7-12-88
Vol. 53 No. 133
Pages 26217-26418

Federal Register

Tuesday
July 12, 1988

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

Contents

Federal Register

Vol. 53, No. 133

Tuesday, July 12, 1988

Separate Parts In This Issue

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
Executive Orders:
12644 26417

7 CFR
2 26217
250 26217
272 26219
273 26219
1126 26226
1900 26398
1940 26228
1980 26400
Proposed Rules:
1030 26369

8 CFR
214 26230

9 CFR
78 26231
Proposed Rules:
50 26262
51 26262
77 26262
78 26262
92 26262

12 CFR
748 26232
Proposed Rules:
336 26262

14 CFR
71 26232
97 26233
1215 26235
Proposed Rules:
71 (4 documents) 26275–26278

15 CFR
4b 26235

16 CFR
13 26236
305 26237

17 CFR
240 26376

19 CFR
12 26238

21 CFR
524 26242

26 CFR
1 26243
Proposed Rules:
1 26279

30 CFR
934 26246
Proposed Rules:
934 26280

32 CFR
266 26246

33 CFR
100 (2 documents) 26246, 26247
117 (2 documents) 26248, 26249
Proposed Rules:
100 26281
166 26282

39 CFR
111 26249

40 CFR
52 (3 documents) 26250–26256
Proposed Rules:
261 26283

47 CFR
Proposed Rules:
22 26288

49 CFR
501 26257
510 26257
511 26257
Proposed Rules:
653 26289

50 CFR
17 (2 documents) 26369

Rules and Regulations

Federal Register
Vol. 53, No. 133
Tuesday, July 12, 1988

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegation of Authority; Corrections

AGENCY: Department of Agriculture.

ACTION: Final rule; correction.

SUMMARY: On May 23, 1988, at 53 FR 18253, the Secretary of Agriculture issued a final rule delegating authority to the Assistant Secretary for Special Services and the Deputy Assistant Secretary for Special Services and revising the delegations of authority to the Chiefs of the Forest Service and Soil Conservation Service. The document inadvertently used inconsistent terms in referring to the authority to approve acquisitions of land under the Weeks Act of March 1, 1911, as amended and related acts and contained a typographical error in the delegation of authority to divide and designate lands into national forests. This document corrects these errors.

FOR FURTHER INFORMATION CONTACT: Jerry Sutherland, Acting Director, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (703) 235–8212.

SUPPLEMENTARY INFORMATION: In the delegation of authority to the Chief of the Forest Service published May 23, 1988, (53 FR 18253), the Chief was granted additional land acquisition approval authority under the Weeks Act of March 1, 1911, as amended, and related acts for acquisitions up to $250,000 in value (7 CFR 2.42(b)). However, in the reservation of land acquisition authority by the Secretary (7 CFR 2.43(f)), the rule did not use language parallel to that used in the delegation to the Chief. The effect of this inconsistency in terminology was to limit the authority of the Chief to approve other land acquisitions. This document corrects that error and a typesetting error made in paragraph (b) of § 2.43 when the rule was published.

PART 2—[AMENDED]

The following corrections are made to the final rule published on May 23, 1988, at 53 FR 18253–18258:

§ 2.42 [Amended]

1. In the second sentence of paragraph (b) of § 2.42, appearing on page 18255, column 1, line 13, change the phrase "and related acts" to read as follows: "and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632)."

§ 2.43 [Amended]

2. In paragraph (b) of § 2.43, appearing on page 18256, column 3, line 13, remove the first "the" and add the word "or" so that the line reads as follows: "acres acquired under or subject to the".

3. In paragraph (f) of § 2.43, appearing on page 18256, column 3, lines 42 and 43, change the phrase "and under other authorities," to read as follows: "and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632)."

Date: July 5, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88–15548 Filed 7–11–88; 8:45 am]
BILLING CODE 3410–11–M

Food and Nutrition Service

7 CFR Part 250

Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under its Jurisdiction; Eligibility of Nonprogram Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Regulations (7 CFR Part 250) to clarify the circumstances under which donated foods may be made available to schools which do not participate in the National School Lunch or School Breakfast Programs and are not "commodity" schools. This final regulation also specifies the types of commodities that such schools are eligible to receive. This amendment will improve the program by ensuring a consistent policy for dealing with these schools.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal agencies, State or local government agencies or geographic regions; and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this proposed

rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this rule are subject to approval by the Office of Management and Budget (OMB) before becoming effective.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

Background

Section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) authorizes the Department to donate commodities for use by various recipients in the United States including "nonprofit school lunch programs". Traditionally, these commodities, as well as donated foods distributed under other legislative authorities, have been made available primarily to schools which participate in the National School Lunch Program (NSLP) or School Breakfast Program (SBP) or which participate as "commodity" schools under section 14(f) of the National School Lunch Act.

There are, however, some nonprofit school lunch programs which do not participate in any of the above programs, and these schools are not addressed specifically in the regulations governing donation of food. Despite this omission, these "nonprogram schools" are eligible to receive certain types of commodities. Section 416 refers generally to nonprofit school lunch programs. The Department has concluded, therefore, that surplus commodity items distributed under the authority of section 416 may be made available to nonprogram schools. For these reasons, on June 15, 1987, the Department proposed at 52 FR 22660 to amend § 250.8(a) of the regulations governing donation of food to clarify that nonprogram schools are eligible to receive certain types of commodities provided they satisfy specified eligibility criteria established for schools which participate in the NSLP or SBP or which are "commodity" schools. We would like to note, however, that nonprogram schools are not a new entity. Rather, these schools already receive food and this rule is being published to codify current practices. Nonprogram schools will receive only the Section 416 commodities that are bonus and in sufficient supply to warrant distribution. First, the proposal stipulated that the school must either be public or have nonprofit status as determined by the Internal Revenue Service. Secondly, the school food service had to be operated on a nonprofit basis. Finally, under the proposal, a private school could not charge tuition in excess of the limit established for the NSLP. Once approved, nonprogram schools would qualify to receive commodities designated by the Department, provided that they complied with all provisions of 7 CFR Part 250.

Since publication of the proposed rule, Part 250 has been restructured through an amendment which was published in the **Federal Register** on June 3, 1988 (53 FR 20416). As a result of the restructuring, Section 250.8, as referenced under the proposed rule, has become Section 250.48. This rule amends the recently issued Part 250.

Analysis of Comments

The Department received seven comments on this proposal, all from State distribution agencies. Only one commenter unequivocally disapproved of the proposed rule. Other commenters, however, either expressed practical concerns with implementation or recommended technical modifications while generally approving of the proposal. The Department considered all comments and is adopting the proposed rule with some minor changes. The remainder of this preamble discusses the principal concerns raised by commenters.

Three commenters expressed concern about the possible staffing/budgetary implications of the proposal, noting that they might have to serve a large number of additional recipient agencies without an increase in administrative funding. The Department realizes that some State agencies may experience some increase in responsibilities. For the most part, however, we expect these increases to be relatively small. The information available to the Department indicates that less than one percent of all public schools and only about one-third of all private schools nationwide are not already participating in the National School Lunch Program (NSLP).

Moreover, a substantial number of nonparticipating private schools were ineligible for the NSLP because their tuitions exceeded the statutory limit imposed by Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. This limit was rescinded by Pub. L. 100–71, the Supplemental Appropriations Act, 1987, enacted on July 11, 1987, which amended section 5(d) of the National School Lunch Act (42 U.S.C. 1760(d)) and Section 15(c) of the Child Nutrition Act (42 U.S.C. 1784(c)). Consequently, many formerly ineligible private schools can be expected to participate in the NSLP, leaving even fewer nonprogram schools to be served. Finally, the Department emphasizes that this regulation is being promulgated to conform the program regulations to section 416, which makes any school eligible for designated commodities if it operates a nonprofit school lunch program.

One commenter was concerned about the potential for abuse, since nonprogram schools are not subject to regular reviews conducted by the State, as are schools participating in the NSLP. The Department acknowledges the need to monitor all recipient agencies to ensure proper use of donated foods. The Department is in the process of reviewing the current monitoring requirements for schools and will be publishing a proposed rule to clearly define these requirements. The monitoring provisions contained in that regulation will be applicable to nonprogram schools.

Another concern involved the quality of meals served in nonprogram schools. This commenter noted that those meals are not subject to nutritional standards; therefore, commodities donated by the Department could be used to prepare nonnutritious meals. The Department believes there is some assurance that commodities will be used to enhance the quality of meals in these schools. For example under current policy, flour is made available to nonprogram schools only to the extent that there is no reduction in the schools' normal commercial flour purchases. Since USDA's donations supplement flour already being acquired by the school, the overall quality of the meals can be expected to improve, regardless of the specific meal standards observed by the school. Similar enhancement should result from the donation of other commodities to these schools.

One commenter suggested that the proposed regulations be revised to state that only section 416 foods which do not count toward a State's guaranteed amount of commodities under section 6 of the National School Lunch Act be designated as available to nonprogram schools. In fact, nonprogram schools are not provided with commodities under Section 6—only those foods designated as "bonus" commodities would be made available to nonprogram schools, and none of these commodities will count against a State's Section 6 commodity allotment.

The Department has made a nonsubstantive modification to the proposed regulation. The phrase "nonprofit school food service" has been

substituted for "nonprofit lunch service" in § 250.48(a)(2)(ii). The revised language parallels the terms used in § 250.48(a)(1).

List of Subjects in 7 CFR Part 250

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

Accordingly, the Department is amending 7 CFR Part 250 as follows:

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

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

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 81–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a), sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10 Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 1114(a), Pub. L. 97–98, 95 Stat. 1269 (7 U.S.C. 1431(e)); Title II, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); 5 U.S.C. 301.

2. Section 250.48 is amended by redesignating the text of paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2), to read as follows:

§ 250.48 School food authorities and commodity schools.

(a) * * *

(2) School food authorities which do not participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter or in the School Breakfast Program under Part 220 of this chapter may receive such commodities as the Secretary may designate, provided the schools are public schools or private schools determined by the Internal Revenue Service to be exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954 or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor; and operate a nonprofit school food service. Such schools shall be eligible to receive only those commodities acquired under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) to the extent that such commodities become available and the Secretary has determined that surpluses of such commodities exist and surplus quantities are sufficient to distribute to nonprogram schools.

* * * * *

Date: July 5, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–15539 Filed 7–11–88; 8:45 am]

BILLING CODE 3410–30–M

---

7 CFR Parts 272 and 273

[Amdt. No. 289]

Food Stamp Program; Simplified Application and Standardized Benefit Projects

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for conducting projects using simplified food stamp application and benefit determination procedures for recipients of certain types of categorical aid. These projects, which are operational alternatives to normal procedures, are authorized by Subsection 8(e) of the Food Stamp Act of 1977, as amended by section 1520 Pub. L. 98–198, the Food Security Act of 1985 (7 U.S.C. 2017(e)). The projects' goals are improved administrative efficiency and reduced error rates.

DATE: This action is effective August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Russ Gardiner, Supervisor, Research, Demonstration and Evaluation Projects Section, Administration and Design Branch, Program Development Division, 3101 Park Center Drive, Alexandria, Va. 22302, Telephone: (703) 756–3387.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final rule has been reviewed under the Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified not major because the provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These provisions will not significantly raise the Food Stamp Program's total benefit and administrative expenses. It is expected that the operation of these projects will result in administrative cost savings and error reduction in the Food Stamp Program (FSP). The projects will be operated in a maximum of five States and five political subdivisions. Because these provisions will deal only with the administration of the FSP in these sites, they will not affect industry or trade in any substantive manner.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015, Subpart V (46 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator, Food and Nurtrition Service (FNS), has certified that the action will not have a significant economic impact on a substantial number of small entities. The rule establishes procedures under which State and local agencies will operate Simplified Application and Standardized Benefit Projects. As participation is voluntary and some administrative cost savings should result, there should be no significant adverse impact on the workload, staffing needs, or paperwork of participating State or county agencies.

Reporting and Recordkeeping

The reporting and recordkeeping requirements contained in § 273.23(1) of this regulation which come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) will be submitted to OMB for their review and approval. They will not be enforced until such time as OMB approval is received.

Background

On April 23, 1987, a proposed rule for the Simplified Application/Standardized

Benefit (SA/SB) Projects was published at 52 FR 13450. Interested parties were given 60 days to provided comments. A total of 15 comment letters were received from State and local agencies and public interest groups during the comment period; all of the letters contained more than one comment. The major concerns raised are discussed below. Commentors on the proposed regulations were also provided with a draft copy of the SA/SB Work Plan Guide (WPG). (The WPG will be used by potential operators in developing proposals for operating SA/SB Projects.) Comments received on the WPG have also been considered in developing this final rule.

An explanation of the rationale for the rule is contained in the preamble of the proposed rule. While part of it is reprinted below for the sake of clarity, the reader should refer to that preamble for a full understanding of the provisions of this rulemaking.

Section 17(d) of the Food Stamp Act, as amended by Pub. L. 97–98 (December 21, 1981) authorized the Secretary to conduct a Simplified Application Demonstration Project. The Simplified Application Demonstration Project was an attempt to reduce the administrative burden of food stamp benefit calculations by simplifying program rules. The demonstration project tested how different approaches to standardizing and simplifying policy affect benefits, administrative costs, and errors in the FSP. Four sites—the State of Illinois, the State of Oklahoma, and San Diego and Fresno Counties, California—participated in the demonstration. Although each developed and implemented its own version of policy simplification, all four focused on simplifying the process of determining food stamp benefit levels for households that are already eligible for other programs, particularly Aid to Families with Dependent Children (AFDC). The legislation allowed the participating sponsors to decide which categories of households would be project eligible—households all of whose members received AFDC, Supplemental Security Income (SSI) and/or Medicaid (pure households); or households only some of whose members received AFDC, SSI and/or Medicaid (mixed households). In Illinois, program simplification entailed assigning food stamp benefits to pure AFDC households based on standard-benefit tables under which all households within certain categories received the same food stamp allotment. In Oklahoma, income equal to the maximum State AFDC payment (plus any applicable AFDC "$30 and ⅓" earned income disregard) was used as the food stamp gross-income standard for AFDC households. Income equal to countable SSI income plus the State-supplemental payment was used as the food stamp gross-income standard for SSI/Medicaid households. The California sites used AFDC income definitions to establish FSP eligibility and benefit levels. The San Diego project involved both pure and mixed AFDC households; only pure AFDC households were project eligible in Fresno. The evaluation of the demonstration showed that simplified procedures could, depending upon the type of benefit standardization implemented, significantly reduce administrative costs and error rates.

The 1985 Food Security Act (Pub. L. 99–198, December 23, 1985) established the use of simplified application and standardized benefit procedures as an operational alternative. By-and-large, the operational guidelines contained in the legislation authorizing the Simplified Application Demonstration (Pub. L. 97–98) were repeated in the new legislation (Pub. L. 99–198). Rather than establish simplified application and standardized benefit procedures as operational alternatives available to all States, the 1985 legislation specifically limits operation to a maximum of five States and five political subdivisions. Because of this limitation, FNS will competitively select operational sites.

General Project Related Concerns

The majority of the commentors expressed strong support for the project. They believed that the project's goals—administrative cost savings through simplification, error reduction, and protection of the poorest households—represented a needed "new direction" in program administration. Not unexpectedly, particular support was expressed by State agency commentors for the project's potential for reducing error rates. Three commentors expressed concern regarding the ability of State agencies to meet those goals while maintaining program costs at current levels. FNS acknowledges that simultaneous achievement of these outcomes will be difficult but not impossible.

Several of the commentors supported the objective of administrative cost savings. Of those commentors, one favored options which also increase program benefits and another cautioned against cutting benefits to achieve program simplification. The statute requires that average allotments by household size not decrease from current levels: Congressional direction requires that the poorest of the poor households not be harmed as a result of standardization. Due to fiscal constraints, a significant increase in program costs cannot be permitted. An amount equal to the Federal savings realized in administrative funds can be added to current benefit costs; however, additional benefit increases should be kept to a minimum. Household protection is achieved by establishing a goal for benefit losses—no household would lose benefits of more than $10 or 20 percent, whichever is less. This goal is contained in the Work Plan Guide and will be used in evaluating project proposals.

One commentor suggested that the project's parameters be expanded to allow benefits to be provided in cash rather than coupons. We wish to emphasize that these projects are operational alternatives and not demonstrations. The authorizing legislation does not permit cash benefits, therefore regulations issued pursuant to 8(e) cannot authorize cash benefits.

Several commentors acknowledged that the legislation itself places restrictions on the level of allowable simplification, but expressed concern that FNS not add to those restrictions. In finalizing these regulations, we have attempted to provide State agencies as much flexibility as possible to tailor their SA/SB systems to existing conditions. We have combined this operational flexibility with specific limitations on the level of benefit changes which will be permissible. Taken in combination, State and local project operators will be allowed to take whatever path they feel is most administratively advantageous as long as recipient benefits and rights are properly protected.

Program Administration—§ 273.23(b)

Two commentors expressed dissatisfaction that operation of the project is limited to a maximum of five States and five political subdivisions. Congress has clearly established this limitation in legislation and, therefore, we are unable to change this provision.

Although not specifically stated in the proposed regulations, the preamble stated that potential project operators would have 90 days to prepare and submit their SA/SB Work Plans. Two commentors objected to this timeframe; stating that it was insufficient time in which to develop benefit methodologies, assess their impact, and clear the submission through the appropriate internal channels. Six months was suggested as an alternative. Since the

draft of the Work Plan Guide has been available since late July 1987, we believe six months is unnecessarily long for Work Plan development. Since 90 days may, in some instances, prove to be inadequate time, the regulations have been revised to provide 120 days for Work Plan submission. Political subdivisions have been provided an additional 30 days since these proposals must clear through the State agency.

One commentor asked whether State agencies could submit a single application which could be evaluated as either a State or project area proposal. Because FNS is expecting to receive a large number of proposals, various panels will review the State and project area proposals. Hence, separate applications for each proposed project will be necessary. If a project area within a State and the State agency both win their categories, the State agency will be given the option of deciding which type of project they wish to operate.

Many of the commentors had strong opinions regarding the selection criteria set forth in the proposed regulation. They were particularly concerned about the weight assigned to "net Federal costs." Following the general concerns discussed above, the commentors stated that achievement of the "zero-net Federal cost" requirement would be difficult, if not impossible. Suggestions for additional selection criteria included: not harming the poorest of the poor; simplifying the application and the application process; household impacts; project management plans and staffing; organizational capability; site population; administrative savings; error reduction; variety of household types and benefit methodologies; and monitoring and evaluation planning. The draft of the Work Plan Guide (WPG) expanded on the evaluation criteria contained in the proposed regulations, specifically including many of these criteria. In particular, the WPG criteria addressed the project's effect on benefits, from a total cost standpoint and an individual household standpoint; the impact of the project's design on processing procedures and demands made of applicants; creativity of design; administrative savings; technical quality; and operational potential. Dispersion of the sites among the FNS Regional Offices was added as a final criteria to serve as a delineator should more than 10 proposals of similar quality exist.

While the selection criteria contained in the draft Work Plan Guide incorporated the majority of comments received on the proposed regulations, two areas deserve additional consideration. The first is administrative cost savings. Several commentors believed that the emphasis placed on administrative cost savings would make it very difficult for State agencies with low per-case costs to compete. They believed that because their costs are so low, it would be difficult to achieve high administrative savings from either a percentage or absolute standpoint. Further, they believed that holding benefit increases to such small amounts would be difficult. One commentor offered a solution to the first problem by suggesting that administrative cost savings be weighted to produce a factor accounting for differences in States' current administrative costs. To accomplish this, the ratio between a State agency's current administrative cost to project cost savings would be multiplied by the ratio between a State agency's administrative cost to the National average administrative cost. It was never FNS' intention that State agencies with low administrative costs be penalized in the selection process. In fact, percentage changes rather than absolute cost changes were used as evaluation factors in the draft Work Plan Guide. We agree that this commentor's approach strengthens the criteria and have incorporated this suggestion. However, we do not see any options with regard to limiting program cost increases, particularly given current Federal budget constraints.

The second area needing further discussion concerns the use of error reduction as a selection criteria. Several commentors believed that since error reduction was a project goal, its achievement should be considered in site selection. As we discussed in the preamble to the proposed regulations, we do not want to reward States with high error rates by making error reduction a selection criteria. A natural effect of simplified procedures will be the reduction of error. This error reduction will not, however, have an impact on program costs since error is reduced by eliminating rather than correcting errors in eligibility and benefit determination.

Contents of the Work Plan—§ 273.23(c)

Substantive comments on the Work Plan have been addressed in other areas of this preamble. However, several commentors suggested that a more complete description of the Work Plan contents be included. This has been done; the final regulations provide an outline of what will be required in the Work Plan. The Simplified Application/Standardized Benefit Notice provides further information and the Work Plan Guide is incorporated herein by this reference and is available by contacting Mr. Gardiner at the above cited address.

The final regulation establishes a requirement to update the Work Plan, as circumstances dictate, to modify the benefit determination methodology. Such changes would have to be approved in advance by FNS.

Project Eligible Households—§ 273.23(d)

Comments concerning households eligible for inclusion in this project generally favored expansion of eligible categories; however, one commentor expressed reservations about including "mixed" households, i.e., a household which contains some members receiving neither AFDC, SSI nor Medicaid, due to anticipated complications in evaluating project effects. Three commentors suggested that State agencies be allowed to designate households receiving State Assistance as project eligible. Another commentor recommended that Non-Public Assistance households be allowed to participate in the project, but only to the extent of allowing a standardized shelter deduction. The legislation specifically identifies those categories of households which may be project eligible. Eligibility is limited to households which include one or more members who are recipients of AFDC, SSI, or Medicaid. Consequently, participants in State programs are eligible for inclusion in this project only if they are part of such households. FNS recognizes that inclusion of "mixed" households will require special procedures; State agencies are free to exclude them if they wish. However, if a State agency includes mixed households in the eligible household universe, it accepts responsibility for designing adequate procedures regarding income and benefits to meet project requirements.

Determining Food Stamp Program Eligibility—§ 273.23(e)

Three commentors addressed themselves to the income definitions established in the proposed regulations and discussed in the preamble. One commentor was concerned the SSI income exclusions were not allowed in determining a household's income; this was considered particularly puzzling since AFDC income exclusions were allowed. Upon further reflection, we believe that an error was made in not excluding such income and the regulations are revised accordingly to achieve consistency. Further, to ensure the integrity of income calculation procedures, each potential sponsor will

be required to document in the Work Plan how gross and net income calculations will be handled. Another commentor pointed out that deemed income should be specifically excluded when the unit having the deemed income is part of the food stamp household supplying the deemed income, e.g., shelter. This was our intention and, in fact, this was the policy followed during the demonstration. The regulations have been rewritten to so specify. A third commentor asked that we allow the disregard of the $50 child support pass-through without additional cost to the State agency. State agencies may develop their benefit methodologies so as to disregard such income, i.e., using the maximum aid payable as a surrogate figure for gross income. However, since there is a need to keep program cost increases to a minimum, the impact of this policy must be closely evaluated and consideration must be given to how such a benefit increase could be offset without harming other households. States choosing to do this need to be concerned about the impact it will have on total program costs and the project's limitation on program cost increases. Further discussion of this issue is found below in § 273.23(f), *Benefit Determination Methodologies.* The last comment was directed toward categorically-eligible project-eligible households. The commentor felt that such households should be exempt from the gross and net income requirements. That was, in fact, our intention in drafting the regulation and this point has been clarified.

Three comments were received on the non-financial eligibility criteria. Two commentors suggested that each AFDC unit be considered a separate food stamp household. This, they believed, would result in even greater simplification and coordination of program rules. The new provisions of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, enacted July 22, 1987), may address these comments. Under this law, a parent, with his/her minor children, may live together with the parent's sibling and yet be considered a separate household if the parent with minor children purchases food and prepares meals separately from the parent's siblings. Similarly, three generations living together may form two separate households if the parent with minor children purchases and prepares meals separately from the children's grandparent(s). Further changes to "household definition" cannot be made for project purposes since the major provisions which define "household concept" are governed by statute. A final commentor requested further clarification on the applicability of non-financial eligibility criteria to categorically-eligible, project-eligible households. This has been clarified to reflect the fact that all categorically-eligible, households must meet the non-financial eligibility criteria contained in other parts of the regulations.

Benefit Levels—§ 273.23(f)

Almost all of the commentors addressed this section of the regulations. The general theme of most State agency commentors was that FNS should decrease the level of specificity established in the proposed regulations. They believed that State agencies should be given flexibility in determining specific project features such as subcategories, who is the poorest of the poor, and how to establish specific deduction amounts. The advocate group which commented expressed concern about the potential impact of the project on participant benefits, stating correctly that the projects' purpose was to simplify administration, not to make significant changes in household benefit levels. FNS concurs with both of these positions; the final regulations have been rewritten to reflect these concerns. State and local operators will be given flexibility to make specific determinations on subcategories and households needing special protection. Given the familiarity State and local agencies have with the characteristics of their caseload, they are in the best position to make such determinations. However, to ensure that Congressional direction on household protection is met, FNS will retain approval rights on benefit determination methodologies. A maximum benefit reduction of $10 or 20 percent, whichever is less, has been established as a goal for benefit changes and has been included in the regulatory language. While FNS may consider waivers to slightly modify this provision, adherence to the goal is important to project selection. One commentor felt that this goal (which was included in the draft Work Plan Guide) was unrealistic and unnecessary, suggesting instead that an average dollar amount, by household size, be used. FNS does not concur in this recommendation, believing it necessary to clearly establish parameters for State agencies to use as they develop their benefit methodologies, particularly given the above-stated flexbility. FNS recognizes that it will be difficult to maintain costs at current levels while adhering to the caveats that (1) average benefits be no less than averages would have been and (2) the poorest of the poor not be harmed as a result of standardization. While FNS will not mandate a preferred solution to this dilemma, State agencies are encouraged to use information known to them, e.g., households with a $50 child support pass-through, households having AFDC benefits recouped, in developing their benefit methodologies and/or household categories. By using available AFDC information, the need for additional food stamp information can be minimized.

