the reference to "affiliate relationships" may not add any significant group of payments which should be presumptive Section 8 violations. The proposed § 3500.15(a) references "affiliate relationships". HUD seeks examples of cases where omission of the term "affiliate relationship" would have a significant effect.

4. What time period is relevant for the referral? Under § 3500.15(a) a payment would only be presumptively illegal if a referral were made, and Section 8(a) of RESPA implicitly requires a referral as an element of a violation. In order for the presumption to be reasonable, the referral should occur during some period relevant to the payment in question. HUD proposes that, in order to raise the presumption of § 3500.15(a), the referral must have occurred after publication of the proposed rule, so that interested persons could have had an indication of HUD's views on the statutory requirements through this proposed rule, and also after (if later) the date of any previous presumptively illegal payment. For example, if a person received quarterly dividends but neither that person nor any associate received any other payments from a company, a key question to determine legality of the dividend would be whether the person or an associate referred any business to the company since payment of the last quarterly dividend. If not, § 3500.15(a) would raise no presumption of illegality regarding that payment "required".

Section 3500.15(b) Required use. The concept of "required use" of a particular provider of a settlement service is important for application of the controlled business arrangement exemption contained in section 8(c)(4)(B) of RESPA and § 3500.15(b) of the proposed rule. HUD proposes to incorporate the same concept within the definition of "referral" for purposes of the general anti-kickback prohibition of Section 8 of RESPA, covered in § 3500.14 of the proposed rule. A definition of "required use" appears in proposed § 3500.2(i). HUD takes a broad view of "required use" as covering any situation where the use of a particular provider for a settlement service is a condition of the availability of some other distinct service or property (including situations where the other service or property will otherwise still be available but at a different price). However, only the person paying for a service could be considered the one "required" to use a particular provider of that service.

Section 3500.15(b) Controlled business exemptions. Subsection (b) of proposed § 3500.15 would implement Section 8(c)(4), the new last sentence of Section 8(c), and Section 8(d)(3) of RESPA. The proposed exemption would follow the three-part structure of Section 8(c)(4) with these major elements: (1) A requirement for *disclosure* of the

relationship between parties giving and receiving the referral with estimated charges for the referred business, (2) *a bar against required use* of a particular provider (except in specified exceptions) and (3) a *bar against any additional thing of value* paid to the referring party or associate beyond return on ownership interest, return on franchise relationship, or payments otherwise permissible under Section 8(c) of RESPA. Major questions faced in interpreting the new statutory provisions and drafting this proposed exemption were—

1. What needs to be disclosed? When? The exemption requires the referring party to disclose the "existence of * * * [a controlled business] arrangement". Since HUD does not propose to define "controlled business arrangement", HUD proposes a requirement of written disclosure of the *nature* of the relationship between referring party and provider (*e.g.*, owner and subsidiary, spouse of owner or provider, or franchisee of franchiser owned by same company as provider). A written estimate of charges would also be required which would, like the lender good faith estimate required by § 3500.7, use the terminology of the HUD-1 settlement statement. HUD does not propose a particular form for disclosure, although comment on this question and the question of whether both disclosures must be provided on the same piece of paper is invited. Generally, the disclosure would have to be provided no later than the referral (not three days after the triggering event as for the good faith estimate required by § 3500.7 of Regulation X). However, by statute, lenders may provide the disclosure with the good faith estimate; the proposed rule would also permit the controlled business arrangement disclosure to be combined with a statement of fixed borrower settlement charges under § 3500.7(e). Special timing rules are also proposed to cover the instances where certain attorneys may *require* use of a particular provider so that the timing of the referral may be uncertain. (These are special statutory exceptions to the normal rule that the controlled business arrangement exemption is unavailable when use of a particular provider is required.) The proposed rule would provide that if a lender requires use of a particular provider in connection with a loan for which the borrower will pay no closing costs (and thus will receive no good faith estimate) the "referral" would occur upon loan application. For an attorney requiring use of an affiliated title company, the "referral" would occur at that point where the attorney should know that the client representation would involve use of title insurance. The fact that a requirement to use a particular provider is not always prohibited in the context of a controlled business arrangement nor generally prohibited by Section 8 does not preclude possible antitrust liability on the ground of an illegal tie-in.

2. What does the "good faith" exception to the first element of the exemption involve? Section 8(d)(3), which provides that noncompliance with the "disclosure" elements of the exemption does not remove the exemption in certain "good faith" cases, is based on Section 130(c) of the Truth in Lending Act. The proposed rule repeats the statutory provision. The proposed rule further indicates that an error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide error*. The proposed rule does not prescribe required or recommended procedures for disclosure. The proposed rule notes that judicial and administrative precedent under Section 130(c) of the Truth in Lending Act are not determinative for HUD.

3. What is a "return on ownership interest"? This phrase is used in Section 8(c)(4)(C) of RESPA, which is the third element of the exemption. HUD does not consider it possible to prescribe all the typical or acceptable methods of calculating return on the various forms of corporate, partnership and other ownership interests. HUD does propose to make clear that the label given to a payment ("dividend", "partnership distribution") is not determinative and that a payment calculated with direct reference to number or value of referrals (rather than, *e.g.*, total volume of business) is not permissible. The proposed rule would reaffirm the comments to Illustration 10 in the current Appendix B to Regulation X. HUD is particularly interested in examples of possible payments which are "borderline" cases, from actual experience to the extent possible, so that HUD can address in the final rule the questions which are likely to arise.

4. What is a "return on franchise relationship"? This phrase is also used in Section 8(c)(4)(C) of RESPA. As with ownership interests, this is difficult to define affirmatively. The legislative history suggests use of the franchise agreement as a guide. The proposed rule considers it necessary that a payment to or from a franchisee be pursuant to a franchise agreement; however, a franchise agreement cannot insulate true kickbacks or referral fees. The franchise agreement should not be adjusted on the basis of a previous amount of referrals by the franchisor or franchisees. As with ownership interests, franchise payments should not be directly related to number or value of referrals. HUD is particularly interested in learning about the "borderline" cases from actual experience.

5. What time period is relevant for the controlled business arrangement exemption? The first and second elements of the exemption relate to referrals, presumably during some time period. This should be the same time period and thus the same referrals which would trigger the proposed § 3500.15(a), which would create a presumption of illegality for certain payments as discussed above. Proposed § 3500.15(b)(1) discusses the time period. The disclosure (first element) must be provided no later than the time of each referral or if the lender requires use of a particular provider, the time of application. Lenders may satisfy this requirement at the time that the good faith estimate or statement under § 3500.7(e) is provided. An attorney, which requires a client to use a particular title insurance agent, may satisfy the requirement no later than the time the attorney knew or should have known that the client's transaction would require issuance of a title insurance policy. Proposed § 3500.15(b)(1) states that if the three conditions described in §§ 3500.15(b)(1)(i), (ii) and (iii) are satisfied since the date of any previous payment which was presumptively made pursuant to an agreement for the referral of business or the date of publication of the proposed rule, then the payment will not be considered a violation of Section 8.

D. Appendix B

New Illustrations 11–14 are proposed to be added to Appendix B of Regulation X in order to illustrate application of the proposed controlled business arrangement provisions to various fact situations. An additional sentence is proposed for the current Illustration 10.

Proposed Illustration 11 would be the most simple "controlled business" situation, and the comments would summarize the proposed § 3500.15, including subsection (b)(1). In proposed Illustration 12, the referring party would be a franchisee of an owner and both dividends to the owner and any payments by the owner/franchisor to its franchisee would be presumed to be illegal unless the relevant exemption was applied. Proposed Illustration 13 would show how indirect ownership (through more than one corporate layer) could result in an "associate"

relationship with a resulting presumption of illegality for payments by the subsidiary company. Franchise relationships unmixed with ownership relationships would be discussed in proposed Illustration 14, in which a franchisee refers business to another franchisee. Such a referral arrangement would not be presumptively illegal under § 3500.15(a), although it would be illegal under § 3500.14(b) if some thing of value were transferred for referrals, such as reciprocal referrals by each franchisee.

III. Section 8—The Graham Case

Since the enactment of RESPA, HUD has considered that the prohibitions of Section 8 of RESPA extended to loan referrals (see illustrations 2 and 7 in 24 CFR Part 3500, Appendix B). Although the making of a loan is not delineated as a "settlement service" in section 3(3) of RESPA, HUD has traditionally taken the position, based on the statutory language, that this list was not to be inclusive of all settlement services.

This rationale is grounded in the following arguments: (1) Making a Federally-related mortgage loan is central to Federal regulation of settlement services; (2) the position that the making of a loan is business incident to or part of a settlement service is based upon a reasonable interpretation of the statute: Congress could not have meant to exclude the making of a mortgage loan; (3) the legislative history indicates that Congress intended to make the scope of RESPA as expansive as possible to deal with the abuses then taking place in the real estate business.

However, some believe that RESPA does not apply to mortgage loans, even though they recognize that the making of a loan is an integral part of the home purchase process. These commentators believe that RESPA was only intended to apply to ancillary services incidental to the settlement. In their view, the exclusion of loans from section 3(3) means that Congress did not intend RESPA to apply to the making of a loan.

The approach was adopted in *United States v. Graham Mortgage Corp.*, 740 F.2d 414 (6th Cir. 1984), *reh den.*, Nos. 83–1628 and 83–1629 (6th Cir., filed September 26, 1984), wherein the Sixth Circuit Court of Appeals refused to follow HUD's interpretation of the scope of Section 8(a) for purposes of a criminal prosecution.

This *Graham* case involved a realty company which was engaged both in traditional brokerage activity and in the purchase, rehabilitation and resale of homes for its own account. A mortgage banker provided interim financing to the realty company for its purchase, rehabilitation and sale of homes for its own account. For each such loan that it received, the realty company agreed to refer to the mortgage banker two loan applicants from its regular brokerage business, in addition to referring the purchaser of the rehabilitated house. The mortgage banker, when making loans to purchasers of the rehabilitated homes, charged the realty company fewer points than it charged other sellers. To recoup the income lost through this reduction in points charged to the realty company, the mortgage banker increased the points charged to sellers in transactions where the buyer-borrower had been referred by the realty company from its regular brokerage business.

On appeal of a conviction under Section 8(a) of the mortgage banking company, certain of its executives, and an executive of the realty company, the Government argued that the transaction came within the prohibitions of Section 8(a) on the theory that the making of a loan is itself a "settlement service" within the meaning of Section 8(a), notwithstanding its absence from the admittedly non-exclusive definition contained in Section 3(3) of RESPA. Finding the statute and the legislative history ambiguous and HUD's administrative interpretations (including informal opinion letters) inconsistent, the Court of Appeals held that, for purposes of a criminal prosecution under Section 8(a), the term "settlement service" did not include the making of a mortgage loan.[4]

Since the *Graham* decision and during the course of its preparation of this proposed rule, the Department has received considerable correspondence urging that it not adopt a regulatory position directly contrary to the Court of Appeals' decision by adopting a definition of "settlement services" that specifically includes "the making of a Federally related mortgage loan." The basis of this recommendation, as stated in one such letter, was a concern that subjecting mortgage financing to the prohibitions in RESPA "may have a serious and negative impact on the secondary mortgage market, and may halt efforts to introduce efficiencies in the mortgage lending process."

The expressed concern regarding halting efforts to introduce efficiencies implicitly assumes that the mortgage marketplace does not need government intermediation and that settlement fees must be similar for competing members of the industry to survive. HUD has been told that borrowers are more sophisticated than ever before and have more accurate information available to make decisions regarding lending related services. While HUD is charged with providing protection to homebuyers, it seeks to avoid promotion of economic inefficiencies or placement of unwelcome burdens on lenders and other participants in the settlement process.

Given the decisions in the *Graham* and *Eisenberg* cases, as well as recent developments in the mortgage lending industry, HUD is seeking comments from the public regarding the extent that RESPA should apply to the making of a loan, or for desirable exceptions that HUD might create. HUD has already responded to informal comments and concerns and is currently proposing liberalization of the previous RESPA rules, with a "mortgage broker exception", and by allowing disclosed voluntary payments by borrowers to mortgage brokers. HUD, therefore, strongly urges additional comments, including economic analysis, regarding these matters.

The term "settlement services" was not defined in the previous RESPA rule (§ 3500.2). HUD now proposes to add a definition of "settlement services" which states that such services are "*any* services provided in connection with settlement." (§ 3500.2(n)). This definition will be restated at the time of publication of the final rule to set forth HUD's determination regarding the making of a loan as a settlement service. Pending implementation of the final rule, HUD will adhere to its longstanding position and continue to enforce RESPA civilly in all federal circuits and will bring criminal prosecutions in every circuit except for the Sixth Circuit (Kentucky, Michigan, Ohio and Tenneessee) for violations, including those involving the making of a mortgage loan.

The Department has received numerous letters and telephone calls regarding its position on mortgage broker activities. The Department requests comments on its position regarding mortgage brokers as currently reflected in Illustration 7. Under the current illustration, compensation by a lender to a mortgage broker is permitted only if the mortgage broker performs additional services, such as obtaining credit and appraisal information, and the payment reflects the reasonable value of those services "without reference to the referral value." The

[4] One civil case, *Eisenberg* v. *Comfed Mtge.*, U.S.D.C. for Dist. of Mass. (84–3486–4), adopted without examination the *Graham* reasoning. The Department had no role in this case, and would not have considered the matter complained of—excess points—to have been a RESPA question.