One commentor requested that 100 households be established as a base number below which the use of averages in determining benefit levels is impractical. Rather than establishing such a hard and fast number, the Department believes that it is best to allow State agencies discretion in this area.

One commentor suggested that State agencies be allowed to "grandfather" existing cases which have allotments outside of "normal" benefit levels. State agencies are welcome to propose such grandfathering in their Work Plans, but they must be able to describe why such cases are anomalies.

The final regulations note the various parameters which must be considered in developing benefit methodologies. FNS believes that State agency ingenuity in developing benefit methodologies and household subcategories will allow their simultaneous achievement.

Household Notification—§ 273.23(g)

Three comments were received concerning household notification. One commentor suggested waiving the requirement for a timely notice of adverse action when a benefit decrease results from an increased AFDC payment. The commentor believed that since the overall effect was an increase in the total amount of funds available to the household, advance notification was not necessary. A second comment, which was similar, asked that a State agency be allowed to terminate food stamp benefits when AFDC benefits are terminated. Recipient households are entitled to timely notice of adverse action, and this right will not be abrogated by this rule. Therefore, these comments have not been accepted. The third comment suggested that States be allowed to phase-in SA/SB provisions if a point-in-time conversion is impractical. This is acceptable to FNS; potential project operators are free to provide for this in their Work Plans.

Application Processing Procedures—§ 273.23(h)

Several commentors addressed themselves to the application procedures discussed in the proposed regulations. One felt that households should not be asked to formally indicate a desire to receive food stamps, but should be asked orally at the time of the initial interview. This same commentor suggested that the AFDC, SSI, or Medicaid applications contain a tear-off sheet which would allow a household to establish its date of application. FNS continues to believe it is important that households indicate in writing their desire to receive food stamps, both to prevent their receipt by households not desiring to receive them and to establish a clear requirement for action on the part of the State agency. Therefore, as under current regulations, project-eligible households will be required to "file" a food stamp application by indicating in writing their desire to receive food stamps. While we do not believe it is necessary to incorporate the tear-off sheet concept in the regulations, it will be included as a suggestion in the Work Plan Guide.

One commentor did not believe the proposed regulations made it clear that non-assistance household members would have to provide the information needed to determine eligibility. Changes have been made, as necessary, to clarify this point.

A final issue involves the processing of SSI households. One comment specifically addressed the processing of mixed-SSI households by the Social Security Administration (SSA). We have had various conversations with SSA staff regarding SSA's possible role in the project; however, we have been unable to offer any specificity regarding State agency proposals. Based on the three circumstances discussed below, interface with SSA may be difficult. First, households jointly applying for SSI and food stamps will not be project eligible because their SSI eligibility will not have been determined and it is unlikely that it will be determined within the food stamp processing period. As under current joint processing procedures, SSA will take food stamp applications from "pure" households but will refer "mixed" households to the State agency. Second, since SSI redeterminations are generally made less frequently than food stamp recertifications, they do not seem to be a vehicle which could be used for food stamp recertifications. Third, SSI applications are generally stored in central locations within a year of approval. It would be difficult, if not impossible, to access such applications if a currently eligible SSI household indicates a desire to receive food stamps. Thus, although SSI application information could be used, the information will generally be drawn from the State Data Exchange (SDX) tape rather than being taken directly from the application itself. The regulations have been reworded to reflect the use of the information on the SDX tape rather than the application itself.

If, as in Oklahoma, the State agency is administering a State SSI supplementation program, the State agency would have maximum flexibility in determining how applications and recertifications for the SSI population, whether pure or mixed, would be handled. Although it appears that there may be problems in attempting SSI/FS simplification, SSA has indicated that they are willing to work toward accomplishing this end.

Regulatory Requirements—§ 273.23(i)

A number of commentors addressed the regulatory requirements section. One State agency commentor recommended allowing State agencies to require recipient cooperation in verifying all information normally required, whether or not it is needed to determine food stamp eligibility and/or allotments under their simplified application procedures. (An example would be to require verification of shelter expenses when a standardized excess shelter deduction is assigned to all households.) We do not believe it appropriate that State agencies require recipients to verify information not needed to determine eligibility and/or allotments. These factors are no longer pertinent for food stamp purposes. Verification of such factors would only serve to unnecessarily increase administrative costs. The program simplification achieved through SA/SB Projects should benefit both State agencies and applicants/recipients.

Three commentors suggested that Monthly Reporting/change reporting requirements be allowed to vary based on project designs. FNS concurs. Changes in reporting requirements should correspond with changes associated with SA/SB procedures. Project operators should incorporate adjustments to these requirements in their Work Plans, specifying any needed waivers to current requirements.

Quality Control—§ 273.23(j)

Several commentors expressed support for using the error rate attributable to project-eligible households in calculating a State's error rate for quality control purposes. However, one commentor doubted that SA/SB procedures would reduce the error rate as much as predicted. A final commentor expressed concern that State agencies would be held fiscally responsible (through the error rate sanction system) for erroneous information collected on SSI households by the SSA. Based on the results from the Simplified Application Demonstration, FNS continues to believe that the project has the potential for having a significant positive impact on a State agency's error rate. With regard to errors made by SSA, an interim regulation (52 FR 29657) is pertinent. This regulation states, at 7 CFR 275.12(d)(2)(v), that errors made as a result of information obtained through the Federal Information Exchange (FIX), specifically BENDEX and SDX systems information, are excluded from liability determinations if the State agency correctly processed the information.

Evaluation—§ 273.23(l)

One commentor expressed concern regarding the lack of emphasis on project evaluation. They believed that a rigorous evaluation was necessary to build a strong case for project expansion. They suggested that State agencies be required to include an evaluation component in their Work Plan and that the evaluation component be fairly heavily weighted in selection criteria. FNS continues to believe that an evaluation of the scope conducted during the demonstration is unnecessary. Current plans are for each site to perform a self-evaluation, verifying the projected impact information provided in their Work Plans. This self-evaluation would be conducted during the three-month period following project implementation, thus allowing the impact date to be relatively free from the influence of other changes. The evaluation would assess the project's actual impact on administrative costs, benefits, and participation and confirm the project's estimated impact on error rates. Information on the actual error rate impact will be collected annually in accordance with the schedule established at § 275.21(d), entitled *Quality control review report, Annual results.*

FNS will select an independent evaluation contractor who will assist in project evaluation. The contractor will be responsible for coordinating project sites' data and assisting FNS in the overall evaluation of the projects.

Reporting Requirements—§ 273.23(m)

Two commentors addressed project reporting requirements. Legislation specifically requires USDA to evaluate the impact of the projects on recipient households, administrative costs, and error rates. One commentor felt it would be difficult, if not impossible, to report the project's actual impact on error rates, administrative costs and participants, particularly in future years. No control group will exist against which to compare project outcomes. No suggestions were made, however, on how to collect the impact data. Given the potential for the "erosion" of the data over time, FNS is in agreement with the commentor. Thus, the reporting requirement for the project is being revised. As stated earlier, there will be an initial self-evaluation of the project's impact on benefit levels, administrative costs and participation. Ongoing reporting will address only error rate impacts. This will be a minimal reporting burden, requiring that States identify project-eligible households during the quality control review process. Project sites would be required to submit a separate report on the error rates attributable to project-eligible households on the same reporting schedule established in § 275.21[d].

State Agency Monitoring—§ 273.23(n)

This section has been rewritten to clarify that project operations will be monitored in accordance with the monitoring requirements established in Part 275.

Termination—§ 273.23(o)

Two comments were received concerning the project's timeframes and project termination. One commentor requested clarification of timeframes. Legislation makes the SA/SB Project an ongoing program alternative; consequently, there are no timeframes. States and political subdivisions selected by FNS will be encouraged to implement this policy provision in a timely fashion and implementation timeframes will be specified in project proposals. Regarding termination, one commentor agreed that FNS should be able to terminate a project, but suggested that a State or political subdivision should also be given the right to terminate. FNS agrees and language has been added to provide States and political subdivisions the right to terminate their participation.

A further provision has been added to clarify what will happen should a project be terminated or choose to terminate. In such instances, FNS reserves the right to select another project site based either on the initial application or a subsequent solicitation.

Implementation

State agencies wishing to conduct a Simplified Application/Standardized Benefit (SA/SB) Project must submit an application to FNS by November 9, 1988. Local agencies shall be given an additional 30 days to allow for clearance through the State agency. The application shall take the form of a Work Plan, the contents of which are discussed in the SA/SB Notice published simultaneously with this rulemaking.

SA/SB Projects have no mandatory implementation date. Rather, FNS is authorized to conduct such projects. The actual project implementation dates depend upon the timetables developed by State and local agencies chosen to operate the projects. The rule's effective date is established as 30 days subsequent to publication.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—[AMENDED]

2. In § 272.1, a new paragraph (g)(100) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(100) Amendment 289.

(i) This rule is effective August 11, 1988.

(ii) State agency Work Plans setting forth proposals for conducting Simplified Application/Standardized Benefit Projects must be postmarked no later than November 9, 1988. Local agency Work Plans must be postmarked no later than December 9, 1988.

3. In § 272.2, a new sentence is added at the end of paragraph (a)(2) to read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content.* * * *

(2) *Content.* * * * State agencies and/or political subdivisions selected to operate a Simplified Application/Standardized Benefit Project shall include that Project's Work Plan in the State Plan of Operation.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. Section 273.23 is added to read as follows.

§ 272.23 Simplified application and standardized benefit projects.

(a) *General.* This subpart establishes rules under which Simplified Application and Standardized Benefit Projects shall operate. State agencies and political subdivisions chosen as project operators may designate households containing members receiving AFDC, SSI, or Medicaid benefits as project eligible. Project eligible households shall have their food stamp eligibility determined using simplified application procedures. Food stamp eligibility shall be determined using information contained in their AFDC, or Medicaid application, or, in the case of SSI, on the State Data Exchange (SDX) tape, and any appropriate addendum. Project-eligible households shall be considered categorically food stamp resource eligible based on their eligibility for these other programs and shall be required to meet food stamp income eligibility standards. However, income definitions appropriate to the AFDC, SSI or Medicaid programs shall be used instead of food stamp income definitions in determining eligibility. In addition, such households shall, as a condition of program eligibility, meet and/or fulfill all food stamp nonfinancial eligibility requirements. (Project-eligible households defined as categorically eligible in § 273.2 (j) and (k) of these regulations are not required to meet the income eligibility standards.) To further simplify program administration, benefits provided to such households may be standardized by category of assistance and household size.

(b) *Program administration.* (1) Simplified application and standardized benefit procedures are applicable in five States and five political subdivisions. For the purpose of this section, a political subdivision is a project area as defined in § 271.2 of these regulations.

(2) State agencies and political subdivisions seeking to operate a

Simplified Application and Standardized Benefit Project shall submit Work Plans to FNS in accordance with the requirements of this section.

(3) FNS shall evaluate Work Plans according to the criteria set forth in the Simplified Application/Standardized Benefit Notice of Intent.

(4) Political subdivisions shall submit their Work Plans to FNS through their respective State agencies for review and approval.

(5) A State agency selected by FNS to operate a Simplified Application and Standardized Benefit Project shall include the Work Plan in its State Plan of Operations. A political subdivision chosen to operate a Simplified Application and Standardized Benefit Project shall assure that the responsible State agency include that political subdivision's project Work Plan in its own State Plan of Operations. The Work Plan shall be updated, as needed, to reflect changes in the benefit methodology, subject to prior FNS approval.

(c) *Contents of the work plan.* The Work Plan submitted by each applicant shall contain the following information:

(1) Background information on the proposed site's characteristics, current operating procedures, and a general description of the proposed procedures;

(2) A description of the proposed project design, including the benefit methodology, households which will be project eligible, operational procedures, and the need for waivers;

(3) An implementation and monitoring plan describing tasks, staffing and a timetable for implementation;

(4) An estimate of project impacts including implementation costs and, on an annual basis, operating costs, administrative costs, error reduction, and benefit changes; and

(5) A statement signed by the State official with authority to commit the State or political subdivisions to the project's operation.

(d) *Project-eligible households.* Each operating agency shall decide which of the following categories of household shall be eligible to participate in the project.

(1) Households all of whose members receive AFDC benefits under part A of title IV of the Social Security Act;

(2) Households all of whose members receive SSI benefits under title XVI of the Social Security Act;

(3) Households all of whose members receive Medicaid benefits under title XIX of the Social Security Act;

(4) Households each of whose members receive one or more of the following: AFDC, SSI, or Medicaid benefits (multiple-benefit households); and

(5) Households only some of whose members receive AFDC, SSI, and/or Medicaid benefits (mixed households).

(e) *Determining Food Stamp Program eligibility.* Under the Simplified Application and Standardized Benefit Project, project eligible households shall have their food stamp eligibility determined using the following criteria.

(1) Certain households, at the operating agency's option, which contain members receiving AFDC, SSI, or Medicaid benefits, shall be designated project eligible and need not make separate application for food stamp benefits. Once such households indicate in writing a desire to receive food stamps, their eligibility will be determined based on information contained in their application for AFDC or Medicaid benefits or, in the case of SSI, on the State Data Exchange (SDX) tape. AFDC or Medicaid applications may need to be modified, or be subject to an addendum in order to accommodate any additional information required by the operating agency.

(2) The income definitions and resource requirements prescribed under § 273.9 (b) and (c) and § 273.8 are inapplicable to project-eligible households. Project-eligible households which have met the resource requirements of the AFDC, SSI, and/or Medicaid programs shall be considered to have satisfied the food stamp resource requirements. Gross income less any allowed exclusions, as defined by the appropriate categorical aid program, shall be used to determine food stamp income eligibility (unless the project household is categorically income eligible as defined in § 273.2 (j) and (k)) and benefit levels. Deemed income, as defined under AFDC, SSI or Medicaid rules, shall be excluded to the extent that households with such income are part of the food stamp household providing the deemed income.

(3) Project-eligible households which are not categorically income eligible shall meet the gross and net income standards prescribed in § 273.9(a). Net income shall be determined by subtracting from gross income either actual or standardized deduction amounts. If standardized deduction amounts are used, they may be initially determined using recent historical data on deductions claimed by such households. Such deductions must be updated, as necessary, on at least an annual basis. Such deductions shall include:

(i) The current standard deduction for all households;

(ii) An excess shelter deduction and a dependent care deduction for households not containing an elderly or disabled member;

(iii) A dependent care deduction, an uncapped excess shelter deduction and a medical deduction for households containing a qualified elderly or disabled member; and

(iv) A standardized or actual earned income deduction for households containing members with earned income.

(4) All non-financial food stamp eligibility requirements shall be applicable to project-eligible households.

(f) *Benefit levels.* (1) In establishing benefits for project eligible households, either the appropriate State standard of need (maximum aid payment) or gross income as determined for the appropriate categorical aid program plus the value of any monetary categorical benefits received, if any, may be used as the gross income amount. If mixed households are designated project eligible, procedures shall be developed to include as household income the income of those household members not receiving categorical aid.

(2) If allotments are standardized, the average allotment for each category of household, by household size, shall be no less than average allotments would have been were the project not in operation.

(3) Benefit methodologies shall be constructed to ensure that benefits received by households having higher than average allotments under normal program rules are not significantly reduced as a result of standardization.

(4) Benefit methodologies shall be structured to ensure that decreases in household benefits are not reduced by more than $10 or 20%, whichever is less.

(5) The methodology to be used in developing benefit levels shall be determined by the operating agency but shall be subject to FNS approval.

(6) With FNS approval, operating agencies may develop an alternate methodology for standardizing allotments/deductions for specific sizes and categories of households where such size and category is so small as to make the use of average deductions and/or allotments impractical.

(7) FNS may require operating agencies to revise their standardized allotments during the course of the project to reflect changes in items such as household characteristics, the Thrifty Food Plan, deduction amounts, the benefit reduction rate, or benefit levels

in AFDC or SSI. Such changes will be documented by revising the Work Plan amendment to the State Plan of Operations.

(g) *Household notification.* All certified project-eligible households residing in the selected project sites shall be provided with a notice, prior to project commencement, informing them of the revised procedures and household requirements under the project. If household allotments are to be standardized, the notice shall also provide specific information on the value of the newly computed benefit and the formula used to calculate the benefit. The notice shall meet the requirements of a notice of adverse action as set forth in § 273.13(a)(2).

(h) *Application processing procedures.* (1) The operating agency shall allow project-eligible households to indicate in writing their desire to receive food stamps. Such households shall be notified in writing, at the time such indication is made, that information contained in their AFDC, SSI, or Medicaid application will be the basis of their food stamp eligibility determination. If mixed households are included in the project-eligible universe, the project operator shall develop a procedure to collect the necessary information on household members not receiving categorical aid.

(2) The operating agency may use simplified application and standardized benefit procedures only for those households containing at least one member certified to receive either AFDC, SSI, or Medicaid benefits. If simplified procedures are to be used, the State agency shall make all eligibility determinations for households jointly applying for food stamps and AFDC, SSI, or Medicaid benefits within the 30-day food stamp processing period. If a household's eligibility for AFDC, SSI, or Medicaid cannot be established within the 30-day period, normal food stamp application, certification, and benefit determination procedures shall be used and benefits shall be issued within 30 days if the household is eligible. Households which are jointly applying for AFDC, SSI, or Medicaid, and which qualify for expedited service, shall be certified for food stamps using procedures prescribed at § 273.2(i). However, if the State agency can process the application of an expedited service household for categorical assistance within the expedited period prescribed at § 273.2(i), it may use simplified application and standardized benefit procedures to certify the household for food stamp benefits.

(i) *Regulatory requirements.* (1) All Food Stamp Program regulations shall remain in effect unless they are expressly altered by the provisions of this section or the provisions contained within the approved SA/SB Work Plan.

(2) *Certification periods for mixed households.* At the option of the operating agency, mixed households may be assigned certification periods of up to one year. Such households, if circumstances warrant, may be required to attend a face-to-face interview on a schedule which would conform to certification periods normally assigned such households as specified in § 273.10(f). At the time of the interview, the household shall be required to complete a modified application and provide additional information in accordance with § 273.2(f). If the household fails to comply with the interview review requirement or if information obtained indicates a revision in household eligibility or benefits, action will be taken in accordance with§ 273.13, Notice of Adverse Action.

(j) *Quality control.* (1) Project eligible households selected for quality control review shall be reviewed by the State agency using special procedures, based on project requirements, which have been developed by the State agency and approved by FNS.

(2) The error rate(s) determined using the special quality control review procedures shall be included when determining the State agency's overall error rate.

(k) *Funding.* Operating agencies shall be reimbursed for project costs at the rates prescribed in § 277.4.

(l) *Evaluation.* Each project site shall conduct a self-evaluation of the project's impact on benefits, administrative costs and participation. Such evaluation shall be conducted within three months of project implementation. The results of the self-evaluation shall be sent to FNS within six months of project implementation. The impact of the project on project-eligible households' error rates shall be reported on an annual basis in accordance with § 273.23(m).

(m) *Reporting requirements.* Operating agencies shall be required to prepare and submit to FNS an annual report on the error rate attributable to project-eligible households. The timing of such reports shall coincide with the due date for the annual quality control report prescribed in § 275.21(d).

(n) *State agency monitoring.* Monitoring shall be undertaken to ensure compliance with these regulations and the Work Plan submitted to and approved by FNS. Project monitoring shall be conducted in accordance with the appropriate sections of Part 275, Performance Reporting System, of these regulations. At a minimum, onsite reviews of the Simplified Application and Standardized Benefit Project shall be conducted once within six months of the project's implementation and then in accordance with the Management Evaluation review schedule for the project area.

(o) *Termination.* (1) FNS may terminate project operations for any reason and at any time on 60 days written notice to the administering State agency or political subdivision. State or local agencies may also choose to terminate their participation with 60 days written notice to FNS. In either such event, operating agencies shall be given sufficient time to return to normal operations in an orderly fashion.

(2) If termination occurs, FNS may select another site for project operations. Such selection shall be based on either previously received project proposals or proposals received under a new solicitation.

Anna Kondratas,

Administrator, Food and Nutrition Service.

Date: July 5, 1988.

[FR Doc. 88-15540 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1126

[Docket No. AO-231-A55; DA-88-109]

Milk in the Texas Marketing Area; Interim Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This action provides, on an interim basis, transportation credits to handlers for hauling excess producer milk to nonpool plants located outside the State of Texas. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits would apply during the months of March-June and the last half of December and would be limited to milk going into Class II and Class III uses. The credits would be computed at a rate of 2.4 cents per 10 miles. Credits would be limited to handlers who transfer milk from plants located in Zone 1 of the marketing area while credits on milk that is moved directly from farms to nonpool plants would be limited to milk produced in northern Texas and southern Oklahoma. Handlers would also receive a credit to recognize costs associated with hauling

milk from higher- to lower-priced areas. The amount of milk to which transportation credits apply would be reduced to the extent that a handler or affiliate of the handler caused milk from outside the State of Texas to be received at plants in the marketing area.

The interim changes to the order, which are based on proposals considered at a public hearing held on February 2–3, 1988, in Irving, Texas, are necessary to partially compensate handlers for transportation costs incurred in clearing the market of surplus milk production that exceeds local manufacturing capacity.

EFFECTIVE DATE: July 12, 1988.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:.

Notice of Hearing: Issued December 30, 1987; published January 6, 1988 (53 FR 256).

Tentative Decision: Issued June 6, 1988; published June 13, 1988 (53 FR 22003).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area.

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

(1) The said order as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended on an interim basis, are such prices as well reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional findings. It is in accordance with the Food Security Improvements Act of 1986 (Section 9 of Pub. L. 99–260, 100 Stat. 51, March 20, 1986) to make this interim order amending the order effective not later than July 13, 1988.

The provisions of this order are known to handlers. The tentative decision of the Assistant Secretary containing all amendment provisions of this order was issued June 6, 1988 (53 FR 22003). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim amendments to the order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of these interim amendments to the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of these interim amendments to the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

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

2. A new § 1126.55 is added to read as follows:

§ 1126.55 Credits to handlers for transporting surplus milk.

For each of the months of March through June and December 16–31, a transportation credit shall be computed for each handler on the amount of producer milk that is classified as Class II or Class III pursuant to § 1126.42(b)(3) or (d)(2) that such handler transfers or diverts to nonpool plants located outside the State of Texas. Credits established pursuant to paragraphs (a) and (b) of this section shall be computed at the rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance, as determined by the market administrator. The amount of milk eligible for a transportation credit and the amount of such credit shall be established in accordance with paragraphs (a), (b), and (c) of this section subject to the limitations specified in paragraph (d) of this section.

(a) A transfer credit shall apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the distance between the transferor pool plant and the transferee nonpool plant.

(b) A credit for diverted milk shall apply to milk produced in Zone 1, 1–A, or 3 of the marketing area or the Oklahoma counties of Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, or Tillman that is diverted to a nonpool plant for the distance in excess of 100 miles between the nonpool plant and the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the route, or the courthouse of the county where the major portion of the milk on the load was produced.

(c) A credit for diverted milk produced in the area specified in paragraph (b) of this section shall also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustment) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received.

(d) No credit shall apply to the total quantity of milk moved to a given nonpool plant by a handler during each of the credit periods if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during each of the credit periods pursuant to paragraphs (a), (b), and (c) of this section shall be offset by the amount of milk that a handler or any affiliate of the handler causes to be received at plants located in the marketing area from outside the State of Texas during each of the credit periods, with such offset to be applied in sequence beginning with the nonpool plant at which the greatest credit would apply.

3. In § 1126.60, paragraph (h) is revised to read as follows:

§ 1126.60 Handler's value of milk for computing uniform price.

* * * * *

(h) Deduct any credit applicable pursuant to § 1126.55.

Signed at Washington, DC, on: July 6, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Service.

[FR Doc. 88-15544 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the allocation of loan and grant program funds to field offices to conform with changes in FmHA activities prompted by the Agricultural Credit Act of 1987, the Housing and Community Development Act of 1987, and the House Joint Resolution # 395, entitled "Makes Further Continuing Appropriations for the Fiscal Year Ending September 30, 1988." The intended effect on this action is to share with the public the methodology and formulas used to allocate FmHA loan and grant program funds to the field offices.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Glendon D. Deal, Deputy Director, Program Support Staff, FmHA, Room 6309, South Agriculture Building, Washington, DC 20250, telephone (202) 382-9619.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because these rules relate to the agency's internal administrative practice of allocating program funds to the field offices and are published for informational purposes only. The majority of the changes involve the timely implementation of the Agricultural Credit Act of 1987 and the Housing and Community Development Act of 1987.

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

The FmHA programs and projects which are affected by this rule are subject to intergovernmental consultation in the manner delineated in 7 CFR Part 3015. The Catalog of Federal Domestic Assistance programs affected are: 10.405, Farm Labor Housing Loans and Grants; 10.407, Farm Ownership Loans; 10.415, Rural Rental Housing Loans; 10.423, Community Facility Loans; 10.427, Rural Rental Assistance Payments; and 10.433, Housing Preservation Grants.

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), Mr. Vance L. Clark, 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 because, in terms of the Agency's grant programs, less than 30 grants will be affected annually.

The majority of these amendments to FmHA's metholology and formulas for allocation of loan and grant program funds to field offices result from the recent changes in the legislative directions for administering the affected programs. The remaining amendments are an effort to eliminate unnecessary verbage and to correct certain references. The following is a summary of the changes made by this action:

Section 1940.551(a) is revised to change the reference to the Western Pacific Territories to Western Pacific Areas to reflect the recent independence of some of these entities.

Section 1940.552(a) is amended to provide for those occasions when funds in a particular program will not be allocated to the field offices due to funding levels or administrative constraints.