Department recently has received numerous requests for informal advice regarding evolving mortgage origination practices, some of which have urged that the requirement that mortgage brokers perform additional services introduces an unwarranted inefficiency into the process. Others have suggested that abusive mortgage brokering practices are developing and that HUD needs to clarify the regulations and discuss permissible practices. Moreover, HUD questions whether the dangers of abuse of position which Congress sought to prevent are presented by mortgage brokers who are not otherwise involved in the transaction and/or are approached by borrowers for the explicit purpose of being brought together with a lender. When a borrower decides to deal with and pay a mortgage broker the cost of the referral is clearly separable from the cost of the loan and a borrower will be aware that a referral fee can be avoided entirely if the borrower chooses to locate and approach mortgage lenders directly.

In an informal legal opinion given by former General Counsel John Knapp dated April 24, 1986, HUD approved a mortgage brokerage program involving voluntary payments by borrowers to persons who assisted in bringing the lender and borrower together. The voluntary payment was to be disclosed on both the good faith estimate of settlement costs and HUD-1 settlement statement and was not a condition of the loan or other settlement service. The Department continues to believe that this practice does not violate Section 8 of RESPA. Because this is a complex issue and other variations on this program may be developing, we strongly urge public comment on this issue and request examples of potential or actual problems caused by this opinion.

To clarify the issue within the framework of the regulation HUD is proposing a mortgage broker exemption at § 3500.14(h)(6) for a voluntary payment by a borrower to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such voluntary payment is disclosed on both the good faith estimate of settlement costs and HUD-1 settlement statement and is not a condition of the loan or other settlement statement service. This exemption is referenced in revised Illustration 7 of Appendix B and the required disclosure of mortgage broker fees form is set forth in proposed new Appendix D to Regulation X. The Mortgage Broker Fee Disclosure Form is to be attached to the good faith estimate. HUD is considering the practical and logistical issues raised by this proposed form. For example, should the good Faith Estimate Form (Appendix C) be combined with the Mortgage Broker Fee Disclosure form (Appendix D) or should mortgage broker fee disclosure language be included with the other mandatory good faith estimate language in § 3500.7(c)? HUD requests any alternative proposals which would be less burdensome and more in conformance with actual business practices.

HUD is also considering adding an explicit exemption in § 3500.14 for a "payment by a lender to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such person has not otherwise acted as a provider of settlement services in connection with the transaction and has not received any other compensation or thing of value from the borrower, the seller, the builder, or any other person for services related to the transaction." This proposed exemption could be considered an extension of the exemption already extended by Section 8(c)(1)(C) of RESPA to the payment of a fee "by a lender to its duly appointed agent for services actually performed in the making of a loan." Any mortgage broker exemption will be adopted only after consultation with the Attorney General, the Administrator of Veterans' Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture.[5] HUD intends to begin this consultation process after publication of this proposed rule but anticipates that the consultation will also encompass consideration by such other agencies, as well as by HUD, of public comments received on the proposal.

A mortgage broker exemption would not make compensated loan referrals by persons who are otherwise involved in the transaction *per se* or even presumptively illegal under Section 8. Instead, it would leave the legality of such compensation dependent upon a determination of the reasonableness of the charge in relation to the value of the service. (Under the mortgage broker exemption mentioned above, a determination of reasonableness of the broker's compensation is not required. HUD anticipates that market competition among lenders based on cost of the loan package to borrowers will provide an effective and adequate source of restraint on fees paid to mortgage brokers.)

As indicated above, HUD in recent months has received numerous requests for informal advice regarding the possible application of Section 8 of RESPA to various loan origination practices, including computerized loan information and origination service networks and use of mortgage brokers paid directly by borrowers, and has been able to respond affirmatively to most such requests on the basis of its pre-*Graham* position. Therefore, HUD does not believe that continued adherence to that position, as reflected in the proposed rule, will interfere with continuing efforts to introduce efficiencies into the mortgage origination process.

HUD solicits comment on application of Section 8 to the mortgage loan origination process, including suggestions as to additional circumstances that might usefully be treated by Illustrations in Appendix B. HUD is especially concerned about Section 8 enforcement matters and intends to pursue violations demonstrated in Illustrations in Appendix B as part of its stepped-up enforcement policy.

IV. Other Provisions of RESPA

The current Regulation X makes no mention of Sections 9, 10, 16, 17, or 19(c) of RESPA. (Section 11 does not pertain to HUD, while Sections 13, 14 and 15 require reports of demonstration projects by HUD and do not impose obligations on any other party). All other sections of RESPA are covered by Regulation X. HUD is proposing interpretive regulations for Section 9(a) (seller cannot require buyer to use particular title company—proposed § 3500.16) and Section 10 (limitations on escrow accounts—proposed § 3500.17). Sections 9(b) (liability for violation of 9(a)—proposed § 3500.19(c)), 16 (court jurisdiction—proposed § 3500.19(d)), 17 (effect on contracts and liens—proposed § 3500.18) and 19(c) (new investigative

[5] It should be noted that the Mortgage Broker exemption does not comport with current Federal Housing Administration rules, specifically 24 CFR 203.1(b) which states as follows:

(b) *Prohibited payments.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person including but not limited to an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder, or real estate agent if such person has received any other compensation from the mortgagor, the seller, the builder, or any other person for services related to such transactions or from or related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner. The mortgagee shall not pay a referral fee to any person or organization.

Comments are requested as to whether the FHA rule should also be altered so as to encompass a mortgage broker exemption.

and subpoena authority—proposed § 3500.19(e)) need no interpretation but HUD is proposing to incorporate them nearly verbatim in Regulation X so that it would cover all parts of RESPA relevant to private parties, thereby avoiding the need for them to consult both the statute and Regulation X.

HUD issued an Advance Notice of Proposed Rulemaking in 1978 requesting comments on various matters including regulations for Section 9 and Section 10 (43 FR 39701). With regard to Section 9, most commenters opposed a regulation with one or more of these objections: Section 9 itself is adequate, States adequately regulate the area, there were no known abuses in the area, and (most common) "clarifying" regulations tend to confuse rather than clarify. HUD took no action following the 1978 ANPR. If HUD repeated Section 9 verbatim in Regulation X, none of these objections would be relevant. HUD invites comments generally on what clarifications or interpretations of Section 9, if any, would be desirable as opposed to a verbatim incorporation of Section 9 in the regulations. In addition to a verbatim incorporation, HUD is proposing to incorporate only one position which HUD has repeatedly stated in unofficial staff interpretations—that sellers who choose and pay the title company do not violate Section 9 as long as they do not indirectly recover the cost from the buyer as a separate charge or a specific adjustment to the sales price. The concept of "required use" is central to Section 9 and the new § 3500.14(g) discussed above would also be applicable here.

The majority of commenters also opposed a regulation for Section 10, generally on the grounds that no escrow account abuses existed, that State requirements to pay interest kept escrow accounts to a minimum and the requirements of the Federal Home Loan Bank Board were stricter. However, a significant minority of commenters contended that Section 10 was unclear, incomprehensible or too complex and encouraged clarifying regulations. HUD proposes to reward Section 10 requirements to improve their clarity and proposes a new § 3500.17 for this purpose. The regulation would apply to all Federally related mortgage loans, whenever made, except those which are in classes exempt from Regulation X disclosure requirements under § 3500.5(c). Since no specific enforcement mechanism is provided to HUD with respect to Section 10, HUD believes it is important that borrowers have adequate information about their accounts to permit them to determine lender compliance and require correction in case of noncompliance. To ensure borrowers are provided with annual escrow information, HUD has considered requiring an annual lender statement on escrow account status. It would be based in part on State statutes, particularly Cal. Civil Code § 2954.2 (Deering 1986 Supp.), Iowa Code Ann. § 524.905(2) (West 1986–7 Cum. Supp.) and Mich. Stat. Ann. § 26.575(1) (Callaghan 1982). HUD believes that the actual practice of many lenders may already include an annual escrow account statement. HUD solicits comment on the suggested annual statement requirement and questions whether such a requirement would impose additional or unnecessary paperwork burdens. Additionally, HUD invites comments on the desirability of such regulations, as opposed to verbatim incorporation of section 10.

V. Other Changes to Regulation X

HUD is proposing numerous other changes to Regulation X. Many are minor changes to the current text of Regulation X for such purposes as clarifying terminology, increasing consistent usage of terminology, slight reorganization of provisions or updating, and will not require a change in the behavior of persons who currently comply with Regulation X. A few changes can have a substantive impact. This proposed rule is not a complete revision of Regulation X, nor is it, in general, a proposal to adopt interpretations of RESPA inconsistent with or beyond the scope of the current Regulation X. It is an updating of the rule with the benefit of over thirteen years' experience. Nevertheless, comments on any matters related to Regulation X are welcome and will be reviewed when the final rule is drafted. Specific changes being proposed, on which comment is invited, are described in this section.

Section 3500.2 Definitions. HUD is proposing to revise some of the existing definitions and to add a number of new definitions in addition to the controlled business arrangement-related definitions previously discussed and contained in § 3500.15.

1. *Date of settlement.* The current definition uses the date on which the lender's security interest becomes effective. The right of one-day advance review of the HUD–1 settlement statement is keyed to this date (see § 3500.10) and that right could be meaningless if the borrower is required to sign documents and provide cash to the settlement agent prior to the date the security interest becomes effective. There is also no uniform nationwide point in a transaction at which a security interest becomes effective; for example, in some jurisdictions local law could link effectiveness to initial funds disbursement which might be delayed after the commencement of settlement. HUD therefore proposes to redefine "date of settlement" in terms of the date on which the borrower signs the security documents (or the documents obligating the borrower to repay, for construction loans to builders or loans to manufactured home dealers which are converted to permanent financing for the first user of the residence).

2. *Federally related mortgage loan.* Currently this term is defined in § 3500.5(b) in a manner which is deliberately more limited than the statutory definition. Exemptions from statutory coverage are currently included both in the definition and in § 3500.5(d), with some overlap. The proposed rule would use the term only in its full statutory sense, with changes from the statutory language only to the extent necessary to interpret ambiguous statutory language such as "residential real property." Exemptions of some classes of loans from the "disclosure" and escrow account provisions of Regulation X would continue to be listed in § 3500.5. The proposed definition would give a broad meaning to the term "residential real estate loan" as that term is used in § 3500.2(b)(2)(iv) in conformity with the prevailing HUD interpretation.

3. *Good faith estimate.* The term would be defined for the first time.

4. *HUD–1 settlement statement.* This term would be defined for the first time. (The term "Uniform Settlement Statement" would no longer be used under the proposed rule.)

5. *Lender* and *mortgaged property.* These terms are proposed for minor change in the wording but not the substance of the current definition.

6. *Manufactured home.* This new defined term would replace "mobile home" in keeping with current HUD usage.

7. *RESPA* would be redefined to include the 1983 amendment.

8. *Settlement.* This key term for RESPA is currently undefined in both RESPA and Regulation X. It is proposed for definition in two senses: generally as the process of conveying title including rendering of facilitating services, and specifically as the actual exchange of funds and documents. As part of the term "settlement services", for example, both RESPA and Regulation X use the term "settlement" in its general sense while some provisions, such as the right

of one-day advance review of the HUD–1 settlement statement or the term "settlement agent", use the term "settlement" in its specific sense as an event occurring in a defined time and place.

9. *Settlement agent.* This term would be defined as equivalent to the statutory phrase "person conducting settlement". If no one else is chosen, the Lender would be considered the settlement agent.

10. *Settlement Service.* This term is defined in Section 3(3) of RESPA but is not defined directly in Regulation X. The term appears in five substantive provisions of the statute: Section 5(c), requiring the lender to provide a "good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement"; Section (8), which prohibits compensation pursuant to any agreement or understanding that "business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person"; Section 8(b), which prohibits splitting of charges "made or received for the rendering of a real estate settlement service * * * other than for services actually performed"; and Sections 3(7) and 8(c)(4)(B), which refer to a provider of settlement services.

Since enactment of RESPA, HUD has considered that the term "settlement service" has the same meaning under all sections of RESPA, and that in all contexts the meaning includes the making of the loan itself. This interpretation is reflected in Regulation X as currently in effect. For example, the charges for which good faith estimates are required to be made include, among other things, items payable in connection with the loan, *e.g.*, "loan origination fees", "loan discounts (*i.e.*, "points"), and "prepaid interest". 24 CFR 3500.7(c) and Part 3500, Appendix A. A definition of "settlement service" is proposed to be added in §3500.2(n) and includes any services provided in connection with settlement.

11. *Special information booklet.* This term would be defined for the first time. The definition would also indicate that the booklet is published in the **Federal Register.**

12. *Title company.* This term would be defined for the first time by incorporating verbatim Section 3(4) RESPA.

Section 3500.3: No delegation of authority to HUD field offices. This section would be revised to remove obsolete references to HUD field offices and to indicate the appropriate office for public inquiries. All power and authority of the HUD Secretary under RESPA is currently delegated to the Director, Office of Insured Single Family Housing, 47 FR 30653 (July 14, 1982) and 51 FR 43670 (December 3, 1986).