Section 1940.552(g) is amended to provide for those occasions when the Administrator must increase the National Office reserve for an individual loan or grant program to accommodate an authorized demonstration program. Many times authorized demonstration programs are of short duration and very limited funding. These conditions do not provide sufficient time to modify regulations or sufficient funds to make an orderly allocation to field offices.

Section 1940.557(i) is revised to provide for targeting of Farm Ownership funds to socially disadvantaged groups in accordance with new legislative direction.

Section 1940.559(c) is deleted to remove the references to Indian Land Acquisition Funds from the Farmer Programs sections. These funds are now being administered by the Community Facilities Division.

Section 1940.575 and 1940. 576 are revised to eliminate redundant wording and to correct references.

Section 1940.577(i) is revised to correct a reference.

Section 1940.578 is revised to eliminate redundant wording and to correct references.

A new § 1940.589 is added to include Industrial Development Grants. Although FmFA has maintained authority to administer this program since its inception in the early 1970's, it has not been funded since 1981. This section is added to set forth the methodology and formulas for allocating these funds to the field offices.

Current § 1940.589 is redesignated as § 1940.590 and is further amended to provide information on the Indian Land

Acquisition Funds, Nonprofit National Corporation Guaranteed Loans and Grants, the Intermediary Relending Program, and Technical Assistance and Training Grants.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Community facilities, Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Rural housing, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for Part 1940 is revised 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 L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§ 1940.551 [Amended]

2. Section 1940.551(a) is amended by changing the last word in the paragraph from "Territories" to "Areas."

3. In § 1940.552, paragraphs (a) and (g) are amended by adding at the end of the paragraphs the following language to read as follows:

§ 1940.552 Definitions.

(a) *Amount available for allocation.* * * * On occasion, the allocation of funds to States may not be practical for a particular program due to funding or administrative constraints. In these cases, funds will be controlled by the National Office.

* * * * *

(g) *Reserve.* * * * The Administrator may retain additional amounts to fund authorized demonstration programs. When such demonstration programs exist, the information is outlined in Exhibit A of this subpart (available in any FmFA State Office).

* * * * *

4. Section 1940.557 is amended by revising paragraph (i) to read as follows:

§ 1940.557 Insured Farm Ownership loan funds.

* * * * *

(i) *Availability of the allocation.* A portion of the allocation will be targeted to the State's rural socially disadvantaged population. The amount of the targeted funds for each state is equal to the State's rural socially disadvantaged population divided by the State's total rural population multiplied by the State's total fiscal year Insured Farm Ownership allocation. Source of data is U.S. Census 1980.

§ 1940.559 [Amended]

5. Section 1940.559 is amended by removing paragraph (c) in its entirety.

6. Section 1940.575 is revised to read as follows:

§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

The criteria used in the basic formula area:

(1) State's percentage of National rural population,

(2) State's percentage of National number of rural occupied substandard units, and

(3) State's percentage of National rural families with incomes below the poverty level.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

SF = (criterion No. 1 × weight of 33⅓%) + (criterion No. 2 × weight of 33⅓%) + (criterion No. 3 × weight of 33⅓%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.522(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

7. Section 1940.576 is revised to read as follows:

§ 1940.576 Rental Assistance (RA) for new construction.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

8. Section 1940.577 is amended by revising paragraph (i) to read as follows:

§ 1940.577 Rental Assistance (RA) for existing projects.

* * * * *

(i) *Obligation of the allocation.* See § 1940.552(i) of this subpart.

* * * * *

9. Section 1940.578 is revised to read as follows:

§ 1940.578 Housing Preservation Grant (HPG) program.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds may be pooled after all HPG applications have been received and HPG fund demand by State has been determined. Pooled funds will be combined with the National Office reserve to fund eligible projects. Remaining HPG funds will be available for distribution for use under the Section 504 program.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Funds for the HPG program will be available for a limited period each fiscal year. Due to the requirements by law to allocate funds on a formula basis to all States and to have a competitive selection process for HPG project selection, FmHA will announce opening and closing dates for receipt of HPG applications. After the closing date, FmHA will review and evaluate the proposals, adjust State allocations as necessary to comply with the law and program demand, and redistribute remaining unused HPG resources for use under Section 504 (as required by statute).

10. Section 1940.589 is revised and redesignated as § 1940.590 and a new § 1940.589 is added to read as follows:

§ 1940.589 Industrial Development Grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National Nonmetro population—50 percent.

(2) State's inverse percentage of nonmetro per capita income—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multipled by the weight factor and summed to arrive at a State factor (SF).

$$SF = \left(\frac{\text{Criterion \#1}}{\text{Sum of criterion \#1}} \right) \times .5 + \left(\frac{1/\text{criterion \#2}}{\text{Sum of } 1/\text{criterion \#2}} \right) \times .5$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocation.* Not used.

(g) *Reserve.* See § 1940.552(g) of this subpart. States may request funds by written request to the Director, Community Facilities Loan Division. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate from the State's allocation.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions funds to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.590 Community and Business programs appropriations not allocated by State.

(a) *Watershed Protection Loans, Resource Conservation and Development Loans, and Flood Protection Loans.* State allocations will not be made for these type loans. Instead, obligating documents may be submitted to the Finance Office when a loan is approved. Only States that are authorized to process Pub. L. 534 loans may submit obligating documents to the Finance Office for that type loan. Resource Conservation and Development (RC&D) Loan funds will be used in preference to Community Facility loan funds in designated RC&D areas for loan purposes included in Subpart A of Part 1942 of this chapter.

(b) *Indian Land Acquisition.* Control of funds will be retained in the National Office and allocated on an individual case basis. Requests for funds will be made to the Director, Community Facilities Division, when it is determined the loan can be approved.

(c) *Nonprofit National Corporation Guaranteed Loans and Grants.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

(d) *Intermediary Relending Program.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

(e) *Technical Assistance and Training Grants.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

Date: June 8, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-15546 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1006-88]

Admission of Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements Pub. L. 99-603, by adding a new category of special immigrants covering certain officers and employees of international organizations and their immediate relatives. This new nonimmigrant classification is added to minimize any family separations caused by ineligibility for special immigrant status on behalf of certain parents and children of persons accorded status under section 101(a)(27)(I).

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone (202) 633-3320.

SUPPLEMENTARY INFORMATION: On February 5, 1988, at 53 FR 3331, the Immigration and Naturalization Service published an interim rule amending Service regulations at 8 CFR 214.2 to implement section 312 of Pub. L. 99-603, Immigration Reform and Control Act of 1986 (IRCA), which created a new nonimmigrant classification at section 101(a)(15)(N) (8 U.S.C. 1101) of the Immigration and Nationality Act (INA). Interested parties were invited to submit written comments on the rule by March 7, 1988. The Service received only one comment proposing the use of blanket employment authorization for persons granted nonimmigrant status under section 101(a)(15)(N) of the INA. The stated justification was the perceived intent of Congress that such nonimmigrants should be accorded employment authorization. The Service concurs that Congress did intend for the new classification to receive employment authorization. However, Congress did not provide specific work authorization language as part of section 101(a)(15)(N) of the INA. Currently, work authorization granted by the Service, not specifically provided in the statute, is administered pursuant to

section 274A of the INA (8 U.S.C. 1324). Accordingly, the interim rule will be revised to reflect that employment authorization is incident to status pursuant to 8 CFR 274a.12(a)(7), and no request to the Service is required.

In compliance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The rule is not a major rule within the definition of section 1(b) of E.O. 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, under control number 1115–0053.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended to read as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187.

2. Section 214.2 is amended by revising paragraph (n) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(n) *Certain parents and children of section 101(a)(27)(I) special immigrants.*—(1) *Parent of special immigrant.* Upon application, a parent of a child accorded special immigrant status under section 101(a)(27)(I)(i) of the Act may be granted status under section 101(a)(15)(N)(i) of the Act as long as the permanent resident child through whom eligibility is derived remains a child as defined in section 101(b)(1) of the Act.

(2) *Child of section 101(a)(27)(I) special immigrants and section 101(a)(15)(N)(i) nonimmigrants.* Children of parents granted nonimmigrant status under section 101(a)(15)(N)(i) of the Act, or of parents who have been granted special immigrant status under section 101(a)(27)(I) (ii), (iii) or (iv) of the Act may be granted status under section 101(a)(15)(N)(ii) of the Act for such time as each remains a child as defined in section 101(b)(1) of the Act.

(3) *Admission and extension of stay.* A nonimmigrant granted (N) status shall be admitted for not to exceed three years with extensions in increments up to but not to exceed three years. Status as an (N) nonimmigrant shall terminate on the date the child described in paragraph (n)(1) or (n)(2) of this section no longer qualifies as a child as defined in section 101(b)(1) of the Act.

(4) *Employment.* A nonimmigrant admitted in or granted (N) status is authorized employment incident to (N) status without restrictions as to location or type of employment, and such authorization need not be requested.

* * * * *

Dated: June 10, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88–15460 Filed 7–11–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88–104]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Washington from Class A to Class Free.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5965.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become increasingly less stringent as a state approaches or achieves Class Free status.

In an interim rule published in the **Federal Register** on March 31, 1988 (53 FR 10358–10360, Docket Number 88–035), and effective March 25, 1988, we added Washington to the list of Class Free states in § 78.41(a) and removed Washington from the list of Class A states in § 78.41(b). Comments on the interim rule were required to be postmarked or received on or before May 31, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Washington from Class A to Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Washington. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by

this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Washington, as well as buyers and importers of Washington cattle. Approximately 66,500 cattle are tested for brucellosis in Washington each year, at an average cost to the seller of $7 per test. Therefore, Class Free status could result in a potential savings of $465,500 for Washington's livestock industry. Since Washington has 23,000 herds, the annual savings to each herd owner will be approximately $20 per herd. We have therefore determined that changing Washington's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small cattle operations affected by this rule.

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

Paperwork Reduction Act

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 10358–10360 on March 31, 1988.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 1st day of July 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–15456 Filed 7–11–88; 8:45 am]

BILLING CODE 3410–34–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Criminal Referral Form

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final amendment.

SUMMARY: Section 748.1(c) requires federally-insured credit unions to report *any* crimes or suspected crimes utilizing NCUA Form 2362. This is inconsistent with the instructions on the Criminal Referral Form itself which requires reporting only if certain thresholds are met. This revision deletes the word "any", instructs credit unions to follow reporting instructions on the Criminal Referral Form itself, and makes minor grammatical corrections. Approval of these revisions has been done without notice and public comment in accordance with 5 U.S.C. 553(b)(3)(B). Given the minor nature of the revisions, the Board finds public comment and notice to be unnecessary.

EFFECTIVE DATE: July 12, 1988.

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

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Staff Attorney NCUA, Office of General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This revision imposes no change in the collection requirements as they currently exist. Accordingly, the rule need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

This rule applies to all Federally-insured credit unions. However, it makes no substantive changes and imposes no additional burden on Federally-insured credit unions than those under the present rule.

List of Subjects in 12 CFR Part 748

Security programs, Filing of reports, Bank Secrecy Act compliance programs and procedure.

By the National Credit Union Administration Board on June 28, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations (12 CFR Part 748) as follows:

PART 748—[AMENDED]

1. The authority citation for Part 748 continues to read as follows:

Authority: 12 U.S.C. 1766 (a); 12 U.S.C. 1786 (q); 31 U.S.C. 5311.

2. Section 748.1(c) is revised to read as follows:

§ 748.1 Filing reports.

* * * * *

(c) *Criminal Referral Form.* Each federally-insured credit union will notify the NCUA Regional Director, the U.S. Attorney, and the Federal Bureau of Investigation within 7 business days of crimes or suspected crimes that occur at its office(s), utilizing NCUA form 2362, Criminal Referral Form. The federally-insured credit union should follow the instructions and reporting requirements set forth on the Criminal Referral Form. Copies of this form have been distributed to all federally-insured credit unions. Additional copies may be obtained by contacting the appropriate NCUA Regional Office.

[FR Doc. 88–15549 Filed 7–11–88; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88–ASO–9]

Amendment To Control Zone and Transition Area, Tallahassee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Control Zone and Transition Area, Tallahassee, FL, is to reflect the name change from Tallahassee Municipal to Tallahassee Regional Airport, to correct the latitude/longitude coordinates for the geographic position of the Tallahassee Airport and the Quincy Municipal Airport, and to eliminate an arrival area extension to the control zone. The arrival area extension was to afford airspace protection for IFR aircraft executing a localizer (backcourse) approach to Runway 18. The standard instrument approach procedure has been cancelled.

EFFECTIVE DATE: 0901 UTC, September 22, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

The Rule

This amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the official name of the airport from Tallahassee Municipal to Tallahassee Regional Airport; to correct the latitude/longitude coordinates for the geographic position of the Tallahassee and Quincy Municipal Airports, and to eliminate a control zone arrival area extension for Tallahassee Regional Airport Runway 18.

Because these changes are technical in nature, reduce the burden on the public and are so minor, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas, Control zones.

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 Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Tallahassee, FL [Revised]

By deleting the existing description and substituting the following: "Within a 5-mile radius of Tallahassee Regional Airport, (Lat. 30°23'45"N., Long. 84°21'02"W); within 1.5 miles each side of the Tallahassee VORTAC 175° radial, extending from the five-mile radius area to 1.5 miles south of the VORTAC."

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Tallahassee, FL [Revised]

By deleting the existing description and substituting the following: "That airspace extending upward from 700' above the surface within a 10-mile radius of Tallahassee Regional Airport (Lat. 30°23'45"N., Long. 84°21'02"W.); within three miles each side of the ILS localizer south course, extending from the 10-mile radius area to nine miles south of the OM; within a 6.5-mile radius of Tallahassee Commercial Airport (Lat. 30°33'02"N., Long. 84°22'31"W.); within a 6.5-mile radius of Quincy Municipal Airport (Lat. 30°35'52"N., Long. 84°33'28"W.)."

Issued in East Point, Georgia, on June 24, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–15526 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 97

[Docket No. 25641; Amdt. No. 1377]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are

identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Issued In Washington, DC on June 24, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 25, 1988

Dothan, AL—Dothan, VOR RWY 13, Amdt. 3

Dothan, AL—Dothan, VOR RWY 18, Amdt. 3

Dothan, AL—Dothan, VOR–A or TACAN, Amdt. 11

Dothan, AL—Dothan, LOC BC RWY 13, Amdt. 6

Dothan, AL—Dothan, ILS RWY 31, Amdt. 7

Eufaula, AL—Weedon Field, VOR/DME RWY 36, Amdt. 2

Sand Point, AK—Sand Point, NDB RWY 15, Orig.

Sand Point, AK—Sand Point, NDB/DME–A, Amdt. 3

Sand Point, AK—Sand Point, NDB–B, Amdt. 1, CANCELLED

Sand Point, AK—Sand Point, NDB/DME RWY 33, Amdt. 2

Ontario, CA—Ontario Intl, VOR or TACAN RWY 26R, Amdt. 10

Ontario, CA—Ontario Intl, NDB RWY 26L, Amdt. 2

Ontario, CA—Ontario Intl, ILS RWY 8L, Amdt. 5

Ontario, CA—Ontario Intl, ILS RWY 26L, Amdt. 6

Ontario, CA—Ontario Intl, ILS RWY 26R, Amdt. 1

Eagle, CO—Eagle County, LDA–B, Orig.

Louisville, KY—Standiford Field, ILS RWY 29, Amdt. 16

Mayfield, KY—Mayfield Graves County, VOR/DME–A, Amdt. 4

Mayfield, KY—Mayfield Graves County, RNAV RWY 18, Orig.

Brookhaven, MS—Brookhaven-Lincoln County, NDB RWY 22, Amdt. 3

Okolona, MS—Okolona Muni-Richard Stovall Field, VOR/DME RWY 18, Amdt. 4

Tupelo, MS—C. D. Lemons Muni, ILS RWY 36, Amdt. 6

Roxboro, NC—Person County, LOC RWY 6, Orig.

Astoria, OR—Port of Astoria, ILS RWY 26, Amdt. 2

Astoria, OR—Port of Astoria, COPTER VOR/DME 066, Amdt. 1

Astoria, OR—Port of Astoria, COPTER LOC/DME 257, Amdt. 1

Buffalo, WY—Johnson County, VOR/DME RWY 30, Amdt. 4

. . . Effective July 28, 1988

Window Rock, AZ—Window Rock, RNAV RWY 2, Orig.

Chicago/Waukegan, IL—Waukegan Regional, NDB RWY 23, Orig.

Waukegan, IL—Waukegan Regional, NDB RWY 23, Amdt. 7, CANCELLED

Chicago/Waukegan, IL—Waukegan Regional, ILS RWY 23, Orig.

Waukegan, IL—Waukegan Regional, ILS RWY 23, Orig., CANCELLED

Columbus, IN—Columbus Muni, NDB RWY 23, Amdt. 9

Columbus, IN—Columbus Muni, ILS RWY 23, Amdt. 6

Winamac, IN—Arens Field, VOR/DME–A, Amdt. 4

Pottstown, PA—Pottstown Limerick, LOC RWY 28, Orig.

Culpeper, VA—Culpeper County, NDB RWY 22, Orig.

Culpeper, VA—Culpeper County, NDB–A, Orig.

The FAA published an Amendment in Docket No. 25600, Amdt. No. 1373 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 89 Page 16390; dated Monday, May 9, 1988) under Section 97, effective June 24, 1988, which is hereby amended as follows:

Charlotte, NC—Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 7

Charlotte, NC—Charlotte/Douglas Intl, NDB RWY 5, Amdt. 31

Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 5, Amdt. 33

Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36L, Amdt. 11

Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 3

Gastonia, NC—Gastonia Muni, NDB RWY 3, Amdt. 6

Southern Pines, NC—Moore County, VOR–A, Amdt. 2

Effective Dates changed to 20 OCT 88.

[FR Doc. 88–15525 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

Tracking and Data Relay Satellite System (TDRSS)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1215, "Tracking and Data Relay Satellite System (TDRSS)," by revising Appendix A to reflect the estimated service rates in 1989 dollars for TDRSS standard services, based on NASA escalation estimates. 14 CFR Part 1215 sets forth the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users.

EFFECTIVE DATE: July 12, 1988.

ADDRESS: Office of Space Operations, Code T, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Eugene Ferrick, 202–453–2030.

SUPPLEMENTARY INFORMATION: The existing regulation was published in the Federal Register on March 9, 1983 (48 FR 9845). Each year since that time, 14 CFR Part 1215 has been amended by revising Appendix A to reflect the rate changes for the appropriate calendar years (CY). Since this revision of Appendix A to 14 CFR Part 1215 reflects the rate changes for CY 1989 and involves NASA management procedures and decisions, no public comment is required.

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities, and it is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1215

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

For reasons set out in the Preamble, 14 CFR Part 1215 is amended to read as follows:

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

1. The authority citation for 14 CFR Part 1215 continues to read as follows:

Authority: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Appendix A is revised to read as follows:

Appendix A—Estimated Service Rates in 1989 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY–89 based on current projections in 1989 dollars are as follows:

Single Access Service—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $154.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $33.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $11.00 per minute for non-U.S. Government users.

Robert O. Aller,

Associate Administrator for Space Operations.

June 24, 1988.

[FR Doc. 88–15581 Filed 7–11–88; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4b

[Docket No. 80348–8094]

Privacy Act of 1974

AGENCY: U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending 15 CFR Part 4b titled, Privacy Act, which implements the Privacy Act of 1974 (5 U.S.C. 552a) (1982 & Supp. II 1984) within Commerce. The amendment will centralize the appeals process into the Office of the General Counsel in order to provide maximum efficiency, uniformity in decisions, and continuity to Privacy Act appeals.

EFFECTIVE DATE: These amendments are effective August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Geraldine P. LeBoo, (202) 377–3271.

SUPPLEMENTARY INFORMATION: The Commerce Department's policies and procedures for handling requests for information under the Privacy Act appear in 15 CFR Part 4b. The Department is amending the regulation which was promulgated at 40 FR 45619, Oct. 2, 1975; 40 FR 50662, Oct. 30, 1975; 40 FR 51168, Nov. 3, 1975. The Department's proposed rule was published for comment on March 30, 1988 (53 FR 10256). No comments were received. The Department is therefore amending the regulation as proposed, except for some minor editorial modifications.

Under the original regulation, Appendix A designated the "Privacy Officer" who was authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment. Appendix B designated the "Privacy Appeals Officer" authorized to receive and act upon appeals from an initial denial of a request. The amended regulations end the handling of appeals by the "Privacy Appeals Officer" in the various Departmental units and centralize the appeals process into the Office of the General Counsel.

Other changes throughout the regulations are editorial and/or reflect necessary organizational designations.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more:

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

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

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

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 4b

Administrative practice and procedure, Privacy.

For the reasons set forth in the preamble, 15 CFR Part 4b is amended as follows:

PART 4b—PRIVACY ACT

1. The authority citation for 15 CFR 4b continues to read as follows:

Authority: 5 U.S.C. 552a; 5 U.S.C. 553; 5 U.S.C. 552; 5 U.S.C. 301; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

2. Section 4b.1 is amended by revising paragraph (d)(1) and (e)(3) as follows:

§ 4b.1 Purpose and scope.

* * * * *

(d) * * *

(1) Requests solely under the Freedom of Information Act (5 U.S.C. 552) and Part 4 of this title;

* * * * *

(e) * * *

(3) Requester is the individual to whom the record pertains and the requester expressly states that the request is under both the Act and the Freedom of Information Act—The request will be processed concurrently under both statutes and the Department's respective implementing regulations. For such dual requests the Department will follow the fee provisions under the Act and this part, and follow the time limits under the Freedom of Information Act and Part 4 of this title;

* * * * *

§ 4b.2 [Amended]

3. Section 4b.2 is amended by removing paragraph (b)(6) which defined the term "Privacy Appeals Officer." Paragraphs (b)(7) through (10) should be renumbered as paragraphs (b)(6) through (9).

4. In the list below, for each section and paragraph indicated remove the language set forth from wherever it appears, and add in its place the language indicated.

§§ 4b.3 and 4b.4 [Amended]

Section/ Paragraph	Remove	Add
§ 4b.3(c)	Appendix D	Appendix C
§ 4b.3(h)	Appendix C	Appendix B
§ 4b.4(b)	Appendix D	Appendix C

5. Section 4b.3(f)(2) is amended by removing the words "Privacy Appeals Officer, identified in Appendix B to this part," and adding the words "General Counsel" in their place.

§§ 4b.5 and 4b.8 [Amended]

6. The following sections are amended by removing the words "responsible Privacy Appeals Officer, identified in Appendix B to this part," wherever they appear, and adding the words "General Counsel" in their place: § 4b.5(a)(2) and § 4b.8(a)(1)(ii). Section 4b.5 (g)(3)(ii) is amended by removing the words "responsible Privacy Appeals Officer, identified in Appendix B to this part" and adding the words "General Counsel" in their place.

7. Section 4b.8(a)(2)(ii)(D) is amended by removing the words "responsible Privacy Appeals Officer, identified in Appendix C to this part" and adding the words "General Counsel" in their place.

§ 4b.9 [Amended]

8. Section 4b.9(b) is amended by removing the words "Privacy Appeals Officer identified in the initial denial (that official is authorized to make final determinations)" and adding the words "General Counsel, Department of Commerce, Room 5882, Washington, DC 20230" in their place. The words "responsible Privacy Appeals Officer" should also be removed, and the words "General Counsel" added in their place. Finally, wherever the words "Privacy Appeals Officer" appear in § 4b.9(b) or the rest of § 4b.9, they should be removed and the words "General Counsel" should be added in their place. The paragraphs of § 4b.9 affected are as follows: (b), (c), (e), (g)(1), (h), and (i).

Appendix A—[Amended]

9. Appendix A is amended by adding the following to the list of officials authorized to receive inquiries, requests for access and requests for correction or amendment: Bureau of Export Administration, Privacy Act Officer, Office of Security and Management Support, Bureau of Export Administration, Room 3889, Herbert C. Hoover Building, Washington, DC 20230.

Appendix B—[Removed]

Appendices C and D [Redesignated as Appendices B and C]

10. Appendix B is removed. Appendix C and Appendix D are redesignated as Appendix B and Appendix C.

Dated: May 20, 1988.

Kay Bulow,

Assistant Secretary for Administration.

[FR Doc. 88-15538 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-CW-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3231]

Medical Staff of Memorial Medical Center; Prohibited Trade Practices, and Affirmative Corrective Actions; Correction

AGENCY: Federal Trade Commission.

ACTION: Consent Order; Correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Wednesday, June 29, 1988, 53 FR 24439. The previous document contained an incorrect address for the contact person. The correct information is reflected in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

DATE: The correction is effective July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Harold Kirtz, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-14586, appearing in the **Federal Register** issue for Wednesday, June 29, 1988, 53 FR 24439, an incorrect address was submitted for the contact person. The correct name and address is as it appears in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

List of Subjects in 16 CFR Part 13

Medical staff, Nurse-midwife, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

C. Landis Plummer,

Acting Secretary.

[FR Doc. 88-15554 Filed 7-11-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for water heaters.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under Sections 305.10, 305.11 and 305.14 of the rule, must be used on labels on water heaters manufactured on and after October 11, 1988, and in advertising of water heaters in catalogs printed after October 11, 1988. Properly labeled water heaters manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATE: October 11, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, or Ruth Sacks, Research Analyst, 202–326–3033, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)[1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Water heaters are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories, including water heaters.

The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all water heaters presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a water heater is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to § 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for water heaters, which were calculated using the 1988 representative average energy costs published by DOE on December 23, 1987,[4] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends Appendix D of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of water heaters beginning October 11, 1988.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163)(1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619)(1978), and as amended by the National Appliance Energy Conservation Act (Pub. L. 100–12)(1987), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In Part 305, Appendix D1, paragraph 1 and the introductory text in paragraph 2 are revised to read as follows:

[1] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR 305 (Nov. 19, 1979).

[3] Reports for water heaters are due by May 1.