Section 3500.4: Reliance upon rule, regulation or interpretation by HUD. This section now states that Regulation X and its appendices are the *only* "interpretations" of HUD which can provide protection from liability under Section 19(b) of RESPA. Since Section 19(b) mentions rules, regulations *and* interpretations thereof, HUD clearly has the legal authority to take a different approach by issuing other official interpretations of Regulation X on which the public could rely. HUD proposes to modify this section to permit, but not mandate, a procedure of publishing such official interpretations in the **Federal Register.** Such interpretations would normally be of general applicability rather than directed to a specific case. While such procedures would not necessarily eliminate all unofficial staff responses to specific inquiries, it could reduce staff time spent on repetitive inquiries and, more importantly, reduce the potential for confusion inherent in the the existence of unofficial interpretations issued over many years which are collected and published privately and relied upon by the public despite their non-binding nature and their possible inconsistency with current HUD positions.

Section 3500.4 currently excludes this staff advice from the scope of "official interpretations" on which any person may rely. No change from this position is reflected in the proposed rule being published. However, HUD solicits comment on the question of the effect to be given to staff responses to inquiries. For example, should such advice be given an effect similar to that of an IRS private letter ruling, so that at least the party to whom it is addressed may rely upon it? These questions are particularly critical in the context of Section 8, violation of which may involve criminal penalties as well as civil liability.

Section 3500.5 Coverage of RESPA. As proposed for revision, this section would no longer define "Federally related mortgage loan" (which, as noted, will be defined in § 3500.2(b)) but would serve two purposes: to clarify the meaning of the statutory exclusion of "temporary financing such as a construction loan" (in § 3(1) of RESPA) and to exempt some classes of Federally related mortgage loans from the disclosure provisions and from the escrow account limitations of RESPA/Regulation X. The current exemptions would be retained in substance but in substantially reworded and simplified form. An additional exemption would be added for property purchased primarily for the purpose of investment.

Section 3500.6 Special information booklet. Minor editorial changes are proposed for this section. The sole substantive change proposed is a deletion of the current rule requiring only one special information booklet (and, because of § 3500.7(a), one copy of the good faith estimate) in cases of multiple borrowers. HUD believes each borrower should receive this information in order to fully implement RESPA's objective of consumer information. However, HUD proposes not to require the information to be provided separately to husband and wife or to secondary obligors such as guarantors. HUD recognizes that its proposal differs from Section 121(b) of the Truth in Lending Act in which disclosure to only one primary obligor is required; there is no express or implied equivalent provision in RESPA. HUD requests comments on this change and specifically questions whether this new requirement will create unnecessary and burdensome paperwork without a corresponding benefit.

Section 3500.7 Good faith estimate. A number of substantive revisions are proposed. Most important, HUD proposes a suggested format for the good faith estimate as set forth in a proposed new Appendix C to Regulation X. The current rule and the proposed rule both permit a lender to use any form as long as certain minimum requirements are met, but these minimum requirements would be expanded and made more specific in the proposed rule. In HUD's experience, the good faith estimates actually used by lenders often fail to meet minimum requirements and may not facilitate borrower comparison with the HUD–1 settlement statement even when the current § 3500.7 is complied with. The suggested format in proposed Appendix C, if used, should contribute to lender compliance and borrower comprehension. As under the current rule, the lender will also be permited to use Section L of the HUD–1 settlement statement as long as additional prescribed material is added.

HUD also proposes modifying § 3500.7(e)(2) which requires any lender requiring use of a particular provider of legal or title examination services or title insurance to disclose the existence (but not the nature) of any "business relationship" with the provider. The proposed changes are in proposed § 3500.7(d) and require a disclosure of the *nature* of the relationship (including a non-business relationship) and explain

the meaning of "relationship". HUD's concerns are that insufficient guidance is currently given to lenders as to when disclosure is needed, and that for disclosure to a borrower the *nature* of a relationship is significant information. HUD also proposes to move the recordkeeping requirements of § 3500.7(f) to a new § 3500.10(e). Other minor editorial changes are proposed for § 3500.7.

Section 3500.8 Use of HUD–1 settlement statement. Minor editorial changes are proposed for this section. All specific requirements for completion of the HUD–1 settlement statement would be contained in revised instructions in Appendix A to Regulation X. Part of the current paragraph (c) would be incorporated into § 3500.10(b) and the remainder would be incorporated into § 3500.10(e). Allowable modifications to the HUD–1 Settlement Statement for certain reporting aspects of the Tax Reform Act of 1986 are published at 52 FR 29782, June 3, 1987.

Section 3500.9 Reproduction of HUD–1 settlement statement. Minor editorial changes are proposed for this section.

Section 3500.10 Inspection and delivery of HUD–1 settlement statement. Currently lenders must keep completed HUD–1 settlement statements for two years after the date of settlement. Since the statute of limitations for Section 8 actions by the HUD Secretary or an Attorney General or insurance commissioner of a State has been extended to three years, the proposed paragraph (e) would also extend the recordkeeping requirement to three years. Paragraphs (b) and (e) are each proposed to include parts of the current § 3500.8(c). In keeping with the change to § 3500.6, each borrower and seller would be entitled to a copy of the HUD–1, but a copy need not be provided separately to both husband and wife or to secondary obligors such as guarantors. HUD requests comments on this change and specifically questions whether this new requirement will create unnecessary and burdensome paperwork without a corresponding benefit.

Section 3500.11 Mailing; Section 3500.12 No fee. Minor editorial changes are proposed for these sections.

Section 3500.13 Relation to State laws. The current section consists primarily of a verbatim repetition of Section 18 of RESPA. The proposed rule would rewrite the requirements of Section 18 for clarity while also incorporating new Section 8(d)(6) of RESPA. It also would set forth HUD's view that the term "State law" as used in Section 18 should properly be read as including State regulations as well as legal enactments by State political subdivisions.

Section 3500.14 Prohibition against kickbacks and unearned fees. In addition to changes discussed in Sections II and III above, a revision of the paragraph structure of the section is proposed to eliminate unnecessary redundancy and quotation of statutory text, as shown in the following chart which compares the current paragraphs in § 3500.14 and the current headings with the equivalent proposed paragraphs and headings.

COMPARISON OF CURRENT AND PROPOSED § 3500.14

Current paragraphs	Proposed paragraphs
No equivalent provision	(a) Section 8 violation (states that violation of rule is violation of statute).
(a) Statutory prohibitions (text of § 8(a)–(d)).	(b) No referral fees (text of Section 8(a) and material from current (d)). (c) No split of charges (text of Section 8(b)); text of Section 8(c) not set forth but substance covered in new (i); text of Section 8(d) moved to new § 3500.18.
(b) Thing of value	(d) Thing of value.
(c) Agreement or understanding.	(e) Agreement or understanding (includes new material).
(d) Payment of thing of value for referral of business.	No equivalent provision; material combined with new (b).
(e) Payment for goods or services actually rendered.	No equivalent provision; material combined with new (c).
No equivalent provision	(f) Referral.
(f) Exemptions	(g) Not violations under this section (includes new exemptions, old (f) and some material from old (e)).
No equivalent provision	(h) Secondary Market transactions.
(g) Examples of violations under section 8.	(i) Appendix B.

HUD also proposes to revise the current § 3500.14(f)(1), which has been redesignated as § 3500.14(g)(2)(ii) in the proposed rule, to apply to all kinds of insurance which may be a settlement service rather than only title insurance. HUD proposes to delete the current § 3500.14(g)(4) as unnecessary and confusing in light of the new "controlled business" provisions.

Sections 3500.16–18. These proposed new sections are explained in Section IV of this preamble.

Section 3500.19 Enforcement and investigations.

Paragraph (a) would generally explain the manner of enforcement of the various provisions of RESPA. Paragraph (b) would repeat, largely verbatim, Sections 8(d)(1), (2), (4) and (5) of RESPA. Paragraph (c) would repeat, largely verbatim, Section 9(b) of RESPA and note the unavailability of authority to award court costs and attorney's fees in Section 9 actions. It should be noted that while RESPA does not specifically authorize such a recovery pursuant to its own provisions, a buyer may be able to recover court costs and attorney's fees under the Federal Rules of Civil Procedure or other statutory authority. Paragraphs (d) and (e) of this proposed new section set forth Sections 16 and 19(c) of RESPA.

Appendix A. HUD's 1981 report to the Congress, required by section 14 of RESPA, reported that the present instructions for completing the HUD–1 settlement statement contained in Appendix A to Regulation X were "incomplete, imprecise and difficult to understand." In response to these concerns of providers of settlement services and consumers and based upon several informal inquiries which indicate many common errors in completing the HUD–1, HUD proposes to revise the instructions considerably. Because most of these concerns could be addressed through improved instructions, no substantive change in the HUD–1 is proposed. HUD intends to maintain the HUD–1 in its current consumer-oriented form. Lenders and others who reproduce the HUD–1 should be aware that the required OMB number has changed as shown on the form in Appendix A. Future number changes may be announced in the **Federal Register** under the proposed § 3500.9(a)(5). Comments are requested regarding these proposed instructions and other problems with the HUD–1 or the instructions.

Comments are also requested regarding any problems or advantages which would result from reduction in size of the HUD–1. The General Services Administration has requested HUD to convert as many forms as possible to the 8.5" x 11" size. While developing the proposed rule, HUD attempted to reduce the size of the current legal-size HUD–1 but found some drawbacks, *e.g.*, reduction in the number of blank numbered spaces and elimination of the blank space at the bottom of the form.

For clearer terminology, the proposed instructions would use terms which are defined in proposed Regulation X (*i.e.*, date of settlement, settlement, settlement agent). To aid both the settlement agent and the borrower, the proposed instructions would provide guidance for each section and line of the

HUD-1. Use of blank lines would also be explained.

Frequently, settlement agents have failed to provide all information required in each line. The proposed instructions would emphasize the insertion of addresses and zip codes in Section F, identification of the person or firm to whom payments have been made and listing of percentage and *per diem* charges. Unlike the current instructions, the proposed instructions for Sections D and E would require all borrowers and sellers to be named on the HUD-1. The proposed instructions would also describe in greater detail the specific settlement charges to be listed in Section L.

The concept of "P.O.C." charges (paid outside of closing) would be clarified to address problems in disclosing charges paid outside of settlement in cases where borrower's deposits are held by a third party who will not serve as the settlement agent but will retain all or part of the deposit as a commission or fee. The current HUD-1 instructions do not assist settlement agents in cases where the settlement agent or someone else holds the borrower's deposit against the sales price (earnest money). Proposed instructions for Lines 201, 501, 506, 507 and 703 and P.O.C. items would account for the handling of earnest money deposits.

The proposed instructions would elaborate on certain common methods of financing. For example, proposed instructions for Line 202 would provide for cases involving the use of conversion of temporary financing into permanent financing. The types of settlement charges may vary from other settlements, but the proposed instructions would suggest the HUD-1 should be completed taking into account adjustments and charges related to the temporary and permanent financing which are known at the date of settlement. Lines 204-209 would be used to indicate any seller financing arrangements or other new loans not listed in Line 202.

The proposed instructions revise the treatment of various fees in Lines 801-811 to reflect the current FHA, VA and FmHA practices and procedures. Because FHA, VA and FmHA do not charge application fees, Line 806 should only be used for application fees required by private mortgage insurance companies. VA funding fees should be listed on Line 904 and 905. Proposed instructions for Lines 808-811 would indicate that these lines are to be used to list additional items payable in connection with the loan including fees to mortgage originators or mortgage brokers. Proposed instructions for Lines 902-905 would provide instructions for listing lump sum mortgage insurance premiums. Other items which are either required by the lender to be paid in advance (such as flood insurance, mortgage life insurance, credit life insurance and disability insurance) or paid at settlement but not required to be paid at settlement would be listed on Lines 904 and 905. The proposed instructions would also provide directions for transactions involving more than one attorney (Lines 1100-1113).

Appendix B. New proposed Illustrations Nos. 11-14 are explained in Section II of this preamble.

Appendix C. This proposed new appendix would be a suggested form for the good faith estimate to correspond to the proposed revision of § 3500.7. Comments are requested on this suggested form.

Appendix D. This proposed new appendix would be the required form to disclose mortgage broker fees which are permitted by § 3500.14(g)(6). Comments are requested on this form, including whether it should be required or whether the elements should be included elsewhere.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule would not have a significant impact on a substantial number of small entities. While the proposals would have some economic impact on small lenders and other small businesses in a position to refer settlement services business such as builders, real estate brokers or agents and attorneys, the impact is not expected to be substantial. HUD finds that there are no anticompetitive discriminatory aspects of the proposed rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impacts

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410.

OMB Control Number

The information collection requirements contained in §§ 3500.7, 3500.8, 3500.9, 3500.10, HUD-1 (Appendix A to the proposed rule) and Appendix C of this proposed rule have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501-3520) and have been assigned OMB control number 2502-0265. The information collection requirements contained in Appendix D of this proposed rule have been submitted to OMB under the provisions of the Paperwork Reduction Act. No person may be subjected to a penalty for failure to comply with this information collection requirement until it has been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Regulatory Impact Analysis

The proposed rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers; individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Semiannual Agenda of Regulations

This rule was listed at 53 FR 13867 as item #897 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3500

Condominiums, Cooperatives, Housing, Mortgages, Real property acquisition.