[4] 52 FR 48563.

Appendix D1—Water Heater—Gas

1. Range Information:

RANGES OF ESTIMATED YEARLY ENERGY COST

First hour rating	Natural gas		Propane	
	Low	High	Low	High
Less than 21	(1)	(1)	(1)	(1)
21 to 24	(1)	(1)	(1)	(1)
25 to 29	(1)	(1)	(1)	(1)
30 to 34	(1)	(1)	(1)	(1)
35 to 40	$163.00	$192.00	$223.00	$263.00
41 to 47	163.00	188.00	223.00	263.00
48 to 55	155.00	222.00	213.00	305.00
56 to 64	153.00	244.00	213.00	335.00
65 to 74	150.00	227.00	206.00	312.00
75 to 86	137.00	227.00	187.00	312.00
87 to 99	171.00	232.00	248.00	319.00
100 to 114	181.00	218.00	258.00	305.00
115 to 131	227.00	232.00	312.00	319.00
Over 131	227.00	238.00	312.00	327.00

[1] No data submitted.

2. Yearly Cost Information—Natural Gas and Propane: Estimates on the scale are based on a national average natural gas rate of 56.2¢ per therm and a national average propane rate of 70.0¢ per gallon.

* * * * *

3. In Part 305, Appendix D2, Paragraph 1 and the introductory text in paragraph 2 are revised to read as follows:

Appendix D2—Water Heater—Electric

1. Range Information:

RANGES OF ESTIMATED YEARLY ENERGY COST

First hour rating	Low	High
Less than 21	(1)	(1)
21 to 24	$432.00	$520.00
25 to 29	437.00	495.00
30 to 34	437.00	520.00
35 to 40	423.00	540.00
41 to 47	419.00	547.00
48 to 55	428.00	562.00
56 to 64	428.00	547.00
65 to 74	432.00	570.00
75 to 86	432.00	604.00
87 to 99	437.00	595.00
100 to 114	437.00	662.00
115 to 131	472.00	673.00
Over 131	(1)	(1)

[1] No data submitted.

2. Yearly Cost Information—Electricity: Estimates on the scale are based on a national average electric rate of 8.04¢ per kilowatt hour.

4. In Part 305, Appendix D3, paragraph 1 and the introductory text in paragraph 2 are revised to read as follows:

Appendix D3—Water Heater—Oil

1. Range Information:

First hour rating	Low	High
Less than 65	(1)	(1)
65 to 74	(1)	(1)
75 to 86	(1)	(1)
87 to 99	(1)	(1)
100 to 114	$181.00	$206.00
115 to 131	171.00	210.00
Over 131	(1)	(1)

[1] No data submitted.

2. Yearly Cost Information—Oil: Estimates on the scale are based on a national average oil rate of $0.83 per gallon.

* * * * *

C. Landis Plummer,

Acting Secretary.

[FR Doc. 88-15555 Filed 7-11-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 88-40]

Customs Regulations Amendments Relating to Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth amendments to the Customs Regulations regarding the compliance of imported motor vehicles and engines with applicable emission requirements of the Environmental Protection Agency (EPA) under the Clean Air Act. These changes conform the Customs Regulations to changes made in the applicable EPA regulations in a final rule of that agency on September 25, 1987, 52 FR 36136, effective July 1, 1988. Under these changes, subject to certain exceptions, individuals and businesses will no longer be permitted to enter vehicles not in conformity with applicable emission requirements subject to bringing the vehicles into compliance within a 90-day period. Only independent commercial importers (ICI's) who hold currently valid certificates of conformity from EPA will be permitted to enter nonconforming vehicles, and they may import vehicles for individuals or businesses not otherwise permitted to import them. An ICI, subject to the more specific definition in EPA regulations, is independent of any manufacturer and does not represent a manufacturer for the distribution of products in the United States. An ICI certificate holder will be responsible for bringing vehicles into compliance with applicable emission requirements, warranting the work, furnishing maintenance instructions, issuing recall notices, testing where required and record keeping. Subject to a few narrow exceptions, importations of ICI certificate holders will not be subject to a bond charge for EPA conformity, but a 15-working day storage period will be required after completion of the work for confirmatory EPA reviews of vehicles and records.

The changes also will eliminate the exception to emission requirements for vehicles which are at least five model years old and imported by a first-time individual importer for personal use. Further, declarations will no longer be required for importations of most vehicles manufactured abroad to meet applicable United States emission requirements and labeled to show their compliance.

These limitations on the importation of nonconforming vehicles are due to various problems that have developed such as difficulties in reviewing and keeping records on a diverse group of importers, problems with enforcing emission standards on improperly modified vehicles and engines, and abuse of the five-model-year-old exception. Further details concerning the changes, the reasons for them, and the expected efficiencies and improved program effectiveness which will result are set forth in the cited EPA notice.

EFFECTIVE DATE: These amendments are effective with respect to merchandise entered, or withdrawn from warehouse for consumption, on or after July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Louis Alfano, Other Agency Enforcement Branch, Office of Trade Operations, U.S. Customs Service, (202) 566-8651.

SUPPLEMENTARY INFORMATION:

Background

Regulations comprising the joint program under which the Environmental Protection Agency (EPA) and the Customs Service provide for the conditions and circumstances under which vehicles and engines of foreign origin and motor vehicles not in compliance with Federal emission requirements may be imported were published by EPA and the Customs Service on February 1, 1972 (37 FR 2432). Subsequently, a need for changes in the joint program was identified which

would improve emissions compliance of nonconforming vehicles and engines as well as improve the overall efficiency of the program. Notices of proposed rulemaking were published by EPA and the Customs Service on July 21, 1980 (45 FR 48812 and 48817). A further EPA notice was published in the Federal Register on November 4, 1983 (48 FR 5092), and a supplemental notice of proposed rulemaking was published on September 5, 1985 (50 FR 36838). EPA's final notice of rulemaking on this subject, with which the changes made by this document will conform, was published on September 25, 1987 (52 FR 36136), and will be effective July 1, 1988.

That document contains an extensive discussion of the EPA rulemaking process, all of the considerations, options and comments taken into account, and the various problems with present procedures which the changes are intended to resolve. The comments received in response to each of the EPA notices have been summarized and analyzed in a document entitled "Summary and Analysis of Comments Pertaining to the Proposed Rulemaking Entitled 'Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act'," which is available for review in EPA's Public Docket EN–79–9, U.S. EPA, Central Docket Section, Room 4, South Conference Center (LE–131), Waterside Mall, 401 M Street, SW., Washington, DC 20460. That summary and analysis should be consulted for a complete understanding of EPA's nonconforming import program.

Section 203 of the Clean Air Act, as amended (42 U.S.C. 7521), prohibits the importation of any new motor vehicle or motor vehicle engine, as defined in section 216(1) of the Act, not covered by an EPA certificate of conformity unless it is exempted by EPA or is imported under the EPA and Customs joint regulations. The regulations currently in effect generally permit the conditional importation of a nonconforming vehicle or engine by any person or business, provided that the Customs entry bond is charged with the condition that the vehicle or engine will be brought into conformity with EPA emission requirements within 90 days. An exception to EPA's modification and/or testing requirements permits a first-time individual importer to import a nonconforming vehicle or engine at least five model years old for personal use without demonstrating emissions compliance.

Under the changes made by EPA, and with which the instant changes in the Customs Regulations will conform, the "five model year old personal use" exception is eliminated. With respect to other nonconforming vehicles, the new regulations substantially change both the manner in which vehicles and engines can be imported and the manner in which emissions compliance can be demonstrated. Subject to certain specified exceptions, only independent commercial importers (ICI's) who hold valid certificates of conformity issued by EPA will be permitted to import nonconforming vehicles or engines. An ICI, subject to the more specific definition in EPA regulations, is an importer who does not have a contractual agreement with a manufacturer to act as its authorized representative for the distribution of motor vehicles or engines in the United States market. Individuals who previously could import a nonconforming vehicle or engine directly will now be required to arrange for importations through ICI certificate holders.

EPA's new provisions also substantially change the manner in which emissions compliance may be demonstrated. Except during an initial five-year phase-in period, all vehicles or engines which are less than six years old, as determined by the date of production, must be covered by an EPA certificate of conformity. Moreover, an ICI may import a vehicle or engine six or more years old and not otherwise exempt from emission standards because of age, subject to a modification/test program which is more stringent than that now in effect. During the five-year phase-in period, some vehicles or engines less than six years old may also be imported subject to the more stringent modification/test program, rather than the new certification-based program. The new regulatory scheme also establishes an exemption from emissions compliance for vehicles or engines more than 20 years old.

For vehicles or engines imported by ICI certificate holders, the bond charge requirement currently found in § 12.73(c), Customs Regulations (19 CFR 12.73(c)), will be largely eliminated. However, conditional admission under bond will still be required in some instances. Importations under exemptions requiring a bond charge include importations for repairs or alterations, testing, or for display, and importations of prototype vehicles or engines prior to certification. In many of these cases, individuals, and not just ICI certificate holders, may continue to import eligible vehicles or engines directly under bond.

These amendments to the Customs Regulations also end the requirement for written declarations for vehicles and engines manufactured to comply with applicable emission requirements and imported by or on behalf of manufacturers (other than ICI's) holding an EPA certificate of conformity. Compliance in these circumstances is usually evidenced by the manufacturer's label. To the extent the declaration requirement is eliminated, the paperwork burden on both importers and the Government is reduced.

Special Analyses

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared. However, an analysis was submitted by EPA to the Office of Management and Budget (OMB) for review with respect to the EPA regulations with which these changes are merely in conformity with no further substantive changes. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Public Docket EN–79–9 located at EPA's Central Docket Section (LE–131A), 401 M Street SW., Washington, DC 20460.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation, as amended, will not have significant impact on a substantial number of small entities beyond the impact of the regulations of EPA which have already been promulgated and with which this regulation merely conforms without further substantive change. Accordingly, this regulation is not subject to the regulatory analysis and other requirements of 5 U.S.C. 603 and 604. However, EPA prepared a regulatory flexibility analysis for their correlative regulations. That document is also available in the public docket for EPA's rulemaking as identified above.

The collections of information contained in this rule conform to those in the EPA regulations, which were reviewed and approved by the Office of Management and Budget under OMB control number 2060–0095.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Inapplicability of Public Notice and Delayed Effective Date Requirements

The changes in the EPA regulations, to which the changes in this document merely conform without further substantive changes, were promulgated previously by EPA with full opportunity for public comment and consideration of the comments submitted. The availability for review of those comments is explained in EPA's final notice published in 52 FR 36136, and as more fully explained above. Therefore, the further solicitation of comments by the Customs Service would serve no useful purpose.

Accordingly, it has been determined that good cause exists for dispensing with the procedures for notice and the opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(B). For the same reasons, good cause exists for dispensing with an effective date delayed beyond the specified effective date of July 1, 1988, pursuant to 5 U.S.C. 553(d)(3).

List of Subjects in 19 CFR Part 12

Air pollution control, Customs duties and inspection, Imports, Motor vehicle pollution, Motor vehicles.

Amendments to the Regulations

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 and the specific authority citation for § 12.73 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Headnote. 11, Tariff Schedules of the United States), 1624.

Section 12.73 also issued under 19 U.S.C. 1484; 42 U.S.C. 7522, 7601.

2. Section 12.73 is revised to read as follows:

§ 12.73 Motor vehicle and engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 85 and 86. Those regulations should be consulted for more detailed information concerning EPA emission requirements. The requirements apply to imported motor vehicles, but do not apply to separately imported non-chassis mounted engines to be used in light-duty trucks or other light-duty vehicles. Other separately imported engines for heavy-duty motor vehicles are covered, and all references in this section to motor vehicles should be deemed to include motor vehicles as well these heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Importation of complying vehicles*—(1) *Labeled vehicles.* Vehicles which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer's label showing such conformity and other EPA-required information shall be deemed in compliance with applicable emission requirements for the purpose of Customs admissibility and entry liquidation determinations. This paragraph does not apply to importations of ICI's covered by paragraph (d) of this section.

(2) *Pending certification.* Vehicles otherwise covered by paragraph (b)(1) of this section which were manufactured for compliance with applicable emission requirements, but for which an application for a certificate of conformity is pending with the EPA may be conditionally released from Customs custody pending production of the certificate of conformity within 120 days of release.

(c) *Importation of vehicles previously in compliance*—(1) *Vehicles of returning residents.* Vehicles of residents returning from Canada, Mexico or other countries as EPA may designate are not covered by this section.

(2) *Vehicles of commuting nonresidents and tourists.* A district director through the issuance of an appropriate means of identification to be affixed to a vehicle may waive all of the requirements of this section for a nonresident regularly crossing the Canadian or Mexican border, or waive the requirements for Mexico or Canadian-registered vehicles of tourists or other travelers.

(3) *Participants in EPA-approved catalytic converter or oxygen sensor control programs.* Further evidence of emissions compliance will not be required for catalytic converter or oxygen sensor-equipped vehicles imported for participating in EPA-approved catalytic converter or oxygen sensor control programs and subject to the requirements of those programs.

(4) *Previously labeled, modified or imported vehicles.* Any other vehicle of United States or foreign origin manufactured with a catalytic converter or oxygen sensor, or any previously imported vehicle subsequently modified with a catalytic converter or oxygen sensor, will not be deemed in compliance with applicable emission requirements if used outside of the United States, Canada, Mexico, or other countries as EPA may designate, until the catalytic converter and/or oxygen sensor is replaced. Conditional release from Customs custody for the purpose of the modification is subject to a 120-day period for completion. Subject to special documentation at the time of export from the United States and approval and other requirements of EPA, replacement of a catalytic converter or oxygen sensor may be avoided if the equipment is disconnected before export from the United States and reconnected after subsequent importation.

(d) *Importation of vehicles by ICI's.* Except for motor vehicles imported in the applicable circumstances covered by paragraphs (c), (e), (f), (g) or (h) of this section, an individual or business other than an independent commercial importer (ICI) holding a currently valid EPA certificate of conformity may not enter a motor vehicle to which EPA emission requirements apply. An ICI, subject to the more specific definition in EPA regulations, is an importer which does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market. However, a motor vehicle may not be conditionally admitted unless it falls within one of the categories provided for in 40 CFR 85.1505 or 85.1509. Before the vehicle is deemed to be in compliance with applicable emission requirements and, therefore, finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-working day period. This period follows notice to EPA of completion of the compliance work to give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-working day period is part of the 120-day period in which an ICI must bring the vehicle into emissions compliance. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for Customs transaction purposes unless otherwise licensed or authorized to do so.

(e) *Exemptions and exclusions from emission requirements based on age of vehicle.* The following motor vehicles, except as shown, may be imported by any person and do not have to be shown to be in compliance with emission requirements or modified before entitled to admissibility:

(1) Gasoline-fueled light-duty trucks and light-duty motor vehicles manufactured before January 1, 1968;

(2) Diesel-fueled light-duty motor vehicles manufactured before January 1, 1975;

(3) Diesel-fueled light-duty trucks manufactured before January 1, 1976;

(4) Motorcycles manufactured before January 1, 1978;

(5) Gasoline-fueled and diesel-fueled heavy-duty engines manufactured before January 1, 1970; and

(6) Motor vehicles not otherwsie exempt from EPA emission requirements and more than 20 years old. Age is determined by subtracting the year of production (as opposed to model year) from the year of importation. The exemption under this subparagraph is available only if the vehicle is imported by an ICI.

(f) *Exemption for exports.* A motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States, and both the vehicle and its container bear a label or tag indicating that it is intended solely for export, is exempt from applicable United States emission requirements. 40 CFR 85.1709.

(g) *Exemptions for diplomats, foreign military personnel and nonresidents.* Subject to the condition that they are not resold in the United States, the following motor vehicles are exempt from applicable emission requirements:

(1) A motor vehicle imported solely for the personal use of a nonresident importer or consignee and the use will be for a period not to exceed one year; and

(2) A motor vehicle of a member of the armed forces of a foreign country on assignment in the United States, or of a member of the personnel of a foreign government on assignment in the United States or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law. For special documentation requirements see paragraph (i)(4) of this section.

(h) *Exemptions and exclusions based on prior EPA authorization.* The following motor vehicles are exempt or excluded from applicable emission requirements if prior approval has been obtained in writing from EPA:

(1) *Importations for repairs.* Any motor vehicle which is imported solely for repairs or alterations and which is not sold, leased, registered or licensed for use or operated on public roads or highways in the United States. 40 CFR 85.1511(b)(1);

(2) *Importations for testing.* Any motor vehicle imported solely for testing. Test vehicles may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test. 40 CFR 85.1511(b)(2). This exemption is limited to a period not exceeding one year from the date of importation unless a request is made under 40 CFR 85.1705(f) for a one-year extension;

(3) *Prototype vehicles.* Any motor vehicle imported for use as a prototype in applying for EPA certification. 40 CFR 85.1511(b)(3) and 85.1706. In the case of an ICI, unless the vehicle is brought into conformity within 180 days from the date of entry it shall be exported or otherwise disposed of subject to paragraph (1) of this section;

(4) *Display vehicles.* Any motor vehicle which is imported solely for display and which will not be sold, leased, registered or licensed for use on or operated on the public roads or highways in the United States. 40 CFR 85.1511(b)(4);

(5) *Racing cars.* Any motor vehicle which qualifies as a racing vehicle meeting one or more of the criteria found at 40 CFR 85.1703(a), and which will not be registered or licensed for use on or operated on public roads or highways in the United States. See also 40 CFR 85.1511(c)(1);

(6) *National security importations.* Any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(2), 85.1702(a)(2) and 85.1708; and

(7) *Hardship exemption.* Any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(3).

(i) *Documentation requirements*— (1) *Exception for manufacturers.* The special documentation requirements of this paragraph do not apply to the entry of any motor vehicles shown to be in compliance with applicable emission requirements under paragraph (b)(1) of this section relating to labeling.

(2) *Declarations of other importers.* Release from Customs custody shall be refused with respect to all other entries unless there is filed with the entry in duplicate a declaration in which the importer or consignee declares or affirms its status as an original equipment manufacturer, an ICI holding an applicable certificate of conformity, or other status, and further declares or affirms the status or condition of the imported vehicles and the circumstances concerning importation including a citation to the specific paragraph or subparagraph in this section upon which application for conditional or final release from Customs custody is applied for.

(3) *Other documentation and information.* An importer's declaration shall include or be submitted with the following further information and documentation:

(A) The importer's name and address and telephone number;

(B) Identification of the vehicle or engine number, the vehicle owner's taxpayer identification number, and his or her current address and telephone number in the United States if different than as provided for in paragraph (3)(A) of this paragraph;

(C) Identification, where applicable, of the place where the vehicle will be stored until EPA approval of the importer's application to EPA for final admission as required for vehicles imported under 40 CFR 85.1505, 85.1509, or 85.1512 having reference to certain importations under paragraphs (c)(4) or (d)(1) of this section;

(D) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Clean Air Act and regulations promulgated thereunder;

(E) Identification, where applicable, of the certificate of conformity by means of which the vehicle is being imported;

(F) The date of manufacture of the vehicle;

(G) The date of entry;

(H) Identification of the vessel or carrier on which the merchandise was shipped;

(I) The entry number where applicable;

(J) Where prior EPA authorization is required for an exemption or exclusion, a copy of that authorization; and

(K) Such other further information as may be required by the EPA or the Customs Service.

(4) *Documentation from diplomats and foreign military personnel.* For entries for which an exemption is claimed under paragraph (g)(2) of this section, there must also be attached to the declaration required under paragraph (i)(2) of this section a copy of the motor vehicle importer's official orders, if any, or if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which the importer is accredited.

(j) *Release under bond.* If a declaration filed in accordance with paragraph (i)(2) of this section states that the entry is being filed under circumstances described in either paragraph (c)(4), (h)(1), (h)(2), (h)(3) or (h)(4) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond condition set forth in § 113.62 of this chapter for the production of an EPA statement that the vehicle or engine is in conformity

with Federal emission requirements. Within the period in paragraph (h)(2), (h)(3) or (c)(4) of this section, or in the case of paragraph (h)(1) or (h)(4) of this section, the period specified by EPA in its authorization for an exemption, or such additional period as the district director of Customs may allow for good cause shown, the importer or consignee shall deliver to the district director the prescribed statement. If the statement is not delivered to the district director for the port of entry within the specified period, the importer or consignee shall deliver or cause to be delivered to the district director those vehicles which were released under a bond required by this paragraph. In the event that the vehicle or engine is not redelivered within five days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(k) *Notices of inadmissibility or detention.* If a motor vehicle is determined to be inadmissible before release from Customs custody, or inadmissible after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if a motor vehicle cannot be released from Customs custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle shall be held in detention by the district director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-day extension may be granted by the district director upon application for good cause shown. If at the expiration of a period not over 60 days the documentation has not been filed, a notice of inadmissibility will be issued.

(l) *Disposal of vehicles not entitled to admission.* A motor vehicle denied admission under any provision of this section shall be disposed of in accordance with applicable Customs laws and regulations. However, a motor vehicle or engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(m) *Prohibited importations.* The importation of motor vehicles otherwise than in accordance with this section and the regulations of EPA in 40 CFR parts 80, 85, 86 and 600 is prohibited.

Michael H. Lane,

Acting Commissioner of Customs.

Approved:

John P. Simpson,

Acting Assistant Secretary, Enforcement.

[FR Doc. 88-15572 Filed 7-11-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Miconazole Nitrate Cream; Miconazole Nitrate Lotion; Miconazole Nitrate Spray

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pitman-Moore, Inc. The supplement provides for technical changes in the regulation for miconazole nitrate cream; miconazole nitrate lotion (21 CFR 524.1443).

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Washington Crossing, NJ 08560, is the sponsor of approved NADA 95-184 which provides for use of a lotion containing 1.15 percent of miconazole nitrate (equivalent to 1 percent miconazole base) as an antifungal agent for topical treatment of infections in dogs and cats. The drug is currently administered by manually rubbing it into the infected area. The sponsor has submitted a supplemental NADA requesting approval of another means of administering the same lotion—a 60 milliliter plastic bottle with spray pump assembly and dust cap. The new dispensing unit will spray a light covering of the lotion on the infected site. The supplemental NADA is approved and 21 CFR 524.1443(a) and (c)(2) are revised to reflect the approval.

Approval of this supplement is an administrative action that does not require generation of new safety or effectiveness data or a reevaluation of the existing safety and effectiveness data in the original application. Therefore, a freedom of information summary is not required for this action.

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

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 524.1443 is amended by revising the section heading, by revising paragraph (a), and by revising the first sentence in paragraph (c)(2) to read as follows:

§ 524.1443 Miconazole nitrate cream; miconazole nitrate lotion; miconazole nitrate spray.

(a) *Specifications.* (1) The cream contains 23 milligrams of miconazole nitrate (equivalent to 20 milligrams of miconazole base) per gram.

(2) The lotion contains 1.15 percent of miconazole nitrate (equivalent to 1 percent miconazole base).

(3) The spray product consists of a dispensing container, sprayer pump assembly, and lotion which contains 1.15 percent of miconazole nitrate (equivalent to 1-percent miconazole base).

* * * * *

(c) * * *

(2) Apply once daily by rubbing into or spraying a light covering on the infected site and the immediate surrounding vicinity. * * *

* * * * *

Dated: July 5, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-15528 Filed 7-11-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8213]

Income Tax; Transitional Rule Relating to Certain Installment Sales by Manufacturers to Dealers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to an exception from the requirement that indebtedness be treated as payment on installment obligations and an exception from the repeal of the installment method of accounting for taxpayers who sell personal property in the ordinary course of business. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**. The Tax Reform Act of 1986 and the Revenue Act of 1987 made changes to the applicable tax law. These regulations affect manufacturers who sell personal property in the ordinary course of their trade or business to dealers and provide them with guidance needed to comply with the changes to the law.

DATES: The regulations contained in this document are effective for, and are applicable to, taxable years ending after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202) 566–3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules under section 811(c)(2) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) (the 1986 Act). Section 811(c)(2) relates to section 453C of the Internal Revenue Code of 1986, as enacted by the 1986 Act and amended by section 10202 of the Revenue Act of 1987 (Pub. L. 100–203, 101 Stat. 1330) (the 1987 Act). Therefore, these regulations are added under section 453C.

Explanation of Provisions

Section 811(a) of the Tax Reform Act of 1986 enacted the proportionate disallowance rule of section 453C. The proportionate disallowance rule limits a taxpayer's use of the installment method of accounting for certain sales of property based on the taxpayer's outstanding indebtedness. In general, the rule applies to dealer sales of real and personal property and to nondealer sales of real property used in a trade or business or held for the production of income if the sales price is greater than $150,000. Section 811(c)(2) of the 1986 Act provides transitional relief from the proportionate disallowance rule for certain sales by manufacturers. Section 811(c)(2) applies only if a taxpayer satisfies the requirements of that section for the taxpayer's first taxable year beginning after October 22, 1986.

Section 10202 of the 1987 Act repeals section 453C for dealer dispositions effective for dispositions of property after December 31, 1987. In addition, the section amends section 453(b)(2)(A) and section 453A to repeal the installment method of accounting for dealer dispositions effective for dispositions after December 31, 1987. The section, moreover, provides transitional relief from the repeal of the installment method for dealer dispositions giving rise to installment obligations that satisfy the requirements of section 811(c)(2) of the 1986 Act.

In explaining the transitional relief from both the proportionate disallowance rule and the repeal of the installment method, the Conference Committee Report accompanying the 1987 Act clarifies that the provisions of section 811(c)(2) apply to any taxpayer who satisfies the requirements of section 811(c)(2). H.R. Rep. No. 100–495, 100th Cong., 1st Sess. 928 (1987). This Treasury decision provides guidance on the application of section 811(c)(2).

An obligation satisfies the requirements of section 811(c)(2) if the obligation (1) arises from a sale by a manufacturer (or an affiliate thereof) to a dealer, (2) obligates the dealer (and only the dealer) to make payments of principal, but not until the dealer resells (or rents) the property, (3) grants the manufacturer the right to repurchase the property at a fixed (or ascertainable) price, with such right to repurchase exercisable by the manufacturer beginning on any day within the first 9 months after the date of sale to the dealer, and (4) arises from a disposition made during a taxable year for which the taxpayer is eligible for section 811(c)(2) treatment. A taxpayer becomes eligible for section 811(c)(2) treatment only if it satisfies a "50% test" for both its first taxable year beginning after October 22, 1986, and its preceding taxable year (i.e., its first taxable year ending on or after October 22, 1986). Thereafter, such a taxpayer does not cease to be eligible for section 811(c)(2) treatment until the second consecutive taxable year it fails the 50% test. To satisfy the 50% test, the face amount of the manufacturer's obligations that would otherwise satisfy the requirements of section 811(c)(2) must be at least 50% of its total sales to dealers giving rise to such obligations.

The regulations provide that an installment obligation that initially satisfies the requirements of section 811(c)(2) must continue to satisfy the requirements of that section at all times. For example, if an installment obligation satisfies the requirements of section 811(c)(2) when issued, but the terms of the obligation are subsequently amended to provide that the dealer's customer (rather than the dealer) is obligated to make payments on the obligation, section 811(c)(2) will cease to apply to that obligation. The regulations further provide that failure to satisfy the requirements of section 811(c)(2) at any time subjects the obligation to the general rules applicable to installment sales by dealers (i.e., the proportionate disallowance rule or the repeal of the installment method for dealers) as if the obligation arose from a disposition occurring on the first day of the month of failure.

The regulations clarify the application of the 50% test in several respects. First, the regulations provide that principal payments reduce the face amount of an obligation for purposes of the 50% test. Second, the regulations clarify that a manufacturer can initially become eligible for section 811(c)(2) treatment only if it meets the 50% test for its first taxable year beginning after October 22, 1986, and for the preceding taxable year. Third, the regulations provide that for purposes of the test, the aggregate face amount of the taxpayer's obligations is computed by using the average monthly balance of the otherwise qualifying obligations.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these temporary regulations is William L. Blagg of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

Amendments to the Regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter A, Part 1 of the Code of Federal Regulations is amended as set forth below:

Income Tax Regulations

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.453(c)–10T is added following § 1.453–10.

§ 1.453(c)–10T Questions and answers relating to section 811(c)(2) of the Tax Reform Act of 1986 (temporary).

The following questions and answers relate to section 811(c)(2) of the Tax Reform Act of 1986:

Q–1. Are installment obligations that satisfy the requirements of section 811(c)(2) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) (the 1986 Act) subject to either: (a) section 453C of the Code as enacted by section 811(a) of the 1986 Act (the proportionate disallowance rule); or (b) the repeal of the installment method for dealers under section 10202 of the Revenue Act of 1987 (Pub. L. 100–203, 101 Stat. 1330) (the 1987 Act)?

A–1. Installment obligations that satisfy the requirements of section 811(c)(2) are exempt from the proportionate disallowance rule of section 453C, which applies to certain obligations arising from dispositions of property after February 28, 1986, and before January 1, 1988. Installment obligations that satisfy the requirements of section 811(c)(2) are also exempt from the repeal of the installment method for dealers under section 10202 of the 1987 Act (section 453(b)(2)(A)), effective for obligations arising from dispositions of property after December 31, 1987. Thus, income from such obligations may be taken into account under the installment method of accounting allowed under the Code as in effect prior to the 1986 Act if the method is otherwise available to the taxpayer.

Q–2. What are the requirements of section 811(c)(2)?

A–2. Section 811(c)(2) applies only to obligations that satisfy the following requirements: One, the installment obligations must arise from the disposition of tangible personal property by a manufacturer or any affiliate thereof (collectively, the manufacturer) to a dealer (i.e., the sale of the property must be intended for resale or leasing by the dealer). Two, the obligation must include eligible terms, as defined below. (Obligations that satisfy these two requirements are hereinafter referred to as "eligible obligations"). Three, the obligation must arise from a disposition made in a taxable year for which the taxpayer is eligible for section 811(c)(2) treatment. In order to initially become eligible for section 811(c)(2) treatment, the aggregate outstanding face amount of the eligible obligations must be at least 50% of the total sales giving rise to eligible obligations (the 50% test) both for the taxpayer's first taxable year beginning after October 22, 1986, and for the preceding taxable year. See A–7 of this section for rules relating to the satisfaction of the 50% test for subsequent taxable years.

Q–3. What do the eligible terms require?

A–3. Eligible terms require that the dealer (and only the dealer) must be obligated to make payments on the principal of the obligation. Moreover, the dealer must not be obligated to make these payments until the dealer resells (or rents) the property. In addition, the manufacturer must have the right to repurchase the property at a fixed or ascertainable price, with such right to repurchase exercisable by the manufacturer beginning on any day within the first 9 months after the date of sale.

Q–4. If an installment obligation includes the eligible terms when issued and an eligible term is later eliminated, does section 811(c)(2) continue to apply? If not, on what date does section 811(c)(2) cease to apply to the obligation?

A–4. Section 811(c)(2) applies to an installment obligation only if the obligation includes the eligible terms at the time the obligation is issued and at all times thereafter. If an eligible term is eliminated, the general rules applicable to installment sales by dealers apply to the installment obligation as if the obligation arose from a disposition occurring on the first day of the month in which an eligible term is eliminated. Therefore, any gain on the obligation that remains to be recognized is included in income for the taxable year during which an eligible term is eliminated. (See section 10202(e)(2)(B)(ii) of the Revenue Act of 1987 for a special rule with respect to an obligation from which an eligible term is eliminated before January 1, 1988). The following examples illustrate the provisions of this A–4:

Example 1. Manufacturer A sells tangible personal property to Dealer B on January 1, 1987. B makes a 25% down payment and gives A an installment obligation for the remaining 75% of the purchase price. The obligation requires B to pay the remaining 75% of the purchase price when B resells the property. The obligation also grants A the right to repurchase the property at a fixed price beginning on or after July 1, 1987. Because of changed business conditions, A and B modify the installment obligation on June 5, 1987, to grant A the right to repurchase the property beginning on or after November 1, 1987. On June 1, 1987, section 811(c)(2) ceases to apply to the obligation because on June 5, 1987 A does not have the right to repurchase the property at a fixed or ascertainable price beginning on any day within the first 9 months after the date of the sale. On June 1, 1987, the obligation is subject to the proportionate disallowance rule of section 453C as amended by section 10202 of the 1987 Act as if the obligation arose from a disposition occurring on June 1, 1987.

Example 2. (i) Manufacturer A, a calendar year taxpayer, sells tangible personal property to Dealer B on January 1, 1988. For each item, B makes a 20% down payment and gives A an installment obligation for the remaining 80% of the purchase price. The obligation requires B to pay 50% of the remaining balance on the date B sells the property. The remaining 50% of the balance is due 60 days after the resale date. The obligation further grants A the right to repurchase the property at a fixed price beginning September 15, 1988.

(ii) Pursuant to a separate agreement between A and B existing on January 1, 1988, a customer who ultimately purchases the property from B may assume B's installment obligation to A. To effect the assumption, A must consider the retail customer credit worthy, and the retail customer must execute a promissory note to A for the unpaid principal. When A accepts the retail customer's promissory note in place of B's installment obligation, A releases B from liability on B's installment obligation except to the extent of the retail customer's failure to pay on its note. The financing agreement also provides that the maturity date and interest rate of the retail customer's promissory note may differ from that of the dealer's installment obligation.

(iii) B sells one piece of property to customer C on March 20, 1988. On that date, C assumes B's installment obligation to A. On March 1, 1988, section 811(c)(2) ceases to apply to A's installment obligation from B because on March 20, 1988, an eligible term was eliminated (i.e., a person other than the

dealer became obligated to make payments on the principal of the obligation). Section 811(c)(2) ceases to apply whether or not the substitution of C for B as the obligor on the installment obligation constitutes a disposition of that obligation. Because of this substitution, the installment obligation must be accounted for under the general rules applicable to an obligation arising from a disposition occurring on March 1, 1988. Therefore, as required by section 453(b)(2)(A), the installment obligation cannot be accounted for under the installment method of accounting for A's 1988 taxable year. See, however, A–5(a) of this section for rules relating to the treatment of the obligation as an eligible obligation during January and February for purposes of the 50% test.

Q–5. How is the 50% test calculated?

A–5. (a) To determine whether a taxpayer satisfies the 50% test for a taxable year, the taxpayer calculates a fraction (the testing fraction), the numerator of which is the average balance of outstanding eligible obligations, calculated on a monthly basis and including eligible obligations arising from sales in prior years, and the denominator of which is the sales for that year giving rise to eligible obligations. The testing fraction must be at least 50% to satisfy the requirements of section 811(c)(2). An obligation that ceases to be an eligible obligation because an eligible term is eliminated nonetheless remains, for purposes of calculating the 50% test, an eligible obligation for the period preceding the month in which the eligible term is eliminated. A sale giving rise to an obligation that ceases to be an eligible obligation because an eligible term is eliminated continues to be included in the denominator of the testing fraction.

(b) To determine the numerator of the testing fraction, the taxpayer first determines the monthly balance of eligible obligations (monthly eligible balance). The monthly eligible balance consists of the face amount of eligible obligations (including eligible obligations arising from sales in previous taxable years) outstanding at the end of the month. Payments of principal on an eligible obligation reduce the amount included in the monthly eligible balance. The sum of the monthly eligible balances is divided by the number of months in the taxable year (counting fractions of a month as whole months in the case of a short taxable year) to determine the numerator of the testing fraction. (In determining the number of months in a taxable year for purposes of this calculation, a month is counted even though no eligible obligations were outstanding at the end of that month.) The denominator of the testing fraction is a number equal to the total amount of all sales arising during the taxable year giving rise to eligible obligations. If a sale giving rise to an eligible obligation includes a down payment, the amount of the sale includes the amount of the down payment. The denominator includes only sales occurring in the taxable year of the determination. Sales occurring in a previous year are not included in the denominator, even though eligible obligations arising from those sales remain outstanding.

(c) The following example illustrates the provisions of this A–5:

Example. On January 1, 1987, Manufacturer A, a calendar year taxpayer, has five outstanding eligible obligations (1986 obligations). On January 1, 1987, the outstanding face amount of each 1986 obligation is $80,000. On January 15, 1987, A sells to Dealer B 15 pieces of tangible personal property for $75,000 each. For each sale, B makes a down payment of $25,000 and gives A an installment obligation with eligible terms for the remaining $50,000. Each obligation provides for adequate stated interest under sections 483 and 1274. On April 15, 1987, A sells to Dealer C 10 pieces of tangible personal property, each for $65,000 with no down payment. For each sale, C issues an installment obligation with the eligible terms for $65,000. Each obligation provides for adequate stated interest under sections 483 and 1274. During 1987, A makes no other dispositions of property giving rise to eligible obligations. During 1987 A receives no payments from B or C on their obligations. With respect to 1986 obligations, A receives $80,000 plus interest on each of the following dates: April 15, 1987; May 15, 1987; June 15, 1987; July 15, 1987 and August 15, 1987. A calculates the 50% test as follows:

Month	Monthly eligible balance
January	$400,000 (5×$80,000) 750,000 (15×$50,000) 1,150,000
February	1,150,000
March	1,150,000
April	1,150,000 (80,000) 650,000 (10×$65,000) 1,720,000
May	1,720,000 (80,000) 1,640,000
June	1,640,000 (80,000) 1,560,000
July	1,560,000 (80,000) 1,480,000
August	1,480,000 (80,000) 1,400,000
September	1,400,000
October	1,400,000
November	1,400,000
December	1,400,000
Total	16,850,000

The average balance of eligible obligations is $1,404,167 ($16,850,000/12). Total sales giving rise to eligible obligations equal $1,775,000 ((15×$75,000)+(10×$65,000)). The testing fraction is 79% ($1,404,167/$1,775,000). Because 79% is greater than 50%, A satisfies the 50% test for 1987. In order to become eligible for section 811(c)(2) treatment, A must also satisfy the 50% test for 1986. See A–6 of this section.

Q–6. For what taxable year must a taxpayer first satisfy the requirements of section 811(c)(2)?

A–6. (a) A taxpayer must meet the requirements of section 811(c)(2) for its first taxable year beginning after October 22, 1986. One of these requirements is that a taxpayer must satisfy the 50% test both for its first taxable year beginning after October 22, 1986, and for the preceding taxable year (i.e., its first taxable year ending on or after October 22, 1986). For example, section 811(c)(2) applies to a calendar year taxpayer only if the taxpayer satisfies the 50% test for both 1986 and 1987. If the taxpayer fails to satisfy the 50% test for either 1986 or 1987, section 811(c)(2) can never apply to any obligation arising from sales by the taxpayer.

(b) Section 811(c)(2)(C) treats obligations issued before October 22, 1986, as containing the eligible terms if the obligations were modified to contain the eligible terms within sixty days after October 22, 1986. Sales giving rise to modified obligations are taken into account in calculating the denominator, and the modified obligations themselves are taken into account in calculating the numerator, of the testing fraction as if the obligations were modified on the date of their original issuance. See A–5 of this section.

Q–7. Must a taxpayer always satisfy the 50% test for both the taxable year and the preceding taxable year?

A–7. (a) If a taxpayer satisfies the 50% test for both its first taxable year beginning after October 22, 1986, and its preceding taxable year (i.e., its first taxable year ending on or after October 22, 1986), such a taxpayer will not cease to be eligible for section 811(c)(2) treatment until the second consecutive

taxable year for which it fails to satisfy the 50% test. A taxpayer that ceases to be eligible for section 811(c)(2) treatment because it fails the 50% test for two consecutive years can again become eligible for section 811(c)(2) treatment by subsequently satisfying the 50% test for two consecutive taxable years. The obligations of a taxpayer that arise from dispositions made in a taxable year for which the taxpayer is not eligible for section 811(c)(2) treatment, however, can never become eligible for section 811(c)(2) treatment. Likewise, eligible obligations arising from dispositions made in a taxable year for which the taxpayer is eligible for section 811(c)(2) treatment do not cease to be subject to section 811(c)(2) treatment if the taxpayer subsequently fails the 50% test for two consecutive taxable years.

(b) The following examples illustrate the provisions of this A–7:

Example (1). A calendar year taxpayer fails the 50% test in 1986, but satisfies the test in 1987 and 1988. Section 811(c)(2) does not apply for 1987 or for any year thereafter. See A–6 of this section.

Example (2). A calendar year taxpayer satisfies the 50% test in 1986 and 1987, fails the 50% test in 1988, and satisfies the 50% test in 1989. Section 811(c)(2) applies to the taxpayer's eligible obligations arising from dispositions made in 1987, 1988, and 1989.

Example (3). A calendar year taxpayer satisfies the 50% test in 1986 and 1987, but fails the 50% test in both 1988 and 1989. Section 811(c)(2) applies to the taxpayer's eligible obligations arising from dispositions made in 1987 and 1988 but does not apply to obligations arising from dispositions made in 1989 and 1990. If the taxpayer satisfies the 50% test for 1990 and 1991, section 811(c)(2) applies to eligible obligations arising from dispositions made in 1991.

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

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: June 14, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–15579 Filed 7–11–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

Amendment to the North Dakota Abandoned Mine Land Reclamation Plan; Correction

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

ACTION: Final rule, correction.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is correcting an error on the final rule approving the North Dakota Abandoned Mine Land Reclamation (AMLR) plan amendment, which was published on Thursday, June 16, 1988 (53 FR 22478–22479). The correction will add the title of the new § 934.25 which was omitted.

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

SUPPLEMENTARY INFORMATION: The following correction is made to the North Dakota Abandoned Mine Land Reclamation (AMLR) plan amendment, which was published on Thursday, June 16, 1988 (53 FR 22478–22479): On page 22479, third column, after line 14, and under amendatory instruction number 3, the section heading for 934.25 is added as follows:

§ 934.25 Amendment to approve North Dakota abandoned mine reclamation plan.

Arthur W. Abbs,

Acting Assistant Director, Program Policy, Office of Surface Mining Reclamation and Enforcement.

Date: July 5, 1988.

[FR Doc. 88–15536 Filed 7–11–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 266

[DoD Directive 7600.10]

Audits of State and Local Governments

AGENCY: Department of Defense.

ACTION: Final rule amendment.

SUMMARY: This amendment is issued to correct administrative errors previously printed in the **Federal Register** on Monday, June 27, 1988.

EFFECTIVE DATE: February 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. V. Stone, Office of the Assistant Inspector General for Audit Policy, Department of Defense, 400 Army Navy Drive, Room 1076, Arlington, VA 22202, telephone (202) 693–0017.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 266

State and local governments.

Accordingly, 32 CFR Part 266 is amended as follows:

PART 266—AUDITS OF STATE AND LOCAL GOVERNMENTS

1. The authority citation continues to read as follows:

Authority: Single Audit Act of 1984, Pub. L. 98–502, 98 Stat. 2327; 31 U.S.C. 7501 note.

2. Renumber each section heading from "§ 226.1–.7" to "§ 266.1–.7."

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 7, 1988.

[FR Doc. 88–15551 Filed 7–11–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–88–02]

Special Local Regulations; Champion Offshore Pro Series, Buffalo Harbor, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Champion Offshore Pro Series to be held on Buffalo Harbor. This event will be held on July 30, 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective and terminate on July 30, 1988. Comments on this regulation must be received on or before July 15, 1988.

ADDRESS: Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: MST2 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable since, under 33 CFR 100.35(a), regulations may be issued only after event approval, which did not occur until June 26, 1988. See 33 CFR 100.25 (concerning event approval). Interested parties have, however, been previously notified of, and some have commented on, this event. Those comments were considered in preparing this regulation.

An opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed. Comments must be received on or before July 15, 1988.

Economic Assessment and Certification

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are MST2 Scott E. Befus, project officer, Office of Search and Rescue, and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Champion Offshore Pro Series will be conducted on Buffalo Harbor on July 30, 1988. This event will have an estimated 36 offshore power boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Buffalo, NY).

List of Subject in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0902 to read as follows:

§ 100.35–0902 Champion Offshore Pro Series—Buffalo Harbor.

(a) *Regulated Area:* That portion of Lake Erie, Outer Bufalo Harbor and Buffalo River Entrance enclosed by a line running from the South Pier Light (LLN 2840) west to a point at 42 degrees 50 minutes 23 seconds North 78 degrees 54 minutes 56 seconds west then north to the Crib Light (LLN 2615) then east to the North Breadwater South End Light (LLN 2660) then east to shore.

(b) *Special Local Regulations:* (1) The above area will be closed to navigation or anchorage from 10:00 a.m. (local time) until 3:00 p.m. on July 30, 1988.

(2) Vessel traffic will periodically be permitted to transit through the regulated area but only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Buffalo, NY) and when so directed by that officer. Commercial vessels over 1000 gross tons will receive priority passage through the regulated area during non-race hours. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in explusion from the area, citation for failure to comply, or both.

(c) *Effective Dates:* These regulations will become effective and terminate on July 30, 1988.

Dated: June 26, 1988.

R.A. Appelbaum,

RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 88–15521 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 100

[CGD 09–88–19]

Special Local Regulations; Sohio Riverfest, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Sohio Riverfest. This event will be held on 29, 30 and 31 July 1988 on the Cuyahoga River, Cleveland, Ohio. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 29 July 1988 and terminate on 31 July 1988.

FOR FURTHER INFORMATION CONTACT: MST2 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 13 May, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transporation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a singificant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are MST2 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Sohio Riverfest will be conducted on the Cuyahoga River on 29, 30 and 31 July 1988. Due to the nature of shoreside businesses and planned entertainment activities, it is anticipated that much vessel congestion will remain in the area even during times when specific marine events are not scheduled. The size of large vessels trying to transit the area and the effects of navigational equipment of large vessels such as prop wash or turbulence cause by operation of main propulsion and bow thruster units would pose a threat to small craft by vessels of 100 gross tons or more during times of planned water-related events. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, Coast Guard Station Cleveland Harbor, OH).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0919 to read as follows:

§ 100.35–0919 Sohio Riverfest, Cuyahoga River, Cleveland, Ohio

(a) *Regulated Area*: (1) The following area will be closed to vessel navigation or anchorage for vessels of more than 100 gross tons: That portion of the Cuyahoga River from the Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge.

(b) *Special Local Regulations*: (1) The above area will be closed to vessel navigation or anchorage by vessels of more than 100 gross tons from 7:00 pm (Local Time) until 12:00 pm on 29 July 1988; 12:00 am until 3:00 pm and 7:00 pm until 12:00 pm on 30 July 1988; and 1:00 pm until 4:00 pm on 31 July 1988.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol in the performance of their assigned duties.

(3) When vessels are moored in this area, they shall be securely moored at bow and stern. Rafting of moored vessels to the extent of impeding another vessel's navigation is prohibited.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) This section is effective from 7:00 pm (EDT) 29 July 1988 until 4:00 p.m. on 31 July 1988.

Dated: June 24, 1988.

R.A. Appelbaum

RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 88–15520 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD5–88–043]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Sunset Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation and the Town of Sunset Beach, North Carolina, the Coast Guard is changing the regulations governing the operation of the drawbridge across the Atlantic Intracoastal Waterway (AICWW) at mile 337.9, at Sunset Beach, North Carolina, by restricting the number of bridge openings during the boating season. This change is being made to alleviate vehicular traffic congestion caused by the steady increase in recreational boats on the AICWW during the boating season, and the resulting increase in bridge openings. This action will accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: On April 14, 1988, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (53 FR 12434) concerning the bridge at Sunset Beach, North Carolina. Interested persons were given until May 31, 1988, to submit comments on the proposed rule. The Commander, Fifth Coast Guard District also published the proposal as a Public Notice on April 14, 1988, which gave interested persons until May 31, 1988 to submit comments.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and LT Robin K. Kutz, Project Attorney.

Discussion of Rule and Comments

The North Carolina Department of Transportation and the Town of Sunset Beach, North Carolina, have requested that the drawbridge only be required to open on the hour, daily, between 7:00 a.m. and 7:00 p.m., from April 1 to October 31. This request was made to alleviate highway congestion at the ocean front and beyond the town limits on Highway 179. Because of the traffic congestion caused by excessive bridge openings, a notice of proposed rulemaking was issued

Two comments were received as a result of the public notice. D.C. Loveland Co., Inc., Philadelphia, PA, in a letter dated May 19, 1988, expressed objection to restricting commercial vessels' on-demand passage through the bridge. The notice of proposed rulemaking did not omit the provision in section 117.821 that requires bridges on the Atlantic Intracoastal Waterway in North Carolina to open on signal from commercial vessels. This section had consolidated all of the regulations governing drawbridges over the Atlantic Intracoastal Waterway in North Carolina into one section. For this final rule, only subparagraph (b)(ė) will be added. The other response was received from a private citizen offering no objection to the proposed rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of the proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the regulation will have no effect on commercial navigation or on any industries that depend on waterborne transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05 (g).

2. Section 117.821 (b)(6) is added as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarie Sound to Sunset Beach, North Carolina.

* * * * *

(b) * * *

(6) NC 50 bridge, mile 337.9, at Sunset Beach, NC, from April 1 to October 31, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

* * * * *

Dated: June 24, 1988.

Alan D. Breed,

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

[FR Doc. 88–15523 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD7–88–03]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Tierra Verde Community Association and the Florida Department of Transportation, the Coast Guard is adding regulations governing the Pinellas Bayway, Structure "E" (SR 679) drawbridge at mile 113, St. Petersburg Beach by permitting the number of openings to be limited during certain periods. This change is being made because a significant increase in highway traffic and bridge openings occurs on weekends due to increased recreational activity. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerald Fleming, at (305) 536–4103.

SUPPLEMENTARY INFORMATION: On April 18, 1988, the Coast Guard published proposed rule (53 FR 12708) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated April 29, 1988. In each notice, interested persons were given until June 2, 1988, to submit comments.

Drafting Information

The drafters of these regulations are Lieutenant Commander Gerald Fleming, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Seven comments were received. Four supported the proposal, including two which suggested that a radio be installed on the bridge for easier communication. Installation of a radiotelephone is not deemed necessary for navigation in this instance, however, the bridge owner will be encouraged to install and monitor a radiotelephone. Two opposed the proposal and suggested the bridge continue to open on signal. Another supported regulations but suggested a different schedule. The information available indicates that the 15 minute schedule will allow enough time for vehicular traffic to disperse while providing approximately the same number of openings as now occurs while opening "on demand". Spreading the scheduled openings at equally spaced intervals over the heaviest periods of vehicular traffic should facilitate the movement of land traffic while meeting the reasonable needs of navigation. After carefully reviewing all comments, the Coast Guard has determined that no information has been presented which justifies changing the proposed regulation. The final rule is, therefore, unchanged from the proposed rule published on April 18, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.287(d)(3) is added to read as follows:

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.

* * * * *

(d) * * *

(3) The draw of the Pinellas Bayway, Structure "E" (SR 679) bridge, mile 113, at St. Petersburg Beach shall open on signal; except that from 9 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays, the draw need be opened only on the hour, quarter-hour, half-hour, and three quarter-hour.

* * * * *

Dated: June 29, 1988.

M.J. O'Brien,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District, Acting.

[FR Doc. 88–15522 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Mail Disputes; Domestic Mail Manual

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule would remove an ambiguity in postal regulations concerning the disposition of mail while claimed by two or more parties. During proceedings to resolve the dispute, the mail is to be held by the postmaster.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: William P. Bennett, (202) 268–2966.