Accordingly, 24 CFR Chapter XX would be amended by revising Part 3500 to read as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

Sec.
3500.1 Designation.
3500.2 Definitions.
3500.3 No delegation of authority to HUD field offices.

Sec.
3500.4 Reliance upon rule, regulation or interpretation by HUD.
3500.5 Coverage of RESPA.
3500.6 Special information booklet of loan application.
3500.7 Good faith estimate.
3500.8 Use of HUD-1 settlement statement.
3500.9 Reproduction of HUD-1 settlement statement.
3500.10 One day advance inspection of HUD-1 settlement statement; delivery; recordkeeping.
3500.11 Mailing.
3500.12 No fee.
3500.13 Relation to State laws.
3500.14 Prohibition against kickbacks and unearned fees.
3500.15 Controlled business arrangements.
3500.16 Title companies.
3500.17 Escrow accounts.
3500.18 Validity of contracts and liens.
3500.19 Enforcement and investigations.
Appendix A—Instructions for Completing HUD-1 Settlement Statement
Appendix B—Illustration of Requirements of Section 8
Appendix C—Sample Form of Good Faith Estimate
Appendix D—Mortgage Broker Fee Disclosure Form

Authority: Real Estate Settlement Procedures Act of 1974, Pub. L. 93-533 (12 U.S.C. 2601 *et seq.*), Real Estate Settlement Procedures Act Amendments of 1975 (Pub. L. 94-205), section 461 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181).

§ 3500.1 Designation.

As used in this Part: This Part may be referred to as Regulation X.

§ 3500.2 Definitions.

As used in this Part:

(a) "Date of Settlement" means the date on which a borrower executes the documents which will give the lender a lien on the mortgaged property, except that in the case of a loan made to finance construction of a new structure or purchase of a manufactured home for resale which is used as or converted to a loan to finance purchase by the first user of the structure or manufactured home the date of settlement shall be the date on which the first user executes the documents which will obligate the first user to repay the loan.

(b) "Federally related mortgage loan" means any loan (other than temporary financing) which—

(1) Is secured by a first lien on property:

(i) Upon which there is located, or will be constructed immediately following settlement using proceeds of the loan, a structure designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives (including any related interests such as a share in the cooperative or right to occupancy of the unit)); or

(ii) Upon which there is located, or will be placed immediately following settlement using proceeds of the loan, a manufactured home; and

(2)(i) Is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) Is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) Is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), as such provisions may be amended from time to time, who makes or invests in residential real estate loans aggregating more than $1,000,000 per year, except that for the purpose of this section the term "creditor" does not include any agency or instrumentality of any State. A "residential real estate loan" means any loan (including temporary financing) secured by a lien (including a junior lien) on property described in § 3500.2(b)(1) except that such property may also be designed for occupancy by more than four families or may be more than individual cooperative or condominium units.

(c) "Good faith estimate" means the lender's estimate of charges which a borrower is likely to incur in connection with a settlement, prepared in accordance with § 3500.7 of this Part.

(d) "HUD-1 settlement statement" or "HUD-1" means the standard form for the statement of settlement charges which is prescribed by the Secretary pursuant to section 4 of RESPA and which appears in Appendix A to this Part.

(e) "Lender" means the secured creditor or creditors named as such in the debt obligation and document creating the lien. For purposes of § 3500.17 of this Part, "lender" also includes any purchaser of a Federally related mortgage loan.

(f) "Manufactured home" has the meaning given in § 3280.2(a)(16) of this title.

(g) "Mortgaged property" means the property which is security for the Federally related mortgage loan.

(h) "Person" means any individual, corporation, partnership, trust, association or other entity.

(i) "Required use". For purposes of §§ 3500.7(d), 3500.14(f)(2), 3500.15 and 3500.16 of this part, a person is "required" to use a particular provider of a settlement service whenever use of such provider is a condition of the availability to such person of some other distinct service or property and the person will pay for the settlement service of such provider or will pay a charge attributable in whole or in part to such settlement service. A "condition of availability" includes any legally-enforceable requirement (*e.g.*, a provision of a loan agreement or sales contract), any situation where the price of the other service or property will vary according to whether a particular provider is used, any situation where the purchaser must pay for certain additional services or goods unless a particular provider is used (*e.g.*, where a borrower must pay certain lender's attorney's fees only if that attorney does not conduct the settlement), or any situation in which a person would reasonably conclude that no choice of providers is permitted even if there is no express requirement to use a particular provider.

(j) "RESPA" means the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533), 12 U.S.C. 2601 *et seq.*, as it may be amended from time to time, including amendments made by the Real Estate Settlement Procedures Act Amendments of 1975 (Pub. L. 94-205) and Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181).

(k) "Secretary" means the Secretary of Housing and Urban Development or any official delegated the authority of the Secretary with respect to RESPA.

(l) "Settlement" means, generally, the process of conveying legal title to residential property to a purchaser who is financing purchase of the property with a Federally related mortgage loan, including the rendering of any services which have as a purpose the facilitating of the conveyance. In some contexts, "settlement" means only the actual collection and distribution of funds and documents related to the conveyance, and may also be known as "closing" or "escrow".

(m) "Settlement agent" means the person conducting the settlement (as defined in the second sentence of the definition of "settlement" in paragraph (1) of this section). If no other person is designated by the lender or the other parties to the settlement, the lender shall be considered the settlement agent.

(n) "Settlement service" means any service provided in connection with settlement.

(o) "Special information booklet" means the booklet prepared by the Secretary pursuant to Section 5 of RESPA to help persons borrowing money to finance the purchase of residential property to understand better the nature and costs of settlement services, in the form most recently published in the **Federal Register.**

(p) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(q) "Title company" means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company.

§ 3500.3 No delegation of authority to HUD field offices.

No authority granted to the Secretary under RESPA has been delegated to HUD field offices. Any questions or suggestions from the public regarding RESPA should be directed to the Office of Insured Single Family Housing, Attention: RESPA, Department of Housing and Urban Development, Room 9278, 451 7th Street, SW., Washington, DC 20410.

§ 3500.4 Reliance upon rule, regulation or interpretation by HUD.

(a) *Statutory provision.* Section 19(b) of RESPA provides: "No provision of this Act or the laws of any State imposing liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

(b) *Rule, regulation or interpretation.* (1) For purposes of section 19(b) of RESPA only the following constitute a "rule, regulation, or interpretation thereof by the Secretary":

(i) All provisions of this part and all Appendices thereto, including the HUD-1 and instructions set forth in Appendix A of this part, but not including any document referred to in this part except to the extent such document is set forth in this part; and

(ii) Any other document which is published in the **Federal Register** by the Secretary which states that it is an "interpretation" for purposes of section 19(b) of RESPA. Such documents are not rules or regulations. Such documents may be revoked or amended by a subsequent document published in the **Federal Register** by the Secretary.

(2) A "rule, regulation, or interpretation thereof by the Secretary" for purposes of section 19(b) of RESPA shall not include the special information booklet prescribed by the Secretary or any other statement or issuance, whether oral or written, by an officer or representative of the Department of Housing and Urban Development (HUD), letter or memorandum by the Secretary, General Counsel, any Assistant Secretary or other officer or employee of HUD, preamble to a regulation or other issuance of HUD, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (b)(1) of this section.

(c) *Unofficial interpretations; staff discretion.* In response to requests for interpretation of matters not adequately covered by this part or by an official interpretation issued under paragraph (b)(1)(ii) of this section, unofficial staff interpretations may be provided at the discretion of HUD staff. Written requests for such interpretations should be directed to the address indicated in § 3500.3 of this part. Such interpretations provide no protection under section 19(b) of RESPA. HUD staff will not ordinarily issue unofficial interpretations on matters adequately covered by this part or by an official interpretation issued under paragraph (b)(1)(ii) of this section.

§ 3500.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to all Federally related mortgage loans except as provided in paragraph (c) of this section.

(b) *Loans to finance construction or purchase of a manufactured home.* The exclusion for temporary financing stated in § 3500.2(b) of this part does not apply to a loan made to finance construction of a new structure or purchase of a manufactured home if—

(1) The structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance transfer of title to the first user, or

(2) The loan either initially has or after completion of construction will have a term of repayment which extends more than two years beyond the date of settlement.

(c) *Exceptions.* Sections 3500.6—3500.11 and 3500.17 of this part do not apply if:

(1) No loan proceeds are used to finance the transfer at settlement of legal title to the property described in § 3500.2(b)(1) of this part (for example, a home improvement loan or refinancing other than refinancing of a land sales contract or installment sales contract to finance transfer of legal title) and no loan proceeds are used to finance construction of a structure or purchase of a manufactured home; or

(2) The property described in § 3500.2(b)(1) exceeds 25 acres or has been purchased or will be purchased for the primary purpose of either resale or investment, provided that property intended to be used at least in part as the borrower's principal residence is not considered property purchased for investment; or

(3) The only transaction of the settlement which involves a Federally related mortgage loan is an assumption of a pre-existing loan or a transfer subject to a pre-existent loan, provided that this exception (3) shall not apply in the case of a pre-existing loan used or converted to a loan to finance transfer of title to the first user. This exception (3) shall not affect the continued application of § 3500.17 of this part for a loan which was already subject to § 3500.17 prior to the settlement.

For the purposes of this paragraph (c), "legal title" means a fee simple estate or a leasehold estate under a perpetual lease, a lease for not less than 99 years which is renewable at the option of the lessee or a lease with a period of not less than 10 years to run beyond the initial maturity date of the Federally related mortgage loan. If a person already holds legal title to property under this definition, then transfer of additional interests in the property to that person (for example, transfer of reversionary interests to a long-term lessee) is not a transfer of legal title.

§ 3500.6 Special information booklet at time of loan application.

(a) *Lender to provide information booklet.* The lender shall provide a copy of the special information booklet to every person from whom the lender receives or for whom it prepares a written application on an application form or forms normally used by the

lender for a Federally related mortgage loan. Where more than one person applies for a loan, the lender shall provide a copy of the special information booklet to each of the persons applying, upon request. Separate copies do not need to be provided to both husband and wife or to secondary obligors such as guarantors. The lender shall supply the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days after the application is received or prepared.

(b) *Revision.* The Secretary may from time to time revise the special information booklet by publishing a notice in the **Federal Register.**

(c) *Reproduction.* The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible and easily readable.

(d) *Permissible changes.* (1) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Secretary shall be made other than those specified in this paragraph (d) or any others approved in writing by the Secretary. A request to the Secretary for approval of any changes shall be submitted in writing to the address indicated in § 3500.3 of this part, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words "settlement costs" are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

(3) The special information booklet may be translated into other languages.

§ 3500.7 Good faith estimate.

(a) *Lender to provide.* The Lender shall provide the good faith estimate required under this section to every person to whom it must provide a copy of the special information booklet under § 3500.6 of this part by delivering the good faith estimate or placing it in the mail to the loan applicant not later than three business days after the application is received or prepared.

(b) *Content of good faith estimate.* A good faith estimate consists of an estimate, as a dollar amount or range, of each charge which will be listed in Section L (except Line 903 and series 1000 of Section L) of the HUD–1 in accordance with the instructions set forth in Appendix A to this part and the lender anticipates that the borrower will pay at settlement based upon the lender's general experience as to which party normally pays each charge in the locality of the mortgaged property. Each such estimate must be made in good faith and bear a reasonable relationship to the charge a borrower is likely to be required to pay at settlement, and must be based upon experience in the locality of the mortgaged property. As to each charge with respect to which the lender requires a particular settlement service provider to be used, the lender shall make its estimate based upon the lender's knowledge of the amounts charged by such provider.

(c) *Form of good faith estimate.* The good faith estimate must meet the minimum requirements set forth in this paragraph. A good faith estimate in the suggested form set forth in Appendix C to this part will be in compliance with such requirements except for any additional requirements of paragraph (d) of this section. Other forms may be used, including Section L of the HUD–1 settlement statement, if all required material is included. The good faith estimate may be provided together with disclosures required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, as long as all required material for the good faith estimate is grouped together. The minimum requirements for the good faith estimate are:

(1) The heading "good faith estimate" shall be prominently displayed.

(2) The following four paragraphs or substantially equivalent paragraphs shall be included, except that the second paragraph may be omitted if the lender has determined in good faith that the good faith estimate includes all items which the borrower will be required to pay at settlement:

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates—the actual charges may be more or less.

This form does not cover all items you will be required to pay in cash at settlement, for example, the deposit in an escrow account for payment of real estate taxes and insurance. You may wish to inquire as to the amount of such items.

The numbers listed beside the estimates correspond to the numbered lines contained in the HUD–1 settlement statement which you will be receiving at settlement. The HUD–1 settlement statement will show you the actual cost for items paid at settlement.

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended. Additional information can be found in the special information booklet provided by your lender.

(3) Each charge shall be described using the description from the appropriate line in Section L of the HUD–1 settlement statement or, if a blank line is expected to be used for such item in Section L at settlement, the anticipated description which will be inserted in such line. (See the instructions which are set forth in Appendix A to this part for instructions on completion of Section L.) The appropriate Section L line number and the estimated charge or range of charges shall be shown opposite the item description.

(4) The name of the lender shall be included.

(5) Any information required by paragraph (d) of this section shall be included.

The lender may require additional relevant information, such as the name/signature of the applicant and loan officer, date, and information identifying the loan application and property, as long as the form remains clear and concise and the additional information is not more prominent than the required material.

(d) *Particular providers required by lender.* If the lender requires use of a particular provider of a settlement service and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must clearly state that use of the particular provider is required and that the estimate is based on charges of the designated provider, give the name, address and telephone number of each such provider, and describe the nature of any relationship between each such provider and the lender. For purposes of the preceding sentence, a "relationship" exists if the provider is an associate of the lender, if within the last 12 months the provider has maintained an account with the lender or had an outstanding loan or credit arrangement with the lender, or if the lender has repeatedly used or required borrowers to use the services of the provider within the last 12 months. Section 3500.2(i) of this part defines "required" use of a provider of settlement services.

(e) *Fixed amount.* With respect to a transaction which is described in § 3500.8(c)(2) of this part, in lieu of providing the good faith estimate the lender shall deliver or place in the mail to the borrower not later than three

business days after the loan application is received or prepared a statement of the amount of the fixed charge, a statement of the settlement services and other items covered by such charge and, if applicable, the information required by paragraph (d) of this section.

(Approved by the Office of Management and Budget under control number 2502-0265)

§ 3500.8 Use of HUD-1 settlement statement.

(a) *Use by settlement agent.* The settlement agent shall use the HUD-1 settlement statement set forth in Appendix A to this part in every settlement involving a federally related mortgage loan except as provided in paragraph (c) of this section.

(b) *Charges to be stated.* The settlement agent shall complete the HUD-1 in accordance with the instructions set forth in Appendix A to this part.

(c) *RESPA transactions exempt from the use of the HUD-1 settlement statement.* A HUD-1 settlement statement is not required for:

(1) Transactions in which the borrower is not required to pay any charges which would be listed as paid from borrower's funds in Section L of the HUD-1, or

(2) Transactions in which the borrower is required to pay a fixed amount for all charges which would be listed as paid from borrower's funds in Section L of the HUD-1 and the borrower is informed of the fixed amount at the time of loan application.

(Approved by the Office of Management and Budget under control number 2502-0265)

§ 3500.9 Reproduction of HUD-1 settlement statement.

(a) *Permissible changes.* The HUD-1 settlement statement may be reproduced with the following permissible changes and insertions:

(1) The person reproducing the HUD-1 may insert in Section A its business name and/or logotype and may rearrange, but not delete, the other information which appears in Section A.

(2) The name, address and other information regarding the lender and settlement agent may be printed in Sections F and H, respectively.

(3) Reproduction of the HUD-1 must conform to the terminology, sequence and numbering of line items as presented in lines 100-1400. However, blank lines or items listed in lines 100-1400 which are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be correspondingly shortened. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD-1 may be used for a substitute or new item.

(4) Charges not listed on the HUD-1 but which are customary locally or pursuant to the lender's practice may be inserted in blank spaces; or where existing blank spaces on the HUD-1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD-1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD-1 and do not require prior HUD approval: Size of pages; tint or color of pages; size and style of type or print, vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD-1 contents on separate pages, on the front and back of a single page, or on one continous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of Sections B through I where necessary to accommodate computer printing; and manner of placement on the HUD-1 of the HUD number but not the OMB approval number, neither of which in any case may be deleted from the HUD-1. Any changes in the HUD number or OMB approval number may be announced by notice in the **Federal Register** rather than by amendment of this rule.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD-1 may be translated into any other language.

(9) An additional page may be attached to the HUD-1 for the purpose of including customary recitals and information used locally in real estate settlements, for example, breakdown of payoff figures; a breakdown of the borrower's total monthly mortgage payments; check disbursements; a statement indicating receipt of funds; applicable special stipulations between buyer and seller; and the date funds are transferred. If space permits, such information may be added at the end of the HUD-1.

(b) *Written approval.* Any other deviation in the form is only permissible upon receipt of written approval of the Secretary. A request to the Secretary for approval shall be submitted in writing to the address indicated in § 3500.3 of this part, stating the reasons why the applicant believes such deviation is needed. The prescribed form must be used until such approval is received.

(Approved by the Office of Management and Budget under control number 2502-0265)

§ 3500.10 One day advance inspection of HUD-1 settlement statement; delivery; recordkeeping.

(a) *Inspection one day prior to settlement.* The settlement agent shall permit the borrower to inspect the HUD-1 settlement statement, completed to set forth those items which are known to the settlement agent at the time of inspection, during the business day immediately preceding the date of settlement. Items related only to the seller's transaction may be omitted.

(b) *Delivery.* The settlement agent shall provide a completed HUD-1 to each borrower, each seller and the lender (if the lender is not the settlement agent), or their agents. Separate copies do not need to be provided to both husband and wife or to secondary obligors such as guarantors. Where borrower's and seller's copies differ as permitted by the instructions in Appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD-1 at or before the settlement or place it in the mail no later than three calendar days before the date of settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver.* The borrower may waive the right to delivery of the completed HUD-1 no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD-1 shall be mailed or delivered to the borrower, seller and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions.* Where the borrower or the borrower's agent does not attend the settlement or where the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD-1 shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping.* The lender shall retain each completed HUD-1 for three years after the date of settlement unless the lender disposes of its interest in the mortgage and does not service the mortgage. The lender may permit its copy of the HUD-1 to be delivered to the owner or servicer of the mortgage as a part of the transfer of the loan file. In such case such owner or servicer shall retain the HUD-1 for the remainder of the three-year period. As to each

Federally related mortgage loan which is exempt from the use of the HUD-1 by reason of § 3500.8(c) of this part, the lender shall keep an accurate record for three years of an itemized list of the settlement services provided, the exact charge, if any, which is to be imosed at settlement, and the paragraph (See § 3500.8(c)(1) or (c)(2)) under which the exemption is granted. The Secretary shall have the right to inspect or require copies of records covered by this paragraph (e).

(Approved by the Office of Management and Budget under control number 2502-0265)

§ 3500.11 Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

§ 3500.12 No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a Federally related mortgage loan made by it (or a loan for the purchase of a manufactured home) for or on account of the preparation and distribution of the HUD-1 settlement statement or statements required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

§ 3500.13 Relation to State laws.

State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. A State law is not inconsistent with RESPA or this part if the State law gives greater protection to a loan applicant, borrower or seller, or if it imposes more stringent limitations on a controlled business arrangement (as defined in section 3(7) of RESPA). The Secretary may determine whether an inconsistency exists upon request of any person or upon the initiative of the Secretary. Any person may request the Secretary to determine whether an inconsistency exists by submitting to the address indicated in § 3500.3 of this part, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Secretary that an inconsistency with State law exists shall be made, after consultation with appropriate Federal agencies, by publication of a notice in the **Federal Register**. "Law" as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

§ 3500.14 Prohibition against kickbacks and unearned fees.

(a) *Section 8 violation.* Any violation of this section is a violation of section 8 of RESPA and is subject to enforcement as such under § 3500.19(b) of this part.

(b) *No referral fees.* No person shall give and no person shall accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a settlement service involving a Federally related mortgage loan shall be referred to any person. The fact that the payment of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the payment is prohibited.

(c) *No split of charges except for actual goods or services.* No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a Federally related mortgage loan other than for services actually performed.

(d) *Thing of value.* "Thing of value" is broadly defined by section 3(2) of RESPA to include any payment, advance, fund, loan, service, or other consideration. Under section 8 of RESPA, a thing of value may be provided either directly or indirectly to a person and can take many forms including, but not limited to, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, retained earnings, special bank deposits or accounts, banking terms, special loan or loan guarantee terms, services of all types at special or free rates, referrals of business, and sales or rentals at special prices or rates, trips and payment of another person's expenses. The "payment" is used throughout § 3500.14 and § 3500.15 as synonymous with giving or receiving any "thing of value" and does not require transfer of money.

(e) *Agreement or understanding.* (1) An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct pursuant to with the payor and recipient of the thing of value understand that the payment is in return for the referral of business. A payment that is made repeatedly and is connected in any way which the volume or value of the business referred to the payor by the recipient is presumptively made pursuant to any agreement or understanding for the referral of business.

(2) An agreement or understanding for the referral of business incident to or part of a settlement service does not include any of the following for purposes of this section:

(i) A bona fide employment agreement (including an agreement establishing the relationship between a real estate broker and its real estate agents, even if that relationship may be characterized as one of independent contractor); or

(ii) Any agreement or understanding between an attorney and the attorney's law firm.

(f) *Referral.* (1) A referral includes any action or statement which has the effect of affirmatively influencing the selection by any person of a particular provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (as described in § 3500.2(i)) a particular provider of a settlement service or business incident thereto.

(g) *Not violations under this section.* None of the following shall be considered a violation of this section:

(1) Generally, the payment of a thing of value that bears a reasonable relationship to the value of goods or facilities actually furnished or services actually performed. The payment may be construed as a violation of this section to the extent that the payment exceeds the reasonable value of such goods, facilities or services. The value of a referral (*i.e.*, the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. While calculation of a payment as a percentage of loan amount does not necessarily result in payments in excess of reasonable value, it may have this result when the good, facility or service

does not vary significantly regardless of loan amount and when comparable goods, facilities or services are available from other sources which do not calculate payments as a percentage of loan amount.

(2) Payment—

(i) to attorneys for services actually rendered, or

(ii) by a title company or other insurance company to its duly appointed agent for services actually performed in the issuance of a policy of insurance, or

(iii) by a lender to its duly appointed agent for services actually performed in the making of a loan.

(3) Payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers.

(4) Normal promotional and educational activities that are not directly conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto, such as a reception by a title company, free seminars on title matters to professionals, furnishing property descriptions and names of record owners without charge to persons such as lenders, real estate brokers or attorneys, or distribution of calendars and other promotional material of nominal value.

(5) The waiver by a lender of the requirement that a borrower pay a prepayment penalty provided in loan documents, whether or not such waiver is conditioned upon receipt by the lender of a loan application from, or the making of a loan to, such borrower or a person purchasing a property from such borrower.

(6) Voluntary payment by a borrower to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such voluntary payment is disclosed on both the good faith estimate of settlement costs and the HUD-1 settlement statement and is not a condition of the loan or other settlement service.

(h) *Secondary Market Transactions.* Section 8 of RESPA and this section do not apply to sales of loans or commitments to sell loans after settlement.

(i) *Appendix B.* Illustrations 1–10 of Appendix B illustrate the requirements of this section.

§ 3500.15 Controlled business arrangements.

(a) *General.* Any payment of a thing of value by a business entity to any person with which it has an affiliate relationship or to a holder of a direct or beneficial ownership interest of more than one percent in the business entity (including but not limited to corporate dividends and partnership or joint venture distributions), any payment by a franchisee to a franchisor, and any payment by a franchisor to a franchisee is presumptively made pursuant to an agreement for the referral of business incident to or part of a settlement service. If such a payment is made in connection with a Federally related mortgage loan, it is presumptively a violation of section 8 of RESPA if:

(1) The person receiving the payment (or beneficial owner for whose benefit the payment is received) is a real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent or a person deriving a significant portion of the person's gross income from providing settlement services, or an associate of any of the foregoing; and

(2) The person receiving the payment (or beneficial owner for whose benefit the payment is received) or an associate has referred business incident to or part of a settlement service to the person making the payment since the date of any previous payment which was presumptively made pursuant to an agreement for the referral of business under this sentence or the date of publication of this provision in a proposed rule, whichever is later. An ownership interest of more than one percent means a legal right to receive more than one percent of all dividends, partnership or joint venture distributions, or similar payments.

(b) *Exceptions.* Any payment which is presumptively made pursuant to an agreement for the referral of business under paragraph (a) of this section (or any other payment in the context of a "controlled business arrangement" as defined in section 3(7) of RESPA) shall not be considered a violation of section 8 of RESPA:

(1) If the following conditions set forth in paragraphs (b)(1) (i), (ii) and (iii) of this section have all been satisfied since the date of any previous payment which was presumptively made pursuant to an agreement for the referral of business under paragraph (a) of this section or the date of publication of this provision as a proposed rule, whichever is later:

(i) The person making each referral has provided to each person whose business is referred both a written disclosure of the nature of the relationship between the provider of settlement services or business incident thereto and the person making the referral and a written estimate of the charge or range of charges generally made by such provider which describes the charge using the same terminology, as far as practical, as Section L of the HUD-1 settlement statement. The disclosures must be provided no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that where a lender makes the referral to a borrower the condition contained in this paragraph (b)(1)(i) may be satisfied as part of and at the time that the good faith estimate or a statement under § 3500.7(e) of this part is provided, and whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm knew or should have known that the client's transaction would require issuance of a title insurance policy. This condition is also satisfied whenever the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with this condition have been maintained throughout the relevant period and that any failure to comply with this condition was unintentional and the result of a *bona fide* error. An error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide* error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA.