SUPPLEMENTARY INFORMATION: On April 8, 1988, the Postal Service published in the **Federal Register** (53 FR 11685) a proposed rule amending the Domestic Mail Manual, section 153.72, to provide an explicit direction to postmasters as to the disposition of disputed mail while the matter is pending before the Judicial Officer Department. This lack of direction has led to uncertainty among postmasters. The Postal Service accordingly proposed to amend 153.72 of the Domestic Mail Manual to state that the disputed mail would be held by the postmaster until such time as notice of final disposition was received from the Judicial Officer Department. Interested persons were invited to submit comments on the proposed change by May 9, 1988. No comments were received.

List of Subjects in 39 CFR Part 111

Administrative practices and procedure, reporting and recordkeeping requirements.

Accordingly, the Postal Service hereby adopts the proposal without change and makes the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 153—CONDITIONS OF DELIVERY

2. In 153.7, revise .72 to read as follows:

153.7 Conflicting Orders by Two or More Parties for Delivery of Same Mail.

* * * * *

.72 Reference to Regional Counsel or Judicial Officer Department. Where the disputing parties are unable to select a receiver, they shall furnish to the postmaster all available evidence on which they rely to exercise control over the disputed mail. If after receipt of such evidence, the postmaster is still in doubt as to who should receive the mail, the postmaster will submit the case to the regional counsel for informal resolution. If after five working days, or such additional time as may be agreed to by all parties, no informal resolution is achieved and no order has been made by regional counsel to return the mail to sender, then regional counsel shall forward the case file to the Judicial Officer Department for decision in accordance with the rules of procedure of that department. If a dispute is referred to the Judicial Officer Department, the postmaster shall hold the disputed mail until such time as notice of final disposition is received from the Judicial Officer.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88–15570 Filed 7–11–88; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL. 3412–2; GA–016]

Approval and Promulgation of Implementation Plans; Georgia; Revision to Visibility Protection Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision to the Georgia Statement Implementation Plan (SIP) which was submitted on August 31, 1987. This submittal, a revision to Georgia's plan for visibility protection in Class I areas, satisfies EPA's requirements as set forth in 40 CFR 51.300 through 51.304 and 51.306. These visibility provisions were submitted to EPA in order to satisfy the second part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 49 Fr 20647 on May 16, 1984. The schedule for submittal and promulgation of these visibility provisions was renegotiated and subsequently extended by a court order on September 9, 1986.

The second part of the settlement agreement required EPA to propose and promulgate Federal Visibility SIP's henceforth called Federal Implementation Plans (FIP's), addressing the general visibility plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306) for those states whose SIP's EPA had determined to be inadequate with respect to the above provisions (see January 23, 1986, notice of deficiency (51 FR 3046) and March 12, 1987, notice proposing FIP's for deficient State SIP's (52 FR 7803)). However, as provided in the renegotiated settlement agreement, a state could avoid the promulgation of said provisions if they submitted a visibility SIP by August 31, 1987. The State of Georgia submitted such an approvable plan revision. The principal effect of the Georgia visibility plan revision is to assure that the State is making and continues to make progress towards the national goal of "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."

DATE: This action will become effective on September 12, 1988, unless notice is received by August 11, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Stuart Perry at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

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

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, Floyd Towers East, 205 Butler Street, SE., Atlanta, Georgia 30334

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch, at the address given above, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On August 31, 1987, the Georgia Environmental Protection Division (GEPD) submitted to EPA for approval a revision to the Georgia SIP, and EPA is today approving the revision. This submittal contained certification that

the revision was preceded by adequate notice and a public hearing. A discussion of the revision now follows.

Backgound

On December 2, 1980, EPA promulgated visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et seq. The visibility regulations required that the 36 states listed in § 51.300(b)(2): (1) Develop a program to assess and remedy visibility impairment from new and existing sources, (2) develop a long-term (10 to 15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area and considered by the Federal Land Managers (FLM's) to be critical to the visitor's enjoyment of the Class I areas) in all aspects of visibility protection. These regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment or "plume blight." The EPA deferred action on the regulation of widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3).

In December 1982, environmental groups filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 states that had failed to submit SIP's to EPA (EDF vs Gorsuch, Number C82–6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. the EPA and the plaintiffs negotiated a settlement agreement for the remaining states which the court approved by order on April 20, 1984. EPA announced the details of the settlement agreement at 49 FR 20647 (May 16, 1984).

The settlement agreement required EPA to promulgate federal visibility SIP's, henceforth called Federal Implementation Plans (FIP's) on a specified schedule for those states that had not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to propose and promulgate FIP's which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307 provided the states did not submit SIP's by certain dates specified in the agreement.

On May 22, 1985, and October 31, 1985, Georgia submitted Part 1 visibility provisions to EPA for approval. On May 22, 1985, the State submitted its "Plan for Visibility Protection in Class I Areas." The plan contained a narrative discussion of the scope and intent of Georgia visibility program, and described the State's visibility monitoring strategy. It also contained revisions to the State's new source review and Prevention of Significant Deterioration (PSD) regulations. On October 31, 1985, the State submitted a schedule for finalizing the details of their monitoring strategy. Together, these submittals satisfied the requirements of 40 CFR 51.305 and 51.307. EPA subsequently approved the revisions on January 28, 1986, (51 FR 3466).

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307) and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIP's on a specified schedule to remedy any deficiencies. The original deadlines for promulgating the FIP's were extended by a court order on September 9, 1986. The order provided that a state could avoid federal promulgation if it submitted a SIP to address the Part 2 (remaining visibility provisions) requirements by August 31, 1987.

The remaining visibility provisions are spelled out in § 51.302(c) (General Plan Requirements) and require that the SIP's include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal,
2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources,
3. Provisions to protect integral vistas identified pursuant to § 51.304,
4. Provisions to address any existing impairment certified by the FLM, and
5. A long-term (10–15) year strategy for making progress toward the national goal pursuant to § 51.306.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined that the SIP's of 32 states (including Georgia) were deficient with respect to the remaining visibility provisions. In that same notice, based on information received from the Department of the Interior (DOI) and the Roosevelt Campobello International Park Commission, 10 Class I areas in 7 states were identified as experiencing visibility impairment within the park boundaries which may be traceable to specific sources (reasonably attributable impairment (RAI)). However, the DOI stated in its certification of impairment that the results from the National Park Service (NPS) visibility monitoring program indicate that scenic views are affected by uniform haze at all NPS monitoring locations within the lower 48 states. Georgia was not identified as experiencing RAI. Also, no integral vista has been identified for any Class I area in Georgia. Since Georgia's Class I areas are not experiencing reasonably attributable impairment of visibility, and since no integral vistas have been identified, items 2, 3, and 4 of the above list do not apply (this is so stated in the Georgia plan). The Georgia plan revolves solely about the State's long-term strategy.

Plan Requirements—Long-Term Strategy

EPA's regulations require that the long-term strategy be a 10 to 15 year plan for making reasonable progress towards the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLM's have declared at least six months before plan submission. A long-term strategy must be developed which covers each Class I area within the state and each Class I area in another state that may be affected by sources within the state. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLM's. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal and include provisions for the review of the impact of new sources as required by § 51.307. The state must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;
5. Smoke management techniques for agricultural and forestry management purposes, including such plans as currently exist within the state for these purposes; and

6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The state must commit to periodic review, and revision if appropriate, of the SIP on a schedule not less frequent than every three years. At the time of the periodic review, a report must be developed in consultation with the FLM's and submitted to the Administrator and to the public. The report must contain an assessment of the following:

1. The progress achieved in remedying existing impairment of visibility in any mandatory Class I federal area;

2. The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I federal area;

3. Any change in visibility since the last such report, or in the case of the first report, since plan approval;

4. Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;

5. The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy;

6. The impact of any exemption granted under § 51.303; and

7. The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report, or, in the case of the first report, since plan approval.

Revision to Georgia's Plan for Visibility Protection in Class I Areas

The revision to Georgia's plan for visibility protection in Class I areas, entitled "Visibility SIP", is divided into 3 main sections as follows:

I. Background
II. Additional Visibility SIP Requirements
III. General Plan Requirements

Section (Background) describes the scope and intent of Georgia's visibility program. It identified that in May 1985 the GEPD adopted its original plan for visibility protection in Class I areas in Georgia. It restates from the May 1985 plan the three mandatory class I areas in Georgia—the Okeefenokee, Cohutta, and Wolf Island Wilderness Areas. It identifies the nearby Class I areas located in North Carolina which may be affected by sources in Georgia—the Joyce Kilmer—Slick Rock and Shining Rock Wilderness Areas. It restates the pollutants which are most involved in visibility impairment—fine particulates, nitrogen dioxide and sulfur dioxide. It points out that in the original plan, Georgia provided its preliminary assessment of visibility impairment in each of the Class I areas, that Georgia coordinated its plan development with the affected FLM's, and that the original plan outlines the State's notification and review procedures for evaluating new sources and describes the State's visibility monitoring plan.

Section II (Additional Visibility SIP Requirements) states that the original plan addressed visibility monitoring and new source review, and the remaining portion of the visibility SIP requirements are being addressed by this revision.

Section III (General Plan Requirements) addresses each of the general plan requirements pursuant to 40 CFR 51.302(c) as previously identified. In March 1985, the GEPD contacted the FLM's for the Class I areas and requested their assistance in characterizing the visibility needs for each area. None of the FLM's identified any integral vistas nor any existing manmade visibility impairment attributable to a source or small group of sources. In June and July 1987, the FLM's were notified and provided the opportunity to participate in the further development of the visibility protection program (copies of correspondence included with plan). This notification meets the Federal Land Manager Coordination requirements as specified in 40 CFR 51.302.

Since reasonably attributable impairment has not been identified for any of the Class I areas covered by the Georgia plan, and no integral vistas have been identified, the State need not address the general plan requirements for BART, Integral Vistas, or provisions to address existing visibility impairment. However, the State has provided that Federal Land Managers may in the future identify visibility impairment due to individual sources, and at such time the State will review its plan and the need for BART. A BART analysis will be performed and the source or sources will be required to implement a BART decision.

The final provision of the general plan requirements is the State's long-term (10–15 year) strategy for making reasonable progress towards the national goal. In developing the long-term strategy, the GEPD addressed each of the six factors required by § 51.306(e) as follows:

1. Emission reductions due to ongoing air pollution control programs—Georgia stated that it presently operates an air pollution control program which addresses control of existing as well as new sources for emissions of particulate matter, nitrogen oxides and sulfur dioxide. They feel these programs are adequate for preventing any future visibility impairment.

2. Additional emission limitations and schedules for compliance—The State is not considering any additional emission regulations since reasonably attributable impairment has not been identified.

3. Measures to mitigate the impact of construction activities—The State points out that the Class I areas in Georgia are located in areas which construction activities are at a minimum. They also state that a fugitive dust regulation is in place to provide for reasonable control of construction activities. They feel that construction activities have little or no impact on visibility in any of the Class I areas in Georgia.

4. Source retirement and replacement schedules—The State does not feel that a specific retirement or replacement program is needed at this time.

5. Smoke management techniques for agriculture and forest management purposes—The State does not have regulations which limit forest or agricultural burning. Prescribed burning on forest and agricultural lands does occur under the supervision of the Georgia Forestry Commission using established prescribed burning procedures which are used to minimize the impacts on visibility of the burns. The State does have a regulation which addresses open burning of land clearing materials and yard trash. The State feels that these procedures are adequate for making progress towards the national goal.

6. Enforcement of emission limitations and control measures—Georgia states that it has an ongoing and effective enforcement program that is adequate for making progress towards the national goal.

The final portion of Georgia's long-term strategy involves the State's requirement to periodically review and revise (as appropriate) the long-term strategy, and to prepare a report to the Administrator and to the public pursuant to § 51.306(c). The State of Georgia has fully met this requirement.

Final Action

After reviewing Georgia's plan for the protection of visibility in federal Class I areas, EPA finds that the plan satisfies all of the remaining requirements of the visibility regulations specified in the second part of the settlement agreement. EPA is therefore approving the visibility plan submitted by the State of Georgia on August 31, 1987.

EPA is publishing this action without prior proposal because the Agency

views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 12, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 12, 1988.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See § 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Georgia was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 5, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart L—Georgia

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.570 is amended by adding paragraph (c)(34) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(34) Revision to Georgia's plan for visibility protection in Class I areas entitled "Visibility SIP" submitted to EPA on August 31, 1987, by the Georgia Environmental Protection Division (GEPD) to satisfy the Part 2 visibility requirements.

(i) Incorporation by reference.

(A) June 10, 1988, letter from the Georgia Department of Natural Resources, and page 5 of the section entitled "Visibility SIP" which is part of the Georgia plan for visibility protection in Class I areas. This page contains the periodic review requirements satisfying 40 CFR 51.306(c), and was adopted by the Georgia Department of Natural Resources on August 31, 1987.

(ii) Additional material

(A) Narrative entitled "Visibility SIP", a revision to Georgia's plan for visibility protection in Class I areas.

* * * * *

[FR Doc. 88–15464 Filed 7–11–88; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3412–1; KY–048]

Approval and Promulgation of Implementation Plans; Kentucky; Protection of Visibility in Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision to the Kentucky State Implementation Plan (SIP) which was submitted on August 31, 1987. This submittal, Kentucky's plan for the protection of visibility in Class I areas, satisfies EPA's requirements as set forth in 40 CFR 51.300 through 51.304 and 51.306. These visibility provisions were submitted to EPA in order to satisfy the second part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 49 FR 20647 on May 16, 1984. The schedule for submittal and promulgation of these visibility provisions was renegotiated and subsequently extended by a court order on September 9, 1986.

The second part of the settlement agreement required EPA to propose and promulgate Federal Visibility SIP's, henceforth called Federal Implementation Plans (FIP's), addressing the general visibility plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306) for those states whose SIP's EPA had determined to be inadequate with respect to the above provisions (see January 23, 1986, notice of deficiency (52 FR 3046) and March 12, 1987, notice proposing FIP's for deficient State SIP's (51 FR 7803)). However, as provided in the renegotiated settlement agreement, a state could avoid the promulgation of said provisions if they submitted a visibility SIP by August 31, 1987. The Commonwealth of Kentucky submitted such an approvable plan. The principal effect of the Kentucky visibility plan is to assure that the State is making and continues to make progress towards the national goal of "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."

DATES: This action will become effective on September 12, 1988, unless notice is received by August 11, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Stuart Perry at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

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

Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch, at the address given above, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On August 31, 1987, the Kentucky Department for Environmental Protection (KDEP) submitted to EPA for approval a revision to the Kentucky SIP, and EPA is today approving the revision. This submittal contained certification that the revision was preceded by adequate notice and a public hearing. A discussion of the revision now follows.

Background

On December 2, 1980, EPA promulgated visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et seq. The visibility regulations required that the 36 states listed in § 51.300(b)(2): (1) Develop a program to assess and

remedy visibility impairment from new and existing sources, (2) develop a long-term (10 to 15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area and considered by the Federal Land Managers (FLM's) to be critical to the visitor's enjoyment of the Class I areas) in all aspects of visibility protection. These regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment or "plume blight." The EPA deferred action on the regulation of widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3).

In December 1982, environmental groups filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 states that had failed to submit SIP's to EPA (EDF vs Gorsuch, Number C82-6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and the plaintiffs negotiated a settlement agreement for the remaining states which the court approved by order on April 20, 1984. EPA announced the details of the settlement agreement at 49 FR 20647 (May 16, 1984).

The settlement agreement required EPA to promulgate federal visibility SIP's, henceforth called Federal Implementation Plans (FIP's), on a specified schedule for those states that have not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to propose and promulgate FIP's which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307 provided the states did not submit SIP's by May 6, 1985.

On May 3, 1985, Kentucky submitted a draft visibility SIP to address the requirements of 40 CFR 51.305 and 51.307. EPA was required to approve the State submittal or to promulgate federal programs by January 6, 1986. On February 13, 1986, EPA promulgated a federal program to meet the requirements of §§ 51.305 and 51.307 for Kentucky since the State had not yet submitted a final plan. The federal program which is covered by the federal visibility monitoring strategy (§ 52.26) and visibility NSR program (§ 52.27 and 52.28), was promulgated as part of the Kentucky SIP. On February 20, 1986, Kentucky submitted a final SIP revision to satisfy the requirements of 40 CFR 51.305 and 51.307. The submittal consisted or revisions to Regulations 401 KAR 51.017 (Prevention of Significant Deterioration (PSD)) and 401 KAR 51.052 (New Source Review in Nonattainment Areas) to satisfy the requirements of 40 CFR 51.037. EPA proposed approval of the PSD regulation on March 17, 1987 (52 FR 8311). However, since EPA has not yet approved the PSD or nonattainment NSR rules, EPA has not removed the provisions which were promulgated on February 13, 1986, to meet the requirements of 40 CFR 51.307. Also, included with the submittal was a visibility monitoring plan to satisfy the 40 CFR 51.305 requirements. EPA has not yet acted to approve the monitoring plan which would replace the federally promulgated provisions.

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307) and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIP's on a specified schedule to remedy any deficiencies. The original deadlines for promulgating the FIP's were extended by a court order on September 9, 1986. The order provided that a state could avoid federal promulgation if it submitted a SIP to address the Part 2 (remaining visibility provisions) requirements by August 31, 1987.

The remaining visibility provisions are spelled out in § 51.302(c) (General Plan Requirements) and require that the SIP's include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal,

2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources,

3. Provisions to protect integral vistas identified pursuant to § 51.304,

4. Provisions to address any existing impairment certified by the FLM, and

5. A long-term (10–15) year strategy for making progress toward the national goal pursuant to § 51.306.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined that the SIP's of 32 states (including Kentucky) were deficient with respect to the remaining visibility provisions. In that same notice, based on information received from the Department of the Interior (DOI) and the Roosevelt Campobello International Park Commission, 10 Class I areas in 7 states were identified as experiencing visibility impairment within the park boundaries which may be traceable to specific sources (reasonably attributable impairment (RAI)). However, the DOI stated in its certification of impairment that the results from the National Park Service (NPS) visibility monitoring program indicate that scenic views are affected by uniform haze at all NPS monitoring locations within the lower 48 states. Kentucky was not identified as experiencing RAI. Also, no integral vista has been identified for any Class I area in Kentucky. Since Kentucky's Class I areas are not experiencing reasonably attributable impairment of visibility, and since no integral vistas have been identified, items 2, 3, and 4 of the above list do not apply (this is so stated in the Kentucky plan). The Kentucky plan revolves solely about the State's long-term strategy.

Plan Requirements—Long-Term Strategy

EPA's regulations require that the long-term strategy be a 10 to 15 year plan for making reasonable progress towards the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLM's have declared at least six months before plan submission. A long-term strategy must be developed which covers each Class I area within the state and each Class I area in another state that may be affected by sources within the state. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLM's. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal and include provisions for the review of the impact of new sources as required by § 51.307. The state must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;

2. Additional emission limitations and schedules for compliance;

3. Measures to mitigate the impacts of construction activities;

4. Source retirement and replacement schedules;

5. Smoke management techniques for agricultural and forestry management purposes, including such plans as currently exist within the state for these purposes; and

6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The state must commit to periodic review, and revision if appropriate, of the SIP on a schedule not less frequent than every three years. At the time of the periodic review, a report must be developed in consultation with the FLM's and submitted to the Administrator and to the public. The report must contain an assessment of the following:

1. The progress achieved in remedying existing impairment of visibility in any mandatory Class I federal area;

2. The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I federal area;

3. Any change in visibility since the last such report, or in the case of the first report, since plan approval;

4. Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;

5. The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy;

6. The impact of any exemption granted under section 51.303; and

7. The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report, or, in the case of the first report, since plan approval.

Kentucky's Plan for Protection of Visibility in Class I Areas (Part II)

The Kentucky Plan is divided into four main sections as follows:

1. Necessity for Plan
2. General Plan Requirements
3. Periodic Review
4. Conclusion

Section 1 (Necessity for Plan) identifies the purpose and goal of the visibility plan. It identifies the mandatory Class I area located in the State (Mammoth Cave National Park), as well as the Class I area located in Missouri (Mingo Wilderness Refuge) that may be affected by sources in Kentucky. Kentucky's plan also identifies the pollutants most involved in visibility impairment—sulfur dioxide, oxides, particulate matter, and ozone.

Section 2 (General Plan Requirements) is divided into four parts as follows: Part (a) (Consultation with Federal Land Managers) provides that Kentucky has met all of the Federal Land Manager coordination requirements as required in 40 CFR 51.302. Kentucky notified the appropriate FLM's for the affected Class I areas via correspondence dated July 13, 1987 (copies included in Appendix A of the plan). The FLM's were also contacted by phone on June 23, 1987, to notify them that Kentucky was developing a visibility SIP and to afford them an opportunity to identify any visibility impairment. Kentucky further states that the FLM's can certify the source-specific impairment(s) of Class I areas at any time.

Part (b) (Assessment of Visibility Impairments) provides that no sources in the Commonwealth have been identified as causing source-specific visibility impairment in either the Mammoth Cave or the Mingo Wilderness area. Also, the National Park Service has not identified any integral vistas for any of the Class I areas in Kentucky or Missouri.

Part (c) (Emission Controls Representing Best Available Retrofit Technology) provides that since no existing sources have been identified to negatively impact visibility, the implementation of BART is not required at this time. Also, if any source-specific impairment is identified, then Kentucky's plan will be adjusted to develop necessary regulatory authority to implement BART, and to set emission limitations and compliance schedules representing BART.

Part (d) (Long-term Emission Control Strategy)—Kentucky lists the six (6) SIP factors required by 40 CFR 51.306(e). Kentucky then states that since there is no identified impairment due to "plume blight" in either Class I area potentially affected by Kentucky sources, the Cabinet feels that the long-term strategy need not address the following topics:

1. Additional emission limitations and schedules for compliance;

2. Source retirement and replacement schedules; and

3. Enforceability of emission limitations and control measures.

Kentucky has provided discussions regarding the three remaining SIP factors required by 40 CFR 51.306(e). These are as follows:

1. Emission reduction due to ongoing air pollution control programs—Kentucky has a number of regulations to control emissions from major industrial sources to achieve, to maintain, and to enhance the quality of the ambient air in the Commonwealth, including its PSD, Nonattainment NSR, and its regulations for existing and new process operations. Kentucky feels that these regulations are adequate for the control of emissions from new and existing sources to achieve the national goal.

2. Measures to mitigate the impacts of construction activities—Kentucky states that no construction activity or practice in the Commonwealth has been identified to negatively impact the air quality of any Class I area. However, the State regulation for the control of fugitive particulate matter (dust) emissions (401 KAR 63.010) prohibits fugitive emissions of particulates from activities such as material handling operations and construction. Kentucky feels that this State regulation is adequate to achieve the national goal.

3. Smoke Management Techniques—Kentucky regulates open burning (401 KAR 63.005). Kentucky states that "Although the provisions of this regulation exempt fires set for recognized agricultural, silvicultural, range, and wild life management practices, there is no present indication that open burning in Kentucky for those purposes are impairing visibility in either of the potentially affected Class I areas." Kentucky feels that the State regulation on open burning is adequate to achieve the national goal.

Section 3 (Periodic Review)—The final portion of Kentucky's long-term strategy involves the State's requirement to periodically review and revise (as appropriate) the long-term strategy, and to prepare a report to the Administrator and to the public. EPA commented to the State that the plan did not state with sufficient clarity Kentucky's intentions with respect to the reporting requirements. In response, Kentucky on October 9, 1987, submitted to EPA a letter of clarification regarding its intentions with respect to the periodic reporting requirements of 40 CFR 51.306(c). This letter cleared up any ambiguity that might have existed in the visibility plan. Therefore, Kentucky has fully met the requirements for a long-term strategy, including those pursuant to § 51.306(c).

Section 4 (Conclusion) presents the State's overall view regarding their visibility plan and states that "since no source-specific impairment(s) has been identified in any designated Class I areas, the Cabinet feels that this plan is adequate to protect visibility in Class I areas."

Final Action

After reviewing Kentucky's plan for the protection of visibility in Class I areas (Part II), EPA finds that the plan satisfies all of the remaining requirements of the visibility regulations specified in the second part of the

settlement agreement. EPA is therefore approving the visibility plan submitted by the Commonwealth of Kentucky on August 31, 1987.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 12, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 12, 1988.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the *Federal Register* on July 1, 1982.

Date: July 5, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(52) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(52) Kentucky Plan for the "Protection of Visibility in Class I Areas (PART II)" submitted to EPA on August 31, 1987, by the Kentucky Department for Environmental Protection (KDEP) to satisfy the Part 2 visibility requirements.

(i) Incorporation by reference.

(A) June 8, 1988, letter from the Kentucky Natural Resources and Environmental Protection Cabinet, October 9, 1987, clarification letter from the Kentucky Natural Resources and Environmental Protection Cabinet, and page 8 of the Kentucky plan for the protection of visibility in Class I areas (PART II) containing the periodic review requirements satisfying 40 CFR 51.306(c), adopted on August 31, 1987.

(ii) Additional material.

(A) Narrative entitled "The Kentucky Plan for the Protection of Visibility in Class I Areas (PART II)."

* * * * *

[FR Doc. 88–15463 Filed 7–11–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–1–FRL–3412–3]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Spongex International Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from Spongex International, LTD. (Spongex) in Shelton, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective August 11, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252; FTS 835–3252.

SUPPLEMENTARY INFORMATION: On March 22, 1988 (53 FR 9334), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8008 as a revision to the Connecticut SIP. The final State Order was submitted by Connecticut as a formal SIP revision on August 31, 1987. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Spongex as required by subsection 22a–174–20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under Subsection 22a–174–20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

A detailed description of Spongex's manufacturing process was provided in the NPR referenced above and will not be restated here. No public comments were received on the NPR.