(ii) No person making a referral has required (as defined in § 3500.2(i)) any person to use any particular provider of settlement services or business incident thereto, except (if such person is a lender) for requiring a buyer, borrower or seller to pay for the services of a particular provider such as an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except (if such person is an attorney or law firm) for arranging for issuance of a title insurance policy, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of a client in a real estate transaction.

(iii) The person making the payment has not given any thing of value other than things of value described in the preceding exemptions listed in § 3500.14(g)(1)–(5) of this part or a return on an ownership interest or franchise relationship. Neither the mere labelling

of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a return on an ownership interest or franchise relationship. A return on an ownership interest includes only payments intended as return on capital and does not include any payment which has a basis of calculation or no apparent principal business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals; any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or a payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments. A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous amount of referrals by the franchisor or franchisees.

(c) *Definitions.* As used in this section:

(1) "Associate" means with respect to a particular person—

(A) A spouse, parent or child of such person;

(B) A corporation or other business entity that controls, is controlled by, or is under common control with such person;

(C) An employer, officer, director, partner, franchisor or franchisee of such person; or

(D) Anyone who has an agreement or understanding with such person, the purpose or substantial effect of which is to enable such person to benefit financially from the referral of business incident to or part of a settlement service.

(2) "Affiliate relationship" means the relationship among business entities where one entity has effective control over the other or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent or subsidiary, characterized by an identity of stock ownership.

(3) "Beneficial ownership" means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

(4) "Control", as used in the definitions of "associate" and "affiliate relationship", means that a person—

(A) Is a general partner, officer, director, or employer of another person;

(B) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(C) Controls in any manner the election of a majority of the directors of another person; or

(D) Has contributed more than 20 percent of the capital of the other person.

(5) "Direct ownership" means the holding of legal title to an interest in a provider of settlement services except where title is being held for the beneficial owner.

(6) "Franchise" means any continuing commercial relationship created by any arrangement or arrangements whereby:

(i)(A) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(*1*) Identified by a trademark, service mark, trade name, advertising or other commercial symbol designating another person (hereinafter "franchisor"); or

(*2*) Indirectly or directly required or advised to meet the quality standards prescribed by another person (hereinafter "franchisor") where the franchise operates under a name using the trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor; and

(B)(*1*) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's method of operation, including but not limited to, the franchisee's business organization, promotional activities, management, marketing plan or business affairs; or

(*2*) The franchisor gives significant assistance to the franchisee in the latter's method of operation, including but not limited to, the franchisee's business organization, management, marketing plan, promotional activities, or business affairs; *Provided, however,* that assistance in the franchisee's promotional activities shall not, in the absence of assistance in other areas of the franchisee's method of operation, constitute significant assistance; or

(ii)(A) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(*1*) Supplied by another person (hereinafter "franchisor"); or

(*2*) Supplied by a third person (*e.g.*, a supplier) with whom the franchise is directly or indirectly required to do business by another person (hereinafter "franchisor"); or

(*3*) Supplied by a third person (*e.g.*, a supplier) with whom the franchise is directly or indirectly advised to do business by another person (hereinafter "franchisor") where such third person is affiliated with the franchisor; and

(B) The franchisor:

(*1*) Secures for the franchisee retail outlets or accounts for said goods, commodities, or services; or

(*2*) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or

(*3*) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraph (c)(6)(ii)(B) (*1*) and (*2*) of this section; and

(iii) The franchisee is required, as a condition of obtaining or commencing the franchise operation, to make a payment or a commitment to pay to the franchisor, or to a person affiliated with the franchisor.

(iv) Exemptions. The provisions of this part shall not apply to a franchise:

(A) Which is a "fractional franchise" (which means any relationship in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent not more than 20 percent of the sales in dollar of the franchisee); or

(B) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retail-grantor primarily for the retailer-grantor's own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly required to do business with by the retailer-grantor or advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor; or

(C) Where the total of the payments referred to in paragraph (c)(6)(iii) of this

section made during a period from any time before to within 6 months after commencing operation of the franchisee's business, is less than $500; or

(D) Where there is no writing which evidences any material term or aspect of the relationship or arrangement.

(v) Exclusions. The term "franchise" shall not be deemed to include any continuing commercial relationship created solely by:

(A) The relationship between an employer and an employee, or among general business partners; or

(B) Membership in a bona fide "cooperative association"; or

(C) An agreement for the use of a trademark, service mark, trade name, seal, advertising or other commerical symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;

(D) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising, or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol.

(vi) Any relationship which is represented either orally or in writing to be a franchise (as defined in paragraph (c)(6)(i)–(iii) of this section) is subject to the requirements of this part.

(7) "Franchisor" means any person who participates in a franchise relationship as a franchisor, as denoted in paragraph (c)(6) of this section.

(8) "Franchisee" means any person who participates in a franchise relationship as a franchisee, as denoted in paragraph (c)(6) of this section, or to whom an interest in a franchise is sold.

(d) *Appendix B.* Illustrations 11–15 of Appendix B illustrate the requirements of this section.

§ 3500.16 Title companies.

No seller of property that will be purchased with the assistance of a Federally related mortgage loan shall require, directly or indirectly, as a condition of selling the property, that title insurance covering the property be purchased by the buyer from any particular title company. Section 3500.2(i) of this part defines "required" use of a provider of a settlement service. Section 3500.19(c) of this part explains the liability of a seller for a violation of this section.

§ 3500.17 Escrow accounts.

(a) *Limitations on settlement deposits and monthly deposits.* If a lender for a Federally related mortgage loan requires a borrower to deposit sums in one or more escrow accounts (also called trust accounts, impound accounts, or similar names) for the purpose of assuring payment of taxes, hazard or mortgage insurance premiums, or other charges with respect to the mortgage property, such sums may not exceed the following:

(1) On or before the date of settlement, a lender may not require a borrower to deposit an aggregate sum in an escrow account in excess of—

(i) A sum that will be sufficient to pay that portion of each charge payable from the escrow account which is attributable to a period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom and ending on the due date of the first full installment payment under the Federally related mortgage loan, and

(ii) One-sixth of an amount which the lender reasonably estimates will be the total amount of charges payable from the escrow account during the twelve-month period following the date of settlement under the normal lending practice of the lender and local custom.

(2) In any month including or following the due date of the first full installment payment under the Federally related mortgage loan, a lender may not require a borrower to deposit an aggregate sum in an escrow account in excess of—

(i) One-twelfth of an amount which the lender reasonably estimates will be the total amount of such charges payable from the escrow account during the ensuing twelve-month period under the normal lending practice of the lender and local custom;

(ii) Such amount as is necessary to maintain an additional balance in such escrow account not to exceed twice the amount calculated under paragraph (a)(2)(i) of this section; and

(iii) Any additional amount which the lender reasonably determines is necessary to avoid or eliminate a deficiency which would preclude full payment from the escrow account of each charge payable from the escrow account on the date a charge would be paid under the normal lending practice of the lender and local custom.

(b) *Normal lending practice.* "Normal lending practice of the lender", as used in paragraph (a) of this section, does not include any lending practice which results in escrow accounts in excess of amounts required by ordinarily prudent lending practice in the locality.

(c) *Example of permitted practices under this section.* For instance, where an annual tax of $1,200 ($100 a month) is paid on March 31 and the date of settlement is June 15 with the first monthly installment due July 1, the lender may require $500 on or before the June 15 settlement. This sum is calculated as follows: The lender is allowed to collect $100 for each month following the date taxes are normally paid (March 31), up to, but not including, the date of the first full mortgage payment (July 1). This constitutes a total of $300 for the months of April, May and June. An additional amount equivalent to two months' payment ($200) may also be required on or before the date of settlement. Thus, on June 15 the lender may require $300 for the "in-between" months and $200 for "cushion", yielding $500. The remaining $700 tax balance is collected at $100 per month for the remaining seven months.

(d) *Loans covered.* Section 10 of RESPA and this section apply to all Federally related mortgage loans, whether made before or after the enactment of RESPA, except for loans covered by the exceptions set forth in § 3500.5(c) of this part.

(e) *Multiple installments.* If a tax or other charge is paid in more than one installment annually, such charge must be paid from a single escrow account instead of separate escrow accounts for different installments.

§ 3500.18 Validity of contracts and liens.

Nothing in RESPA or this part shall affect the validity or enforcement of any sale or contract for the sale of real property or any loan, loan agreement, mortgage or lien made or arising in connection with a Federally related mortgage loan.

§ 3500.19 Enforcement and investigations.

(a) *Manner of enforcement.* RESPA contains specific enforcement provisions only for section 8 and section 9 of RESPA, which correspond to §§ 3500.14, 3500.15 and 3500.16 of this part. The substance of those RESPA enforcement provisions is set forth in this section. The Secretary has taken no position regarding the availability of private causes of action against private parties which violate other provisions of RESPA or this part. It is the policy of the Secretary to cooperate regarding RESPA matters with Federal, State or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition,

failure to comply with RESPA may be grounds for administrative action by the Secretary under Part 24 of this title concerning debarment, suspension, ineligibility of contractors and grantees, or under Part 25 of this title concerning the Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement which may be legally available.

(b) *Violations of section 8 of RESPA and § 3500.14 of this part.* (1) Any person or persons who violate section 8 of RESPA or § 3500.14 or § 3500.15 of this part shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

(2) Any person or persons who violate the provisions identified in paragraph (b)(1) of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service. For purposes of contemplating the charge paid for a mortgage loan, only the loan origination fee and loan discount are used but not the principal or interest for the loan.

(3) The Secretary or, to the extent authorized by State law, the Attorney General of any State or the insurance commissioner of any State, may bring an action to enjoin violations of such provisions.

(4) In any private action brought pursuant to this paragraph (b), a court may award to the prevailing party the court costs of the action together with reasonable attorney's fees.

(c) *Violations of section 9 of RESPA and § 3500.16 of this part.* Any seller who violates the provisions of section 9 of RESPA or § 3500.16 of this part is liable to the buyer in an amount equal to three times all charges made for the title insurance referred to in § 3500.16. RESPA does not provide for recovery of court costs or attorney's fees in any private action brought pursuant to this paragraph (c).

(d) *Jurisdiction of courts.* Any action pursuant to the provisions of this section may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within one year from the date of the occurrence of the violation, except that actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

(e) *Investigations; subpoena authority.* (1) The Secretary may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of RESPA, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Secretary is authorized by section 19(c) of RESPA to hold such hearings, administer such oaths, and require by subpoena the attendance and testimony of such witnesses and production of such documents as the Secretary deems advisable.

(2) Under section 19(c) of RESPA, any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena of the Secretary issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Appendix A—Instructions for Completing HUD–1 Settlement Statement

The following are instructions for completing Sections A through L of the HUD–1 settlement statement, required under section 4 of RESPA and Regulation X of the Department of Housing and Urban Development (24 CFR Part 3500). This form is to be used as a statement of actual charges and adjustments to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. Refer to Regulation X to determine if the HUD–1 is legally required to be used in a particular mortgage loan transaction. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. For this reason, these instructions include various references on handling an assumed existing loan in case of a new second mortgage loan. Refer to the definitions section of Regulation X for specific definitions of many of the terms which are used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to Regulation X regarding rules applicable to reproduction of the HUD–1. An additional page may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in settlements, for example, a breakdown of payoff figures; a breakdown of the Borrower's total monthly mortgage payments; check disbursements; a statement indicating receipt of funds; applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower or Seller by the Lender and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or Seller will pay for at settlement. Charges to be paid outside of settlement, including cases where a non-settlement agent (*i.e.*, attorneys, title companies, escrow agents, real estate agents or brokers) holds the Borrower's deposit against the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, shall be included on the HUD–1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided for additional insertions in Sections J and K. The names of the recipients of the settlement charges in Section L and the names of the recipients of adjustments described in Section J or K should be included on the blank lines.

Lines and columns which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

Line Item Instructions

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be given. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, and zip code of settlement agent; address and zip code of "place of settlement."

Section I. Fill in the date of settlement (as defined in Regulation X).

Section J. Summary of Borrower's Transaction. Line 101 is for the gross sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the gross sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves,

refrigerators, etc. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in Section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender or first user loan (a loan to finance construction of a new structure or purchase of a manufactured home where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user). For other loans covered by Regulation X which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Examples include cases in which the Seller has taken a trade-in or other property from the Borrower in part payment for the property being sold. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for carpets or drapes which the Borrower is to purchase separately. Lines 204–209 can also be used to indicate any Seller financing arrangements or other new loan not listed in Line 202. For example, if the Seller takes a note from the Borrower for part of the sales price, insert the principal amount of the note with a brief explanation on Lines 204–209.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities use but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 may indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction) or cash payable to the Borrower at settlement (if, for example, the Borrower's deposit against the sales price (earnest money) exceeded the Borrower's cash obligations in the transaction). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds the deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party, and if that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in Section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit which is being disbursed as proceeds and enter in column for Line 506 the amount retained by the above described party for settlement services. If the settlement agent holds the deposit insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Line 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other payoffs of Seller obligations should be shown on Lines 506–509 (but not on Lines 1303–1305). They may also be used to indicate funds to be held by the settlement agent for the payment of water, fuel, or other utility bills which cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements, should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Line 601 and 602 are summary lines for the Seller. Enter total in Line 420 on Line 610. Enter total in Line 520 on Line 602.