State Order No. 8008 requires Spongex to *either* implement a reformulation program which reduces VOC emissions by a minimum of sixty-five percent on a solids-equivalent basis (i.e., a sixty-five percent reduction is required from the historical Pre-RACT baseline specified in terms of pounds VOC per pound of compound mix or per pound of polyvinyl chloride (PVC) utilized), or to install fume incineration control equipment which achieves an overall reduction in VOC emissions from the total process of at least sixty-five percent. Under this latter option, the overall reduction of sixty-five percent can be accomplished by maintaining the normalizing ovens such that they emit a minimum of eighty

percent of the total VOC emissions from the process, and utilizing add-on control equipment which meets a minimum ninety percent capture efficiency and a minimum ninety percent destruction efficiency. If Spongex cannot maintain the normalizing ovens such that they emit a minimum of eighty percent of the total VOC emissions from the process, then it will be required to increase the capture efficiency and destruction efficiency of the add-on control equipment to the appropriate levels necessary to maintain the overall sixty-five percent reduction.

Spongex has indicated to the DEP that it intends to comply with the State Order by reformulating every one of its product formulations such that a sixty-five percent reduction is achieved for each product from the historical Pre-RACT level. Spongex has submitted a table to the DEP which lists the Pre-RACT and Post-RACT emissions rates for each product formulation. The emissions rates are specified in terms of pounds VOC per pound of PVC. The Post-RACT emissions rate for each formulation represents a sixty-five percent reduction from the historical Pre-RACT level for that formulation. The Connecticut DEP has incorporated the table into the State Order as Appendix A and states that the Post-RACT emission rates in that table are enforceable RACT limitations that Spongex must adhere to.

Compliance with these limitations will be verified with recordkeeping of each batch formulation that is made by Spongex. For each batch formulation made at the mixer location, Spongex will record the produce identification, the batch quantity or PVC resin utilized, and the quantity of pounds VOC contained in the batch. Spongex is required to keep these records on site for at least three years.

EPA has reviewed State Order No. 8008 and has determined that the level of control required by this Order represents RACT for Spongex.

Final Action

EPA is approving Connecticut State Order No. 8008 as a revision to the Connecticut SIP. The provisions of State Order No. 8008 define and impose RACT on Spongex to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Date: July 5, 1988.

Lee M. Thomas,

Administrator.

Subpart H, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(44) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(44) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on August 31, 1987.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated August 31, 1987 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8008 and attached Compliance Timetable and Appendix A (allowable limits by product classification) for Spongex International, Ltd. in Shelton, Connecticut. State Order No. 8008 was effective on August 21, 1987.

(ii) Additional materials.

(A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 88-15465 Filed 7-11-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 501, 510 and 511

Organization and Delegation of Powers and Duties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This Notice incorporates a delegation of authority to the Deputy Administrator and, in the absence of the Administrator and the Deputy Administrator, to the Managing Director to exercise all authority lawfully vested in the Administrator and reserved to him or her, except where specifically limited by law, order, regulation or instruction. This Notice also makes technical revisions to the agency's organization and delegation rules, including the correction of legal citations, updating to reflect recent statutory enactments, and inclusion of materials which had been inadvertently omitted in previous printings of the Code of Federal Regulations.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Hasse, Management and Data Systems, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4818).

SUPPLEMENTARY INFORMATION: Due to internal reorganization, the National Highway Traffic Safety Administration is amending its delegation of authority to allow the Deputy Administrator to exercise, in the Administrator's absence, those authorities previously reserved to the Administrator and to allow the Managing Director to exercise those authorities previously reserved to the Administrator in the absence of both the Administrator and the Deputy Administrator.

Additionally, because of internal agency reorganization, the position of Executive Secretary is retitled the Director of the Executive Secretariat and is assigned the functions previously delegated to the Executive Secretary, with the exception of subpoena authority. This authority is transferred from the Director of the Executive Secretariat to the Chief Counsel.

The amendment set forth below relates solely to the organization and assignment of duties within the agency, and has no substantive regulatory effect. Thus, it is not covered by the notice and

comment and effective date requirements of the Administrative Procedure Act or the requirements of Executive Order 12291 or the Department of Transportation's regulatory policies and procedures. Notice and public procedure are, therefore, not required, and the amendment may be made effective in less than thirty days after publication.

List of Subjects in 49 CFR Parts 501, 510 and 511

Authority, Delegations, Organization, Functions, Subpoenas.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations, is amended as set forth below:

1. 49 CFR Part 501 is revised to read as follows:

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Sec.

Authority: 49 U.S.C. Sections 105 and 322, delegation of authority at 49 CFR 1.50.

§ 501.1 Purpose.

This part describes the organization of the National Highway Traffic Safety Administration (NHTSA) through Associate Administrator, Regional Administrator and Staff Office Director levels and provides for the performance of duties imposed on, and the exercise of powers vested in, the Administrator of the NHTSA (hereafter referred to as the "Administrator").

§ 501.2 General.

The Administrator is delegated authority by the Secretary of Transportation (49 CFR 1.50) to:

(a) Carry out the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.).

(b) Carry out the Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.), except for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(c) Exercise the authority vested in the Secretary by Section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7544(2)).

(d) Exercise the authority vested in the Secretary by Section 204(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 433(b)) with respect to the laws administered by the National Highway Traffic Safety Administrator pertaining to highway, traffic and motor vehicle safety.

(e) Carry out the Act of July 14, 1960, as amended (23 U.S.C. 313 note) and the National Driver Register Act of 1982 (23 U.S.C. 401 note).

(f) Carry out the functions vested in the Secretary by the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), except section 512.

(g) Administer the following sections of Title 23, United States Code, with the concurrence of the Federal Highway Administrator:

(1) 141, as it relates to certification of the enforcement of speed limits;

(2) 154 (a), (b), (d), (e), (f), (g) and (h); and

(3) 158.

(h) Carry out the consultation functions vested in the Secretary by Executive Order 11912, as amended.

(i) Carry out section 209 of the Surface Transportation Assistance Act of 1978, as amended (23 U.S.C. 401 note), and section 165 of the Surface Transportation Assistance Act of 1982, as amended (23 U.S.C. 101 note), with respect to matters within the primary responsibility of the National Highway Traffic Safety Administrator.

(j) Administer section 414(b)(1) of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. App. 2314) with concurrence of the Federal Highway Administrator, and section 414(b)(2).

(k) Carry out section 2(c) of the Truth in Mileage Act of 1986 (15 U.S.C. 1988 note).

(l) Carry out section 204(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (23 U.S.C. 402 note) with the coordination of the Federal Highway Administrator.

§ 501.3 Organization and general responsibilities.

The National Highway Traffic Safety Administration consists of a headquarters organization located in Washington, DC, and a unified field organization consisting of ten geographic regions.

The organization of, and general spheres of responsibility within, the NHTSA are as follows:

(a) *Office of the Administrator*—(1) *Administrator.* (i) Represents the Department and is the principal advisor to the Secretary in all matters relating to the National Traffic and Motor Vehicle Safety Act of 1966, as amended; the Highway Safety Act of 1966, as amended; the Motor Vehicle Information and Cost Savings Act, as amended; and such other authorities as are delegated by the Secretary of Transportation (49 CFR 1.50);

(ii) Establishes NHTSA program policies, objectives, and priorities and directs development of action plans to accomplish the NHTSA mission;

(iii) Directs, controls, and evaluates the organization, program activities, performance of NHTSA staff, program and field offices;

(iv) Approves broad legislative, budgetary, fiscal and program proposals and plans; and

(v) Takes management actions of major significance, such as those relating to changes in basic organization pattern, appointment of key personnel, allocation of resources, and matters of special political or public interest or sensitivity.

(2) *Deputy Administrator.* Assists the Administrator in the discharge of his/her responsibilities and is responsible for: directing and coordinating the Administration's management and operational programs as well as the related policies and procedures at headquarters and in the field; and policy direction and supervision of the Regional Administrators.

(3) *Managing Director.* As the principal advisor to the Administrator and Deputy Administrator, provides direction on internal management and mission support programs. Provides executive direction and supervision to the Associate Administrators for Plans and Policy, Research and Development, and Administration.

(4) *Director of International Harmonization.* Coordinates and develops strategies for the international harmonization of U.S. motor vehicle safety standards and regulations with those of foreign countries.

(5) *Director, Executive Secretariat.* Provides a central facilitative staff that administers an executive correspondence program and maintains policy files for the Administrator and Deputy Administrator, and services and support to committees as designated by the Administrator.

(6) *Director, Office of Public and Consumer Affairs.* As the principal staff advisor to the Administrator on public affairs and consumer programs, provides comprehensive programs for public information and public affairs covering all NHTSA activities.

(7) *Director, Office of Civil Rights.* As principal staff advisor to the Administrator and Deputy

Administrator on all matters pertaining to civil rights, acts as Director of Equal Employment Opportunity, Contracts Compliance Officer and Title VI (Civil Rights Act of 1964) Coordinator; assures Administration-wide compliance with related laws, Executive Orders, regulations and policies; and provides assistance to the Office of the Secretary in investigating and adjudicating formal complaints of discrimination.

(b) *Chief Counsel.* As chief legal officer, provides legal services for the Administrator and the Administration; prepares litigation for the Administration; effects rulemaking actions; issues subpoenas; and serves as coordinator on legislative affairs.

(c) *Associate Administrators*—(1) *Associate Administrator for Rulemaking.* As the principal advisor to the Administrator on the setting of motor vehicle standards and regulations, administers the programs of the Administration to develop and issue Federal standards and regulations dealing with motor vehicle safety, fuel economy, theft prevention, and consumer information and regulations dealing with the following characteristics of motor vehicles: damage susceptibility, crashworthiness, and ease of diagnosis and repair.

(2) *Associate Administrator for Enforcement.* As the principal advisor to the Administrator on the enforcement of motor vehicle standards and regulations, directs and administers programs to ensure compliance with Federal laws, standards and regulations relating to motor vehicle safety, fuel economy, theft prevention, damageability, consumer information and odometer fraud.

(3) *Associate Administrator for Traffic Safety Programs.* As the principal advisor to the Administrator on State and community highway safety programs, develops national traffic safety programs, including the reduction of alcohol and drug use among drivers, the encouragement of safety belt and child safety seat use, and the enforcement of traffic laws; provides technical assistance and liaison to States (in cooperation with Regional Administrators) and other organizations in support of highway safety programs.

(4) *Associate Administrator for Research and Development.* As the principal advisor to the Administrator on motor vehicle and highway safety research and development, directs and administers programs related to accident investigation and information collection, analysis and dissemination, and facilities requirements to support NHTSA research and development efforts.

(5) *Associate Administrator for Plans and Policy.* Acts as the principal advisor to the Administrator on all matters involving NHTSA policies, objectives, budget, programs, and plans and their effectiveness in carrying out the goals and missions of the Administrator.

(6) *Associate Administrator for Administration.* Acts as the principal advisor to the Administrator on all administrative and managerial matters as they relate to NHTSA missions, programs, and objectives; organization and delegations of authority; management studies; personnel management; training; logistics and procurement; financial management; accounting and data systems design; paperwork management; investigations and security; audits; defense readiness; and administrative support services.

(d) *Regional Administrators.* Provide leadership, technical guidance and assistance to the States in their development and implementation of comprehensive Highway Safety Plans; oversee the administration of the national highway safety program within their geographic areas; monitor and evaluate State programs; provide interpretation of information on technical traffic safety and motor vehicle research to the States; and provide feedback to headquarters personnel, as appropriate, on identified needs, problems, and findings.

§ 501.4 Succession to Administrator.

The following officials in the order indicated, shall act in accordance with the requirements of 5 U.S.C. 3346–3349 as Administrator of the National Highway Traffic Safety Administration, in the case of the absence or disability or in the case of a vacancy in the office of the Administrator, until a successor is appointed:

(a) Deputy Administrator,
(b) Managing Director,
(c) Chief Counsel,
(d) Associate Administrator for Rulemaking,
(e) Associate Administrator for Enforcement,
(f) Associate Administrator for Traffic Safety Programs,
(g) Associate Administrator for Plans and Policy,
(h) Associate Administrator for Research and Development, and
(i) Associate Administrator for Administration.

§ 501.5 Exercise of authority.

(a) All authorities lawfully vested in the Administrator and reserved to himher in this Regulation or other NHTSA directives may be exercised by the Deputy Administrator and, in the absence of both Officials, by the Managing Director, unless specifically prohibited.

(b) In exercising the powers and performing the duties delegated by this part, officers of the NHTSA and their delegates are governed by applicable laws, executive orders, regulations, and other directives, and by policies, objectives, plans, standards, procedures, and limitations as may be issued from time to time by or on behalf of the Secretary of Transportation, the Administrator, Deputy Administrator and Managing Director or, with respect to matters under their jurisdictions, by or on behalf of the Associate Administrators, Regional Administrators, and Directors of Staff Offices.

(c) Each officer to whom authority is delegated by this part may redelegate and authorize successive redelegations of that authority subject to any conditions the officer prescribes. Redelegations of authority shall be in written form and shall be published in the **Federal Register** when they affect the public.

(d) Each officer to whom authority is delegated will administer and perform the functions described in the officer's respective functional statements.

§ 501.6 Secretary's reservations of authority.

The authorities reserved to the Secretary of Transportation are set forth in Subpart 1.44 of Part 1 and in Part 95 of the regulations of the Office of the Secretary of Transportation in subtitle A of this Title (49 CFR Parts 1 and 95).

§ 501.7 Administrator's reservations of authority.

The delegations of authority in this part do not extend to the following authority which is reserved to the Administrator and, in those instances when the office of the Administrator is vacant due to death or resignation, or when the Administrator is absent as provided by Subpart 501.5(a), to the Deputy Administrator or Managing Director:

(a) The authority under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, to:

(1) Issue, amend, or revoke final federal motor vehicle safety standards and regulations;

(2) Make final determinations concerning violations of the Act and regulations issued thereunder; and

(3) Grant or renew temporary exemptions from federal motor vehicle safety standards.

(b) The authority under the Highway Safety Act of 1966, as amended, to:

(1) Apportion authorization amounts and distribute obligation limitations for State and community highway safety programs;

(2) Approve the initial awarding of alcohol incentive grants to the States authorized under 23 U.S.C. 408;

(3) Issue; amend, or revoke uniform State and community highway safety guidelines, and with the concurrence of the Federal Highway Administrator, designate priority highway safety programs, under 23 U.S.C. 402;

(4) Fix the rate of compensation for non-government members of agency sponsored committees which are entitled to compensation.

(c) The authority under the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), to:

(1) Issue, amend, or revoke final rules and regulations developed under the Act;

(2) Grant exemptions from final motor vehicle theft prevention and fuel economy standards issued under the Act;

(3) Make final determinations concerning violations of the Act and regulations thereunder;

(4) Assess civil penalties and approve manufacturer fuel economy credit plans under section 502(e).

(d) The authority under section 141, 154 and 158 of Title 23 of the United States Code, with the concurrence of the Federal Highway Administrator, to disapprove any State certification or to impose any sanction on a State for violations of the National Maximum Speed Limit or the National Minimum Drinking Age.

§ 501.8 Delegations.

(a) *Deputy Administrator.* The Deputy Administrator is delegated authority to act for the the Administrator, except where specifically limited by law, order, regulation, or instructions of the Administrator. Provide supervision to the Regional Administrators and executive direction to the Director of International Harmonization; and assist the Administrator in providing executive direction to all organizational elements of NHTSA.

(b) *Managing Director.* The Managing Director is delegated line authority for executive direction over the Associate Administrators for Plans and Policy, Research and Development, and Administration.

(c) *Director, Office of Civil Rights.* The Director, Office of Civil Rights is delegated authority to:

(1) Act as the NHTSA Director of Equal Employment Opportunity.

(2) Act as NHTSA Contracts Compliance Officer.

(3) Act as NHTSA coordinator for matters under Title VI of the Civil Rights Act of 1964, Executive Order 11247, and regulations of the Department of Justice.

(d) *Chief Counsel.* The Chief Counsel is delegated authority to:

(1) Exercise the powers and perform the duties of the Administrator with respect to the setting of odometer regulations authorized under Title IV of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1981 et seq.), and with respect to providing technical assistance and granting extensions of time to the States under section 2(c) of the Truth in Mileage Act of 1986 (15 U.S.C. 1988 note) as provided for in Subpart 501.2(k).

(2) Establish the legal sufficiency of all investigations conducted under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and under the authority of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), and to compromise any civil penalty or monetary settlement in an amount of $5,000 or less resulting from a violation of either of those Acts.

(3) Exercise the powers of the Administrator under subsection 112(c) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1401(c)).

(4) Issue subpoenas, after notice to the Administrator, for the attendance of witnesses and production of documents pursuant to the National Traffic and Motor Vehicle Safety Act and the Motor Vehicle Information and Cost Savings Act.

(e) *Associate Administrator for Plans and Policy.* The Associate Administrator for Plans and Policy is delegated authority to direct the NHTSA planning and evaulation system in conjunction with Departmental requirement and planning goals; coordinate the development of the Administrator's plans, policies, budget, and programs, the analyses of their expected impact, and their evaluation in terms of the degree of goal achievement; and perform independent analyses of proposed Administration regulatory, grant, legislative, and program activities.

(f) *Associate Administrator for Rulemaking.* Except for those portions that have been reserved to the Administrator, the Associate Administrator for Rulemaking is delegated authority to exercise the powers and perform the duties of the Administrator with respect to the setting of motor vehicle safety and theft prevention standards, average fuel economy standards, procedural regulations, and the development of consumer information and regulations authorized under:

(1) The National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and

(2) Title I, II, V and VI of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.).

(g) *Associate Administrator for Enforcement.* Except for those portions that have been reserved to the Administrator or delegated to the Chief Counsel, the Associate Administrator for Enforcement is delegated authority to exercise the powers and perform the duties of the Administrator with respect to administering the NHTSA enforcement program for all laws, standards, and regulations pertinent to vehicle safety, fuel economy, theft prevention, damageability, consumer information and odometer fraud, authorized under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.).

(h) *Associate Administrator for Traffic Safety Programs.* Except for those portions that have been reserved to the Administrator or delegated to the Regional Administrators, the Associate Administrator for Traffic Safety Programs is delegated authority to exercise the powers and perform the duties of the Administrator with respect to: The Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.); the authority vested by section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7544(2)); the authority vested by section 204(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 433(b)), with respect to the laws administered by the Administrator pertaining to highway, traffic, and motor vehicle safety; the Act of July 14, 1960, as amended (23 U.S.C. 313 note) and the National Driver Register Act of 1982 (23 U.S.C. 401 note); the authority vested by section 141, as it relates to certification of the enforcement of speed limits, and sections 154 (a), (b), (d), (e), (f), (g) and (h) and 158 of Title 23 of the United States Code, with the concurrence of the Federal Highway Administrator; and section 209 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 401 note) as delegated by the Secretary in Subpart 501.2(i).

(i) *Associate Administrator for Research and Development.* The Associate Administrator for Research

and Development is delegated authority to: develop and conduct research and development programs and projects necessary to support the purposes of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Highway Safety Act of 1966, as amended, and the Motor Vehicle Information and Cost Savings Act, as amended, in coordination with the appropriate Associate Administrators, and the Chief Counsel.

(j) *Associate Administrator for Administration.* The Associate Administrator for Administration is delegated authority to:

(1) Exercise procurement authority with respect to requirements of the NHTSA;

(2) Administer and conduct personnel management activities of the NHTSA;

(3) Administer NHTSA fiscal management programs, including systems of funds control and accounts of all financial transactions; and

(4) Conduct administrative management services in support of NHTSA missions and programs.

(k) *Regional Administrators.* Each Regional Administrator is delegated authority to:

(1) Approve or disapprove, jointly with the delegate of the Federal Highway Administrator, State Highway Safety Plans under 23 U.S.C. 402, including the initial agreement, any changes thereto, and approval of final vouchers, in accordance with the procedural requirements of the Administration, except for highway safety programs administered on Indian Reservations by the Secretary of the Interior under 23 U.S.C. 402(i), which will be approved or disapproved by the Region VI Regional Administrator, jointly with the delegate of the Federal Highway Administrator;

(2) Administer the operational phases as the Contracting Officer's Technical Representative for any projects that have been or may be delegated for regional administration; and

(3) Approve the awarding of alcohol incentive grants to the States under 23 U.S.C. 408, for years subsequent to the initial awarding of such grants by the Administrator.

PART 510—[AMENDED]

2. The authority citation for Part 510 continues to read as follows:

Authority: Secs. 112 and 119, National Traffic and Motor Vehicle Act 1966, as amended (15 U.S.C. 1401 and 1407); secs. 104, 204, 414, and 505, Motor Vehicle Information and Cost Saving Act, as amended (15 U.S.C. 1914, 1944, 1990d, and 2005); delegation of authority (49 CFR 1.51).

3. Section 510.4 is revised to read as follows:

§ 510.4 Subpoenas, generally.

NHTSA may issue to any person, sole proprietorship, partnership, corporation, or other entity a subpoena requiring the production of documents or things (subpoena duces tecum) and testimony of witnesses (subpoena as testificandum), or both, relating to any matter under investigation or the subject of any inquiry. Subpoenas are issued by the Chief Counsel. When a person, sole proprietorship, partnership, corporation, or other entity is served with a subpoena ad testificandum under this part, the subpoena will describe with reasonable particularity the matters on which the testimony is required. In response to a subpoena ad testificandum, the sole proprietorship, partnership, corporation, or other entity so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the entity.

PART 511—[AMENDED]

4. The authority citation for Part 511 continues to read as follows:

Authority: 15 U.S.C. 2002; delegations of authority at 49 CFR 1.50.

5. In § 511.38, paragraphs (b), (d) and (f) are revised to read as follows:

§ 511.38 Subpoenas.

* * * * *

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the Chief Counsel, or by the Presiding Officer. A subpoena duces tecum shall specify the books, papers, documents, or other materials or data-compilations to be produced.

* * * * *

(d) *Issuance of a subpoena.* The Presiding Officer shall issue a subpoena by signing and dating, or ordering the Chief Counsel to sign and date, each copy in the lower right-hand corner of the document. The "duplicate" and "triplicate" copies of the subpoena shall be transmitted to the applicant for service in accordance with these Rules; the "original" copy shall be retained by or forwarded to the Chief Counsel for retention in the docket of the proceeding.

* * * * *

(f) *Return of service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time, and manner of service. If service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The "triplicate" of the subpoena, bearing or accompanied by the return of service, shall be returned forthwith to the Chief Counsel after service has been completed.

* * * * *

Issued on: May 27, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-15415 Filed 7-7-88; 11:53 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 53, No. 133
Tuesday, July 12, 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

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 77, 78, and 92

[Docket No. 88-098]

Brucellosis and Tuberculosis Regulations That Require or Allow Hot-Iron Branding of Animals on the Jaw; Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comment.

SUMMARY: We are asking for public comment on our current regulations that require or allow animals to be hot-iron branded on the jaw. We are requesting these comments because we have received a petition asking that we initiate rulemaking proceedings with regard to all brucellosis and tuberculosis regulations that require or allow hot-iron branding. The comments we receive will provide us with information we need to decide whether the regulations should be changed, and, if so, how they should be changed.

DATE: Consideration will be given to comments postmarked or received September 12, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Please state that your comments refer to Docket Number 88-098. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The petition requesting us to initiate rulemaking is available for public inspection at Room 728 of the Federal Building, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782, and at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC 20090-6464. Hours for inspection are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnett Matchett, Senior Staff Veterinarian, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8565.

SUPPLEMENTARY INFORMATION:

Background

In accordance with regulations in 9 CFR Parts 50, 51, 77, 78, and 92, the Animal and Plant Health Inspection Service administers programs designed to control and eradicate brucellosis and tuberculosis in cattle and bison. Brucellosis, also called Bang's disease, is a contagious bacterial disease affecting cattle, bison, and other animals. It can cause sterility, slow breeding, abortion, and loss of milk production. It can also affect humans, and is known as undulant fever in humans. Bovine tuberculosis is a contagious, infectious, and communicable disease of cattle, bison, and other species, including humans. Tuberculosis in affected animals causes weight loss and general debilitation.

In both the Brucellosis and the Bovine Tuberculosis Eradication Programs, hot-iron branding on the jaw is used to identify animals that have been exposed to or contracted the disease. In the Brucellosis Eradication Program, hot-iron branding on the jaw is also used to identify certain cattle and bison that have been vaccinated against the disease. In addition, as part of surveillance for bovine tuberculosis, hot-iron branding on the jaw is required as a means of permanently identifying steers imported into the United States from Mexico.

Petition

We received a petition requesting that we initiate rulemaking regarding all regulations that now require or allow animals to be hot-iron branded on the jaw under the Brucellosis and the Bovine Tuberculosis Eradication Programs. The petition was filed on behalf of the American Society for Prevention of Cruelty to Animals, the Animal Protection Institute, the Humane Society of the United States, the Fund for Animals, and the Massachusetts Society for Prevention of Cruelty to Animals. These petitioners suggested that freeze-branding, or a marking method comparable to freeze-branding, be substituted for hot-iron branding as the exclusive method of branding animals under the brucellosis and tuberculosis programs. In the alternative, the petitioners suggested that the regulations be amended to allow animal owners the option of having animals marked by freeze-branding or a marking method comparable to freeze-branding.

On February 12, 1988, we published a notice in the **Fedeal Register** (53 FR 4179, Docket Number 88-007) advising the public that we had received the petition, and that we were studying the suggestions contained in it.

We are now seeking input from the public order to gain as much information on this subject as possible, and to help us decide whether to propose changes in the regulations. We invite comments and suggestions on the current regulations, on the petition and suggestions contained in it, and on alternatives to hot-iron branding.

List of Subjects in 9 CFR Parts 50, 51, 77, 78, and 92

Animal diseases, Bison, Brucellosis, Canada, Cattle, Hogs, Imports, Indemnity payments, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Tuberculosis, Wildlife.