Line 603 may indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction) or cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or broker. If the sales commission is based on a percentage of the price, enter the sales price, the percentage, and the dollar amount of the total commission paid by the Seller.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or broker is retaining as a "P.O.C." item.

Line 704 may be used for additional charges made by the sales agent or broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record the fee charged by the Lender for processing or originating the loan. If this fee is computed as a percentage of the loan amount, enter the percentage of the blank indicated.

Line 802 is used to record the loan discount or "points" charged by the Lender, and, if it is computed as a percentage of the loan amount, enter the percentage in the blank indicated.

Line 803 is used for appraisal fees if there is a separate charge for the appraisal. Appraisal fees for HUD and VA loans are also included on Line 803.

Line 804 is used for the cost of the credit report if there is a charge separate from the origination fee.

Line 805 is used only for inspections by the Lender or the Lender's agents. Charges for other pest or structural inspections required to be stated by these instructions should be entered in Lines 1301–1305.

Line 806 should be used for an application fee required by a private mortgage insurance company.

Line 807 is provided for convenience in using the form for loan assumption transactions.

Line 808–811 are used to list additional items payable in connection with the loan including fees to mortgage originators or mortgage brokers.

Lines 901–905. This series is used to record the items which the Lender requires (but which are not necessarily paid to the lender, *i.e.*, FHA mortgage insurance premium) to be paid at the time of settlement, other than reserves collected by the Lender and recorded in 1000 series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for all mortgage insurance premiums due and payable at settlement. A lump sum mortgage insurance premium paid at settlement should be inserted on Line 902 with a note which indicates the premium is for the life of the loan and represents the total amount of insurance.

Line 903 is used for hazard insurance premiums which the Lender requires to be paid at time of settlement except reserves collected by the Lender and recorded in the 1000 series.

Lines 904 and 905 are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000 series) including flood insurance, mortgage life insurance, credit life insurance and disability insurance premiums. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1008. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions, this is referred to as an "escrow," "impound," or "trust" account. In addition to the items listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, etc.

Lines 1100–1113. This series covers title charges, which include a variety of services performed by title companies or others and includes fees directly related to the transfer of title (title examination, title search, document preparation) and fees for title insurance, legal charges (which include fees for Lender's, Seller's or Buyer's attorney, or the attorney preparing title work) and fees for settlement agents and notaries. In many jurisdictions the same person (for example, an attorney or a title insurance company) performs several of the services listed in this series and makes a single undifferentiated charge for such services. In such cases, enter the overall fee on Line 1107 (for attorneys), or Line 1108 (for title companies), and enter on that line the item numbers of the services listed which are covered in the overall fee. If this is done, no amounts should be entered for the individual items which are covered by the overall fee. In transactions involving more than one attorney, one attorney should use Line 1107 and the other attorney should use Line 1111, 1112 or 1113.

Line 1101 is used for the settlement agent's fee.

Lines 1102 and 1103 are used for the fees for the abstract or title search and title examination. In some jurisdictions the same person both searches the title (that is, performs the necessary research in the records) and examines title (that is, makes a determination as to what matters affect title, and provides a title report or opinion). If such a person charges only one fee for both services, it should be entered on Line 1103 unless the person performing these tasks is an attorney or a title company in which case the fees should be entered as described in the general directions for Lines 1100–1113. If separate persons perform these tasks, or if separate charges are made for searching and examination, they should be listed separately.

Line 1104 is used for the title insurance binder which is also known as a commitment to insure.

Line 1105 is used for charges for preparation of deeds, mortgages, notes, etc. If more than one person receives a fee for such work in the same transaction, show the total paid in the appropriate column and the individual charges on the line following the word "to".

Line 1106 is used for the fee charged by a notary public for authenticating the execution of settlement documents.

Line 1107 instructions are discussed in the general directions for Lines 1100–1113.

Lines 1108 and 1110 are used for information regarding title insurance. Enter the total charge for title insurance (except for the cost of the title binder) on Line 1108. Enter on Lines 1109 and 1110 the individual charges for the Lender's and owner's policies. Note that these charges are not carried over into the Borrower's and Seller's columns, since to do so would result in a duplication of the amount in Line 1108. If a combination Lender's/owner's policy is available, show this amount as an additional entry on Lines 1109 and 1110.

Lines 1111–1113 are for the entry of other title charges not already itemized. Examples in some jurisdictions would include a fee to a private tax service, a fee to a county tax collector for a tax certificate, and a fee to a public title registrar for a certificate of title under a Torrens Act.

Lines 1201–1205 are used for government recording and transfer changes. Recording and transfer charges should be itemized. Additional recording or transfer charges should be listed on Lines 1204 and 1205.

Lines 1301 and 1302 are used for fees for survey and pest inspection.

Lines 1303–1305 are used for any other settlement charges not referrable to the categories listed above on the HUD–1, which are required to be stated by these instructions. Examples may include structural inspections or pre-sale inspection of heating, plumbing, or electrical equipment. These inspection charges may include a fee for insurance or warranty coverage.

Line 1400 is for the total settlement charges paid from Borrower's funds and Seller's funds. These totals are also entered on Lines 103 and 502, respectively, in Sections J and K.

(Approved by the Office of Management and Budget under control number 2502–0265)

Appendix B—Illustration of Requirements of Section 8

The following illustrations provide additional guidance on the meaning and coverage of section 8 of RESPA. While particular illustrations may refer to particular providers of settlement services, such illustrations are applicable by analogy to providers of settlement services other than those specifically mentioned. Other provisions of Federal or State law may also be applicable to the practices and payments discussed in the following illustrations.

1. *Facts.* A, a provider of settlement services, maintains an abnormally large balance in a non-interest bearing account with B, a mortgage lender, pursuant to an understanding that B will refer borrowers of Federally related mortgage loans to A for the purchase of settlement services involving such loans.

Comments. Allowing B to use the deposited funds at no interest is a thing of value given by A to B pursuant to an agreement or understanding that business incident to or part of a settlement service shall be referred to A in violation of section 8 of RESPA. The maintenance of any accounts reasonably needed by A in the normal course of its business would not be a violation of section 8.

2. *Facts.* B, a lender of Federally related mortgage loans, pays A, a real estate agent, a fee of $25 per transaction purportedly for services performed such as arranging for B's appraiser to visit the property. The purported services for which the fee is paid are services that real estate agents frequently perform as part of their services and the fee is really intended to enable B to compensate A for referring potential borrowers to B.

Comments. Both A and B are in violation of section 8 of RESPA, since the fee is being paid in compensation for the referral of business rather than for legitimate services actually rendered by B on behalf of A.

3. *Facts.* A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of

settlement services in connection with the sale of individual lots by B.

Comments. The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business and both A and B are in violation of section 8 of RESPA. Similarly, section 8 would be violated if a title company gives a discount or allowance for the prompt payment of a title insurance premium or other charge for a settlement service to a real estate agent, attorney or lender as a rebate for the placement of business with such title company.

4. *Facts.* B, a lender, encourages persons who receive Federally related mortgage loans from it to employ A, an attorney, to search title and perform related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A will provide legal services to B or B's officers or employees at abnormally low rates or for no charge.

Comments. Both A and B are in violation of section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender or a real estate agent who only referred a prospective client to the attorney, section 8 would be violated by both individuals.

5. *Facts.* A, a provider of settlement services, pays referral fees to persons who refer settlement services business on commercial real estate to A.

Comments. While commercial transactions are not covered by RESPA, the payment of such referral fees would be a violation of section 8 if they involve indirect compensation for the referral of settlement services business covered by RESPA.

6. *Facts.* A, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, a title company, for the purchase of title insurance services. A fills out a simple form (*i.e.*, application form) but performs no other services in connection with the issuance of the title insurance policy. B pays A a commission (or pays a portion of the title insurance premium) for the transactions.

Comments. The payment of a commission or portion of the title insurance premium by B to A under circumstances where no substantial services are being provided by A to B is a violation of section 8 of RESPA.

7. *Facts.* A, a "mortgage originator" or "mortgage broker", receives loan applications and refers borrowers to lenders for a fee.

Comments. If A performs services such as obtaining credit and appraisal information or preparing an application for mortgage insurance or guarantee which are of value to a Lender paying the fee, without reference to the referral value of such services, and the fees paid bear a reasonable relationship to the value of such services, the payment of such a fee would not be in violation of Section 8 of RESPA. Section 8 does not apply to voluntary payments by a borrower to A for assistance in locating a lender, provided that the voluntary payment is disclosed on both the good faith estimate of settlement costs and the HUD-1 settlement statement and the payment is not a condition of the loan or other settlement service.

8. *Facts.* A, a title insurance company, provides among its other services an "Insured Closing Service Letter". Under this letter, for which no separate or additional charge is made, the company agrees to provide indemnity against loss due to certain fraudulent or negligent acts of the company's policy-issuing agents or approved attorneys in complying with closing instructions and in conducting the closing of any transaction in connection with which a policy of title insurance is to be issued by A.

Comments. Where A has provided such an Insured Closing Service Letter to a specified person and the protection afforded thereby is effective without regard to whether the particular case was referred to A by the person receiving protection under such letter, the provision of the letter would not be pursuant to an agreement or understanding that settlement services be referred, and therefore not in violation of section 8.

9. *Facts.* A, a service corporation, is a title insurance agent for B, a title insurance company. The search and examination of title, in connection with applications for title insurance policies prepared by A, are performed by employees of B. Employees of B also make any determinations as to the insurability of title. A issues title insurance policies on behalf of B and receives a commission equal to the amount paid other title insurance agents in the community, including other agents of B, who perform the title search and examination as well as prepare and issue the title insurance policy.

Comments. While A may be performing some real service for B, the fact that the amount of the commission received by A is equal to the commissions customarily paid to full-service title insurance agents who perform substantially greater and more valuable service indicates that the commission paid by B to A is really intended to compensate A for the referral of business. The amount by which the commission exceeds the reasonable value of the services rendered by A to B would be a referral fee prohibited by section 8 of RESPA. Section 8 does not prohibit variations in the amount of commissions that may be paid, not does it require that the quantum of services rendered be identical in all cases, so long as services significant to the issuance of a title insurance policy are rendered and the amount of the commission bears a reasonable relationship to the services rendered.

10. *Facts.* A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance company. A is part owner of B. B performs the title search and examination, makes determinations of insurability and issues a policy of title insurance on behalf of C, for which C pays B a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

Comments. While the payments of a commission by C to B is not a violation of section 8 of RESPA if the amount of the commission constitutes reasonable compansation for the services performed by B for C, the payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A relative to the amount referred by other owners constitutes a violation of section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varied based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners such arrangements would constitute violations of section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests.

11. *Facts:* Same as illustration 10, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of stock is not based on the amount of business referred or expected to be referred.

Comments: The dividends are presumed to be, at least in part, payments for the referral of business. However, since the payment can be considered a return on ownership interests A and B will be exempt from section 8 if A did not require anyone to use the services of B, A disclosed its ownership interest in B and provided an estimate of B's charges to each person referred by A to B, and B makes no payment (nor is there any other thing of value exchanged) to A other than dividends.

12. *Facts:* A, a franchisor for franchised real estate brokers, owns B, a provider of settlement services. C, a franchisee of A, refers business to B.

Comments: Any payments by A to C such as cash advances and any dividends from B to A are presumed to be, at least in part, for the referral of business to B. A, B and C will all be exempt from section 8 if C disclosed its franchise relationship with the owner of B and provided an estimate of B's charges to each person referred to B and C did not require anyone to use the services of B and all A's payments to C are under the franchise agreement and represent a return on the franchise relationship (rather than, *e.g.*, being based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, *e.g.*, being based on the referrals).

13. *Facts:* A holding company, A, owns subsidiaries B and C. B owns D, a mortgage company, and C owns E, a real estate broker. D and E have a practice of referring business to each other.

Comments: D and E are each owned by an "associate" of the other. Thus, dividends paid by B, C, D and E are presumed to be, at least in part, payments for the referral of business unless all elements of the appropriate exemption are satisfied. However, the fact that D and E have a practice of referring business to each other means that the third

element of the exemption cannot be met for dividends paid by D and E, since additional "things of value" are being paid. D and E are each giving and receiving a "thing of value" by referring business.

14. *Facts:* A, a franchisor, has franchise agreements with B and C, franchised real estate brokers located in different cities. B refers potential buyers moving to C's city to C.

Comments: Section 8 would be violated if B's referral is pursuant to an agreement and if a thing of value is given pursuant to such agreement (for example, reciprocal referrals of business). However, the mere existence of the arrangement described would not create any presumption that payments from A to B were pursuant to a referral agreement.

Appendix C—Sample Form of Good Faith Estimate

[Name of Lender] [1]

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates—the actual charges may be more or less.

This form does not cover all items you will be required to pay in cash at settlement, for example, the deposit in an escrow account for payment of real estate taxes and insurance. You may wish to inquire as to the amounts of such items.[2]

The numbers listed beside the estimates correspond to the numbered lines contained in the HUD-1 Settlement Statement which you will be receiving at settlement. The HUD-1 Settlement Statement will show you the actual cost for items paid at settlement.

Item [3]	HUD-1	Amount or range
Loan Origination Fee	801	$———
Loan Discount Fee	802	$———
Appraisal Fee	803	$———
Credit Report	804	$———
Inspection Fee	805	$———
Interest from —— to —— $—— per day.	901	$———
Mortgage Insurance Premium	902	$———
Settlement Fee	1101	$———
Document Preparation Fee	1105	$———
Attorney's Fee	1107	$———
Title Insurance	1108	$———
Recording Fees	1201	$———
City/County Tax Stamps	1202	$———
State Tax	1203	$———
Survey	1301	$———
Pest Inspection	1302	$———

Applicant ———————————
Date ———————————
Loan Officer ———————————
Date ———————————

[1] The name of the lender shall be placed at the top or bottom of the form. Additional information identifying the loan application and property may appear at the bottom of the form or on a separate page.

[2] This paragraph may be omitted if the lender has determined in good faith that all items which the borrower will be required to pay in cash at settlement are listed.

[3] Items for which there is estimated to be no charge to the borrower are not required. Any additional items for which there is estimated to be a charge to the borrower shall be listed if required on the HUD-1.

(Approved by the Office of Management and Budget under control number 2502-0265)

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended. Additional information can be found in the Special Information Booklet provided by your lender.

Appendix D—Mortgage Broker Fee Disclosure Form

Instructions: Whenever a mortgage broker fee is paid by the borrower, the disclosure below must be completed and attached to the good faith estimate. No changes to, deletions from or additions to this form shall be made other than those approved in writing by the Secretary. A request to the Secretary for approval of any changes shall be submitted in writing to the address indicated in 24 CFR § 3500.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

NOTICE: A mortgage broker fee in the amount of $——— is listed in the above good faith estimate (Line ——) on the basis of information furnished by (mortgage broker). Pursuant to your negotiations with (mortgage broker) and the (agreement) you have signed, this fee will be paid directly to the (mortgage broker) and is not imposed by or paid to the (lender) and is not a condition of the loan or other settlement service. YOU ARE ADVISED THAT THIS FEE *MAY* BE AVOIDED ENTIRELY IF YOU APPROACH THIS OR ANOTHER LENDER DIRECTLY. ADDITIONALLY, LOWER MORTGAGE INTEREST RATES AND MORTGAGE BROKER FEES MAY BE AVAILABLE FROM OTHER MORTGAGE LENDERS OR MORTGAGE BROKERS.

Dated: April 15, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-10908 Filed 5-13-88; 8:45 am]

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Reader Aids

Federal Register

Vol. 53, No. 94

Monday, May 16, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

15543-15642 2
15643-15784 3
15785-16050 4
16051-16234 5
16235-16376 6
16377-16534 9
16535-16692 10
16693-16858 11
16859-17002 12
17003-17166 13
17167-17446 16

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5802 15643
5803 15645
5804 15647
5805 15785
5806 15793
5807 16235
5808 16237
5809 16239
5810 16241
5811 16377
5812 16530
5813 16532
5814 16533
5815 16689
5816 16856
5817 16857
5818 17003
5819 17005
5820 17007
5821 17009
5822 17167

Executive Orders:
11480 (Superseded by EO 12640) 16996
12163 (Amended by EO 12639) 16691
12638 15649
12639 16691
12640 16996

5 CFR

841 16535
843 16535
1320 16618
1645 15620

Proposed Rules:
630 16554

7 CFR

246 15651
252 16379
301 ..... 15654, 16536
319 16538
354 15656
401 16539
701 15657
729 15543
900 15658
905 17169
910 ..... 16243, 17011
1106 15795
1762 15545
1951 ..... 15797-15800, 16243
1965 15800
2620 16540
3901 15547

Proposed Rules:
1 15685
15 16283
401 16554
652 15566
725 16721
780 17054
911 17056
915 17056
916 16931
918 17056
921 17056
922 17056
923 17056
924 17056
953 15850
958 15850
982 17056
987 16130
1040 15851
1068 ..... 15690, 16556
1230 15700
1497 16131
1498 16131
1900 16615
1946 17198
1948 17201
1951 17201
1955 17201
1980 ..... 15852, 16416

8 CFR

3 15659

Proposed Rules:
212 16972
214 16972
217 16972
236 16972
242 16972
245 16972
248 16972
299 16972

9 CFR

11 15640
78 16245
327 17011
335 17015
381 17011

Proposed Rules:
325 17059
327 17059
381 17059

10 CFR

50 16051
420 15801
465 15801
600 15801
1004 15660

Proposed Rules:
2 16131
50 16425
51 16131
60 16131

12 CFR

265 ... 15801
505 ... 16054
600 ... 16693
611 ... 16695

Proposed Rules:

203 ... 17061
545 ... 16147
611 ... 16934, 16936
614 ... 16937, 16963
615 ... 16937, 16948, 16963
617 ... 16936
618 ... 16937, 16948, 16963
622 ... 16966
623 ... 16966
624 ... 16968

14 CFR

21 ... 16360, 17171
25 ... 16360, 17171
36 ... 16360
39 ... 16241–16250, 16379–16386, 16697–16699, 17017, 17018, 17176–17178
71 ... 15634, 16252, 16253, 16387, 17019, 17020, 17179
97 ... 16388
302 ... 16700

Proposed Rules:

39 ... 16289, 16438, 16722–16724, 17077, 17222
71 ... 16290, 16291, 17078–17080, 17223–17225

15 CFR

4 ... 16057, 16211
15b ... 15548
372 ... 16390
373 ... 17021
399 ... 16254, 16701, 17021

16 CFR

13 ... 17022
455 ... 16390

Proposed Rules:

13 ... 16725, 16727

17 CFR

240 ... 16399, 17180

18 CFR

2 ... 15802, 16859
16 ... 15804
154 ... 16058
157 ... 16058
260 ... 16058
271 ... 16541
284 ... 16058, 16859
375 ... 16058
385 ... 16058, 16407
388 ... 16058

Proposed Rules:

35 ... 16882
38 ... 16882
292 ... 16882
293 ... 16882
382 ... 16882

19 CFR

Proposed Rules:

146 ... 16730
177 ... 17226

20 CFR

209 ... 17182
210 ... 17182
211 ... 17182
416 ... 16542, 16615
802 ... 16518

21 CFR

5 ... 17185
81 ... 15551
101 ... 16067
170 ... 16544
179 ... 16615
182 ... 16862
184 ... 16837, 16862
186 ... 16862
444 ... 16615
452 ... 16837
522 ... 15812
561 ... 15812
866 ... 16837
876 ... 16837
895 ... 16837
1002 ... 16837

Proposed Rules:

175 ... 16837
176 ... 16837
177 ... 16837
178 ... 16558, 16837
211 ... 16150
352 ... 15853
864 ... 17227

22 CFR

Proposed Rules:

41 ... 16975
206 ... 16559
1507 ... 16153

23 CFR

625 ... 15669

24 CFR

207 ... 15813
215 ... 15818
220 ... 15813
221 ... 15813
232 ... 15671, 16068
241 ... 16068
242 ... 16068
885 ... 15818
968 ... 15551

Proposed Rules:

570 ... 15566
3500 ... 17424

26 CFR

1 ... 16076, 16214, 16408
145 ... 16867
602 ... 16076, 16214, 16408

Proposed Rules:

1 ... 16156, 16233
48 ... 16882
602 ... 16233

27 CFR

9 ... 17022

28 CFR

Proposed Rules:

16 ... 16730

29 CFR

1625 ... 15673
1907 ... 16838
1910 ... 16838
2619 ... 17025
2676 ... 17026

Proposed Rules:

1910 ... 16731
1915 ... 16731
1917 ... 16731
1918 ... 16731

30 CFR

210 ... 16408
216 ... 16408
756 ... 17186
845 ... 16016

Proposed Rules:

75 ... 16872
914 ... 16560
925 ... 15702

31 CFR

5 ... 16702
306 ... 15553

32 CFR

199 ... 17190
390 ... 16254
706 ... 16873

33 CFR

100 ... 16255, 16874
110 ... 16874, 17027
117 ... 16547, 16875
162 ... 15555
165 ... 16703, 17028

Proposed Rules:

117 ... 16292
165 ... 16883

34 CFR

33 ... 15673
361 ... 16978
363 ... 17140
365 ... 17140
366 ... 17140
369 ... 17140
370 ... 17140
372 ... 17140
374 ... 17140
375 ... 17140
378 ... 17140
379 ... 17140
385 ... 17140
387 ... 17140
388 ... 17140
389 ... 17140
390 ... 17140
778 ... 17150

Proposed Rules:

200 ... 16292
373 ... 15776
380 ... 15776

35 CFR

9 ... 16256

36 CFR

211 ... 17029
251 ... 16548
261 ... 16548
1258 ... 16257

Proposed Rules:

7 ... 16561
211 ... 17310
217 ... 17310
228 ... 17310
251 ... 17310

37 CFR

1 ... 16413
2 ... 16413

Proposed Rules:

1 ... 16522
201 ... 16567

38 CFR

3 ... 16875
21 ... 16257
42 ... 16704

Proposed Rules:

21 ... 16884

39 CFR

111 ... 16258

Proposed Rules:

3001 ... 16885

40 CFR

35 ... 15820
52 ... 16261, 17033
60 ... 17038
61 ... 17038
152 ... 15952
153 ... 15952, 15998
156 ... 15952, 15998
158 ... 15952, 15998
162 ... 15952, 15998
163 ... 15998
180 ... 15822–15826, 16719, 17191
271 ... 16264
303 ... 16086

Proposed Rules:

50 ... 17081
51 ... 17081
52 ... 15703, 16732, 17378
58 ... 17081
141 ... 16348
142 ... 16348
180 ... 15854, 15855
253 ... 15624
261 ... 15704
300 ... 17228
763 ... 15857

41 CFR

101–41 ... 16876
101–42 ... 16089
101–43 ... 16089
101–44 ... 16089
101–45 ... 16089
101–46 ... 16089

42 CFR

400 ... 16267
435 ... 16550

Proposed Rules:

57 ... 15710, 16158, 16293
435 ... 15857

43 CFR

2 ... 16128
3000 ... 17340
3040 ... 17340
3100 ... 17340
3130 ... 17340
3150 ... 17340
3160 ... 16408, 17340
3180 ... 17340
3200 ... 17340
3210 ... 17340
3220 ... 17340
3240 ... 17340

3250 17340
3260 17340
Proposed Rules:
11 15714
12 16733
Public Land Orders:
6675 16269

44 CFR

59 16269
60 16269
61 16269
62 16269
64 15555
65 16269
70 16269
72 16269

45 CFR

Proposed Rules:
670 16886

46 CFR

150 15826
153 15826
Proposed Rules:
581 15863

47 CFR

Ch. 1 15557
1 ..... 17039, 17192
73 ..... 15560, 16551, 17040–17048, 17193
76 17049
80 17051
Proposed Rules:
2 17082
13 15572
15 17083
25 17230
69 16301
73 ..... 15572–15575, 15716, 16165, 16569, 16570, 17083–17085, 17331–17232
80 15572

48 CFR

301 15561
304 15561
306 15561
307 15561
313 15561
315 15561
330 15561
332 15561
333 15561
352 15561
5215 16280
5252 16280
Proposed Rules:
213 17232
245 17233
252 17233
1401 17086
1403 17086
1415 17086
1453 17086

49 CFR

1 15844
99 16414
171 16990
172 17158
173 ..... 16991, 17158
174 10158
177 ..... 16990, 16991, 17158
350 15845
511 15782
571 17053
831 15846
1143 15849
1150 15849
1160 16552
Proposed Rules:
217 16640
219 16640
383 16656
391 16656
392 16656
567 17058
571 ..... 15576, 15578, 17088
575 16167
1135 16296
1140 17234
1145 16296
1152 17234
1201 15579

50 CFR

91 16344
301 16838
640 17194
661 ..... 16002, 16415
672 16129
675 16552
Proposed Rules:
32 16296
33 16296
216 16299
644 15718
683 16735

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 13, 1988

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.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
*53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
300-399	11.00	Jan. 1, 1988
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
*1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	[2] Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	July 1, 1988
12 Parts:		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	13.00	Jan. 1, 1988
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988
140-199	9.50	Jan. 1, 1988
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
*300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
16 Parts:		
0-149	12.00	Jan. 1, 1988
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1988
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
800-1299	13.00	Apr. 1, 1987
1300-End	6.00	Apr. 1, 1987
22 Parts:		
1-299	19.00	Apr. 1, 1987
300-End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
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200-499	26.00	Apr. 1, 1987
500-699	9.00	Apr. 1, 1987
700-1699	18.00	Apr. 1, 1987
1700-End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
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§§ 1.641-1.850	17.00	Apr. 1, 1987
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§§ 1.1001-1.1400	16.00	Apr. 1, 1987
§§ 1.1401-End	20.00	Apr. 1, 1987
2-29	20.00	Apr. 1, 1987
30-39	13.00	Apr. 1, 1987
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50-299	14.00	Apr. 1, 1987
300-499	15.00	Apr. 1, 1987
500-599	8.00	[3] Apr. 1, 1980
600-End	6.00	Apr. 1, 1987
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987

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29 Parts:		
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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, 1988. 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.

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