Done in Washington, DC, this 6th day of July 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-15505 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is issuing for public comment a revision of

Part 336 of its rules and regulations, 12 CFR Part 336, which governs the standards of ethical and other conduct of FDIC employees. Significant changes include identifying certain employees subject to reporting requirements and credit restrictions by position description series codes; clarifying the permissible conditions of acceptance of food, refreshments, entertainment, and mementos; modifying existing credit restrictions with regard to credit cards; permitting renegotiation of existing debt on the same terms and conditions as are offered to the general public, conditioned upon disqualification from participation in matters affecting the creditor; shortening the term of some credit prohibitions; clarifying the prohibitions on purchase of liquidation assets, FDIC property, and property of insured banks; reporting of family member employment by firms which do business with the FDIC; decentralizing of reporting to the regional or consolidated office level; eliminating semiannual reports of indebtedness; and adding a new subpart to address post-employment representational restrictions.

DATE: Comments must be submitted by September 12, 1988.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, DC 20429, or hand-delivered to Room 6108 at the same address, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, at (202) 898–7272 or Donald L. Rosholt, Deputy Ethics Counselor, at (202) 898–7271.

SUPPLEMENTARY INFORMATION: As stated, Part 336 sets out FDIC rules relating to the ethical and other standards of conduct expected of FDIC employees, former employees, and special government employees. As revised, the regulation would be composed of six subparts and an appendix, each of which is discussed below.

Subpart A

This subpart sets out the definitions and administrative provisions which control throughout the regulation. Generally, the administrative provisions are the same as in the present regulation. Under these provisions, each employee is responsible for compliance with the regulation; the Ethics Counselor is responsible for the FDIC's ethics program; the Executive Secretary is designated as the Ethics Counselor; and remedial actions for violations can be appealed to the Chairman.

A number of new definitions are established, many of which are self-explanatory. Noteworthy changes include the following: The terms "appear personally," "official responsibility," and "senior employee" reflect the inclusion of post-employment provisions in Part 336. The definitions duplicate statutory language found at 18 U.S.C. 207. The terms "assisted entity" and "assuming entity" would replace the current definitions of "assisted bank" and "assuming bank." The new definitions are necessary in order to cover the complex arrangements arising out of transactions under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)). "Covered employee" would mean a person required to file Confidential Statements of Employment and Financial Interests or Financial Disclosure Reports. The incumbents of the positions referenced have duties and responsibilities that empower them to participate personally and substantially in significant discretionary actions affecting the government or government decision-making. "Reviewing official" would mean the Deputy Ethics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests of covered employees.

Subpart B

This subpart mostly incorporates the provisions of 5 CFR Part 735, the U.S. Office of Personnel Management regulation which establishes government-wide standards of conduct for federal employees. Because 5 CFR 735.101 requires the FDIC to incorporate the provisions, they will not be discussed in great detail.

Proposed changes include the following: Section 336.8, which relates to the acceptance of gifts, entertainment, favors, and loans from persons affected by an FDIC decision, has been clarified in several ways. First, existing provisions relating to the acceptance of things of monetary value from friends and relatives have been revised to clarify that (i) the thing of monetary value must come from the individual and (ii) any relationship between that individual and a regulated entity or firm with which the agency does business must be coincidental. Second, a separate provision has been added to allow the acceptance of mementos of nominal extrinsic value given in commemoration of a special event or activity. Third, the exception for the acceptance of food and refreshments in the ordinary course of a meeting or conference has been revised and is now incorporated into §§ 336.8(b)(5) and (6). Section 336.8(b)(5) is unchanged from the current provision. Section 336.8(b)(6) allows attendance at widely attended group functions when a prior determination has been made that attendance is in the best interest of the FDIC. Section 336.9 has been amended to provide for the FDIC's and an employee's acceptance of travel, lodging, or subsistence from charitable, tax-exempt organizations. Existing provisions of § 336.11 have been amended to make it clear that no honorarium may be accepted in conjunction with any appearance, speech, or article related to FDIC matters.

Subpart C

This subpart sets out the FDIC's rules relating to financial interests and outside activities of employees. As in the present regulation, employees generally are prohibited from having financial interests or obligations that conflict or appear to conflict with the employees' FDIC duties and responsibilities. The proposed regulation (§ 336.15) also prohibits the negotiation by an employee of, or arrangement for, future employment with a person whose financial interests may be affected by the employee's official duties while the employee is personally engaged in a matter affecting such person.

The subpart also addresses the following specific areas: permissible extensions of credit; ownership of bank securities; purchase of liquidation assets; purchase of FDIC property and providing services to FDIC; purchase of assets of insured banks; outside employment or activity; and employment of family members by persons other than the FDIC.

The rules relating to extensions of credit in § 336.16 have been revised and the prohibited and permissible sources of credit for various categories of employees are identified in a matrix form for ready reference (Appendix A). The revisions recognize changes in the way in which banks and financial services companies conduct their business and in the scope and intensity of the FDIC's supervisory and receivership activities. First, a disqualification has been added (§ 336.16(c)) that generally precludes covered employees from participating in matters affecting their creditors. Second, covered employees who participate personally and substantially in matters involving the rendering of financial assistance to an institution are precluded from borrowing from the institution until it is no longer classified as an assisted or assuming entity

(§ 336.16(b)(5)). Third, credit restrictions imposed upon liquidation employees and closed bank attorneys would be modified so that such employees would no longer be automatically required to cancel existing credit card accounts with assisted or assuming banks headquartered *outside* their region of official assignment (§ 336.16(b)(3)). Fourth, examiners and certain other covered employees of the Division of Bank Supervision would be permitted under certain circumstances to obtain credit cards from insured state nonmember banks located outside their region of official assignment (§ 336.16(a)). The Ethics Counselor in consultation with the appropriate director may require disqualification whenever an employee's credit relationship presents a conflict of interest or the appearance thereof. Fifth, the proposed regulation (§ 336.16(d)(1)) would permit an employee to renegotiate a loan from a prohibited creditor if: the employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor, the terms and conditions of the renegotiated loan are on the same terms and conditions as those offered to the general public, and the prior written approval of the Ethics Counselor is obtained. This provision is proposed because of the hardships certain employees have experienced in refinancing debt contracted prior to FDIC employment. Because an employee is disqualified from participating in any action relating to his or her creditor, there should be no conflict of interest or appearance thereof nor any violation of 18 U.S.C. 213 in the case of an examiner.

The current § 336.18 has been amended to apply solely to the purchase of liquidation assets. Additionally, it has been expanded to require self-disqualification from a sales transaction involving a relative or any organization or partnership with which the employee, employee's spouse, or dependent child is associated and adds a prohibition regarding disclosure of inside information with regard to a proposed sale of liquidation assets. Section 336.19 has been retitled "Purchase of FDIC property." The proposed section now enumerates prohibitions heretofore included by reference to an outstanding directive. The new section provides all employees with guidelines without the necessity of obtaining supporting directives. A new § 336.20 has been added which sets out the conditions under which employees may purchase insured bank assets.

Proposed § 336.23, previously numbered § 336.20, has been expanded to require disclosure of employment of family members by firms having business with the FDIC. The change reflects the expanded sphere of possible conflicts arising from liquidation activities.

Subpart D

This subpart sets out FDIC rules relating to the filing of required reports by FDIC employees. Significant changes are proposed with regard to reports of indebtedness and of financial interests. No significant changes would be made to reports of interest in FDIC decision or those required under the Ethics in Government Act of 1978.

The proposed revision eliminates, because the information called for by the report is incorporated into the statement of employment and financial interests, the filing of a separate Confidential Report of Indebtedness, now required to be filed on a semiannual basis, except for employees covered by § 336.28. The reporting date for the statement of employment and financial interests, now filed as of June 30, will be changed to December 31.

As to statements of employment and financial interests, several changes will be made. First, employees of the Divisions of Bank Supervision and Liquidation who are required to file such statements will be identified by grade level and job series. Second, statements will be submitted to the reviewing official, who is the Deputy Ethics Counselor for an employee's place of assignment. Third, statements will be retained in the office of the reviewing official. The reviewing official will submit a copy of the statement to the Ethics Counselor certifying his or her review. All reports will be held in confidence by the Deputy Ethics Counselors and the Ethics Counselor.

Subpart E

This subpart has been retitled and now sets out FDIC rules relating to limitations on former employees, including special government employees, with respect to participation in matters connected with their former duties and responsibilities while serving with the FDIC.

The proposed addition paraphrases certain of the limitations on representation found at 18 U.S.C. 207 as applied to all former employees generally and senior employees specifically. Secondly, the proposal establishes the right of former employees to consult with the Ethics Counselor as to the property of an appearance before the agency. Last, the regulation sets out the FDIC's right to suspend appearance privileges when a person has knowingly failed to comply with the provisions of this subpart.

Subpart F

This subpart relates to the standards of conduct applicable to special government employees. No substantive changes have been made other than to redesignate the subpart.

Appendix

This appendix sets out the provisions of § 336.16 in a table format. The agency attaches great significance to employees' compliance with the credit restrictions enumerated in the applicable subsection. The appendix will provide a ready reference for each class of employee subject to such restrictions.

List of Subjects in 12 CFR Part 336

Conflicts of interest; Credit; Disclosure requirements; Government employees; Former government employees.

Accordingly, Part 336 is proposed to be revised to read as follows:

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

Sec.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

Subpart C—Financial Interests and Obligations; Outside Employment

Authority: E.O. 11222, 3 CFR 1964–1965 Comp.; 5 CFR 735.104; 5 CFR 737.1(a); E.O. 12565.

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

§ 336.1 Purpose and scope.

In order to assure the proper performance of FDIC business and to maintain public confidence in government, FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. This part establishes the policies and procedures of the FDIC with regard to the ethical and other standards of conduct and responsibilities for employees and special government employees. Permissible financial interests, obligations, and outside employment are set forth. This part further sets out the policies and procedures for employee reporting of financial interests and obligations.

§ 336.2 Definitions.

For the purposes of this part:

(a) "Affiliate" means any holding company of which a bank is a subsidiary and any other subsidiary of such holding company. Any other entity which would be defined as an affiliate of an insured state nonmember bank under 12 U.S.C. 221a, if such bank were a member bank, shall be deemed to be an affiliate of such insured state nonmember bank.

(b) "Appear personally" means knowingly representing, aiding, counseling, advising, consulting, or assisting in representing another person by personal presence in any formal or informal appearance in connection with any application or interpretation arising under the statutes or regulations administered by the FDIC, except that a request for general information or explanation of FDIC policy or interpretation shall not be construed to be a personal appearance.

(c) "Appropriate director" means the director of the Washington division or office or the regional director or regional counsel for the division to which an employee is assigned.

(d) "Assessment auditor" means any individual employed as an auditor of insured banks for deposit insurance assessment purposes, whether assigned to a field office or the Washington office, and includes Washington office personnel having oversight and review responsibility for the collection of assessments.

(e) "Assisted entity" means (1) any bank which has received financial assistance from the FDIC to prevent its failure, (2) any bank resulting from a merger or consolidation with any bank described in paragraph (e)(1) of this section, or (3) any parent bank holding company of a bank described in paragraph (e) (1) or (2) of this section; *Provided,* that an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such bank or bank holding company and the FDIC.

(f) "Assuming entity" means any bank or bank holding company which has entered into a transaction with the FDIC to purchase some or all of the assets and assume some or all of the liabilities of a failed bank for a period of one year following the closing of such failed bank.

(g) "Attorney" means any individual employed by the FDIC as an attorney, whether or not assigned to the Legal Division. The term does not include outside attorneys engaged in the private practice of law and retained by the FDIC.

(h) "Chairman" means the Chairman of the Board of Directors of the FDIC.

(i) "Covered employee" means any employee required to file a statement of employment and financial interests or a Financial Disclosure Report pursuant to §§ 336.27(a) or 336.38.

(j) "Dependent child" means a son, daughter, stepson, or stepdaughter who either (1) is unmarried, under 21, and living in the employee's household, or (2) has received over half of his or her support from the employee in the preceding calendar year.

(k) "Employee" means any individual member of the Board of Directors, officer or employee, including a liquidation graded employee, of the FDIC, but does not include a special government employee, the Comptroller of the Currency, or any person employed by the Office of the Comptroller of the Currency.

(l) "Examiner" means any commissioned bank examiner and any employee assigned to the Division of Bank Supervision in a position of the 570 series.

(m) "Honorarium" means a payment, usually for services on which custom or propriety forbids a price to be set.

(n) "Insured bank subject to audit for deposit insurance assessment purposes" means any one of the 500 largest insured banks with demand deposits in excess of $100 million, which are routinely audited by the FDIC for assessment purposes.

(o) "Member of the employee's immediate household" means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(p) "Official responsibility" means the direct administrative, supervisory, or dicisional authority, whether intermediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, or recommend official action or to express staff opinions in dealings with the public.

(q) "Person" means an individual, bank, corporation, company, association, partnership, firm, society, or any other organization or institution.

(r) "Reviewing official" means the Deputy Eithics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests filed by covered employees assigned to his or her division, office, or consolidated office.

(s) "Security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(t) "Senior employee" means any individual member of the Board of

Directors of the FDIC and any employee named or designated by the Director of the U.S. Office of Government Ethics pursuant to 18 U.S.C. 207(d)(1).

(u) "Special government employee" means any employee serving the FDIC with or without compensation for up to 130 days during any 365-day period on a full-time or intermittent basis.

(v) "Subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

§ 336.3 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new employee and special government employee within 30 days of commencement of employment, and each such employee or special government employee shall complete and file the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation in accordance with its instructions. The Ethics Counselor shall annually distribute a reminder of the basic provisions of this part to each employee and each special government employee.

(c) An employee who believes that his or her assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her appropriate director.

§ 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.

(a) The FDIC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the FDIC's Ethics Counselor.

(b) The Ethics Program Manager, Office of the Executive Secretary, shall act as the FDIC's Alternate Ethics Counselor and shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors, to whom the Ethics Counselor may delegate duties and responsibilities under this part. Duties and responsibilities so delegated may not be redelegated.

§ 336.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee or special government employee may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order, and regulation.

(c) Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless an employee or special government employee requests review, pursuant to § 336.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 336.6 shall take effect immediately upon receipt of notice of the determination of the Chairman or his or her designee.

§ 336.6 Review of remedial actions.

When remedial action is ordered pursuant to § 336.5, the affected employee or special government employee may request the Chairman to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The Chairman, or his or her designee, will promptly review the matter and will provide written notice of his or her determination to the employee, which determination shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 336.7 General rules.

FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding the FDIC's efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making an FDIC decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of the FDIC.

§ 336.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the FDIC;

(2) Is or may be regulated or examined by the FDIC; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationships rather than the business of the persons concerned are the sole motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) To the acceptance of unsolicited mementos of nominal extrinsic value, given in commemoration of an event, special project, or special activity;

(4) Except as otherwise provided in § 336.16, to the acceptance of loans from banks or other financial institutions on the customary terms and conditions offered to the general public;

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(6) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering of mutual interest to the government and the private sector, such as receptions and informational programs sponsored or hosted by universities, educational associations, the financial services industry, technical and professional associations, firms doing business with

the FDIC, international organizations, or government entities where it has been determined that attendance is in the interest of the FDIC and is related to its mission, in accordance with written guidelines issued by the Ethics Counselor, consistent with guidelines established by the U.S. Office of Government Ethics.

(c) No examiner shall accept any gratuity from any insured state nonmember bank, from any insured bank examined by the examiner, or from any person connected therewith. (See 18 U.S.C. 213)

(d) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) or (c) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) or (c) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the Ethics Counselor within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the Ethics Counsleor. The cost of returning such gift or item shall be borne by the FDIC. (See 18 U.S.C. 209)

(e) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself of herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement. (See 5 U.S.C. 7351)

(f) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law. (See 5 U.S.C. 7342)

§ 336.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the FDIC (in accordance with the FDIC's General Travel Regulations), and an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to the appropriate director and the Ethics Counselor within 30 days of such acceptance. When appropriate, the FDIC will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 336.8 (b)(5) and (b)(6).

(d) Notwithstanding the provisions of 5 U.S.C. 4111, the FDIC may, and an employee may not (without the approval of the appropriate director, who shall have consulted with the Ethics Counselor), accept travel, lodging, or subsistence when the donor is an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), and acceptance does not result in, or create the appearance of, a conflict of interest.

(e) When an employee is not on official duty and there is no payment or reimbursement by the FDIC for expenses of travel, lodging, or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this part and does not present a conflict of interest or the appearance thereof.

(f) The provisions of this section do not prohibit, or require a report of, the acceptance of travel, lodging, or subsistence provided by family members or personal friends.

§ 336.10 Use of official information.

(a) Except as permitted in § 336.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her FDIC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use personal information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a, or Part 310 of the FDIC's regulations.

(c) An examiner may not disclose information from a bank examination report except as authorized by law. (See 18 U.S.C. 1906)

(d) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905)

§ 336.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before banking or public organizations on matters involving the FDIC unless the employee receives prior approval, and prior clearance of material to be published, by the appropriate director.

(b) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her FDIC employment unless the information is available to the general public or the appropriate director gives authorization for such use, upon the determination that the use of the information is the public interest.

(c) Except as provided in § 336.8(b)(3), no employee may receive any compensation or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates substantially to matters involving the FDIC or contains information that is not otherwise available to the general public.

(d) No employee may accept an honorarium of more than $2,000 for any appearance, speech, or article in connection with non-FDIC related activities. No employee may accept an honorarium in connection with any appearance, speech, or article in connection with FDIC-related matters. (See 2 U.S.C. 441i)

§ 336.12 Employment by FDIC of relatives.

(a) For the purposes of this section:

(1) A "relative" is any person related to an FDIC official as parent, step-parent, child, step-child, brother, sister, step-brother, step-sister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An "official" is any employee who has authority to appoint, employ, promote, or advance employees or to recommend anyone for appointment, employment, promotion, or advancement at the FDIC.

(3) A "supervisor" is any employee whose position requires independent judgement to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) An FDIC official may not—

(1) Appoint, employ, promote, or advance any relative to a position at the FDIC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another FDIC official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee

shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the Director of the FDIC's Office of Personnel Management and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration of the nature of the supervisor's position, the operational needs of the division, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Director of the FDIC's Office of Personnel Management, and the Ethics Counselor shall determine whether the relative may be assigned to another position at the FDIC which is outside the scope of the supervisor's authority.

§ 336.13 Use of FDIC property.

An employee shall not, directly or indirectly, use or allow the use of any kind of FDIC property, including, but not limited to, property which the FDIC holds in its corporate capacity, leased property, or property which the FDIC holds in its capacity as receiver, liquidator, or liquidating agency of the assets of a bank, for other than officially approved activities. An employee has a positive duty to protect and concerve FDIC property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 336.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected a meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgement by a court or one imposed by law such as federal, state, or local taxes. An employee who has difficulty in meeting his or her financial obligations may seek counseling with the FDIC's Office of Personnel Management. This does not require the FDIC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the FDIC or while on duty for the FDIC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal, dishonest, or other conduct prejudicial to the FDIC.

(d) *Miscellaneous.* Other provisions with which an employee would be familiar include:

(1) The "Code of Ethics of Government Service," which prescribes general standards of conduct (Pub. L. No. 96–303, 94 Stat. 855–856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201–209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibition against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285);

(13) Prohibition against political activities in 5 U.S.C. § 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607;

(14) Prohibition against an employee's acting as the agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219);

(15) Prohibition against the use of manipulatives or deceptive devices in connection with the purchase or sale of any security (17 CFR 240.10b–5).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 336.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's FDIC duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her FDIC duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit. (See 18 U.S.C. 208)

(d) No partner of any employee or a special government employee may act as agent or attorney for any person other than the United States before the FDIC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or othewise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying the appropriate director and the Ethics Counselor in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee, other than the Chairman or the Director (Appointive) [1] receives the prior written determination of the Ethics Counselor, who shall consult with the appropriate director, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the FDIC. (See 18 U.S.C. 208)

§ 336.16 Extensions of credit.

(a) An examiner, and any other covered employee of the Division of Bank Supervision at or above the grade 11 level (except those employees covered under paragraph (b)(1) of this section), may not, directly or indirectly,

[1] The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply to the Chairman if he or she receives the prior written determination of the President (or the Director (Appointive) if he or she receives the prior written determination of the Chairman) that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the FDIC. (See 18 U.S.C. 208)

accept or become obligated on any extension of credit, including credit extended through the use of a credit card, from an insured state nonmember bank, except, in the case of an obligation or extension of credit evidenced by a credit card, credit may be obtained from an insured state nonmember bank located outside the employee's region of official assignment.[2] Any such credit card must be issued under the same terms and conditions as are offered to the general public, the total line of credit from any one institution must not exceed $10,000, and the employee must file with the appropriate director a Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification.

(b) Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed $10,000—

(1) An individual member of the Board of Directors (except the Comptroller of the Currency), any assistant or deputy to the Board of Directors or to an individual Board member (except the Comptroller of the Currency), any assistant thereto, any director of a division or office, the holder of any position immediately subordinate thereto, and any covered employee of the Office of Consumer Affairs may not, directly or indirectly, accept or become obligated on any extension of credit from an insured state nonmember bank.

(2) A regional counsel or attorney (Bank Supervision) assigned to a regional office may not, directly or indirectly, accept or become obligated on any extension of credit from an insured state nonmember bank headquartered in the employee's region of official assignment.

(3) A regional director, deputy regional director, and any other covered employee of the Division of Liquidation assigned to a regional or consolidated office; a supervisory account or supervisory field accountant of the Division of Accounting and Corporate Services assigned to a regional or consolidated office; and a regional counsel or attorney (Bank Liquidation) assigned to a regional or consolidated office may not, directly or indirectly, accept or become obligated on any extension of credit from an assisted or assuming entity, for so long as such entity remains an assisted or assuming entity, located in the employee's region of official assignment which, for the purposes of this subparagraph, shall be deemed to include—

(i) The bank resulting from a failed bank if the assuming entity is a bank holding company;

(ii) The assuming entity and all of its branches if the assuming entity is a bank located in the employee's region of official assignment; and

(iii) The branches of the assuming entity located in the employee's region of official assignment if the assuming entity is a bank located outside the employee's region of official assignment;

(4) An assessment auditor may not, directly or indirectly, accept or become obligated on any extension of credit from an insured bank subject to audit for deposit insurance assessment purposes except that, with the prior written permission of the appropriate director, an assessment auditor may accept or become obligated on an extension of credit from one such bank and shall be disqualified from participating in any audit of or otherwise taking any action on behalf of the FDIC with regard to such bank.

(5) An individual member of the Board of Directors (except the Comptroller of the Currency), and any other covered employee assigned to the Washington office, who has participated personally and substantially on behalf of the FDIC in any matter involving an assisted or assuming entity, or a covered employee of the Division of Liquidation assigned to the Washington office whose official duties bring him or her into contact with any matter involving an assisted or assuming entity, may not, directly or indirectly, accept or become obligated on any extension of credit from such entity for so long as it remains an assisted or assuming entity.

(c) The Director of the Division of Bank Supervision, the holder of any position immediately subordinate thereto, an examiner, or any other covered employee of the Division of Bank Supervision is disqualified from participating in any examination, audit, visitation, or investigation of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee. An assessment auditor is disqualified from participating in any audit of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from such bank, financial institution, or other person does not exceed $10,000. Every other covered employee is disqualified from taking any action on behalf of the FDIC with regard to any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee in an amount in excess of $10,000. The appropriate director, in consultation with the Ethics Counselor, may also extend such disqualification to affiliates of such creditors.

(d) If the adoption of this regulation, change in marital status, commencement of employment, reassignment to another division or location, or action affecting the status of the creditor [3] results in an extension of credit prohibited by paragraphs (a) and (b) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor and report his or her retention in writing to the appropriate director and Ethics Counselor.

(1) An employee, other than an employee described in paragraph (b)(1) of this section, otherwise required to liquidate a nonconforming extension of credit under its original terms may request permission to renegotiate the loan. An employee described in paragraph (b)(1) of this section otherwise required to liquidate a nonconforming extension of credit under its original terms may request review and concurrence by the Ethics Counselor to renegotiate such a loan. Any such request shall be made, in writing, to the appropriate director and Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, to the Ethics Counselor, stating—

(i) The purpose of the renegotiation;

(ii) The terms and conditions of the original loan;

(iii) The terms and conditions now available to the general public;

[2] An examiner and any other covered employee of the Division of Bank Supervision at or above the grade 11 level assigned to the Washington office may obtain credit extended through the use of a credit card from any insured state nonmember bank, subject to the restrictions of paragraph (a) of this section.

[3] Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

(iv) The terms and conditions now offered the employee;

(v) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(vi) The financial hardship, if any, denial of the request will cause.

(2) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the appropriate director and the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, without the prior review and concurrence by the Ethics Counselor.

(e) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances—

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate director, who shall have consulted with the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, he or she receives the prior concurrence of the Ethics Counselor; and

(5) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the creditor.

(f)(1) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless—

(i) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as co-maker, endorser, or guarantor;

(ii) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse nor dependent child will look to the employee, to his or her income, or to his or her property for the payment thereof; and

(iii) The spouse or dependent child has, or in the case of student loans will have, the income, the ability, and the means to meet the loan obligation at maturity.

(2) Even though an extension of credit to a spouse or dependent child is, by virtue of paragraph (f)(1) of this section, not deemed to be an extension of credit or an employee, as a metter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor to the same extent as if the employee were obligated on the extension of credit.

§ 336.17 Bank securities.

(a) While employed by the FDIC an employee may not purchase, own, or control, directly or indirectly, any securities of an insured bank or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board of Directors) may own or control securities of an insured bank or affiliate thereof whenever—

(i) Ownership or control was acquired prior to commencement of FDIC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor, pursuant to § 336.24, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the bank or affiliate; Provided, that the Ethics Counselor, in consultation with the appropriate director, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the FDIC.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of preemptive rights arising out of the ownership of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might result in a substantial impairment of the employee's ability to perform his or her FDIC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured bank or affiliate therof which arises through ownership of shares (or other investment units) or publicly held holding companies, mutual funds, or investment trusts but only if (1) the assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities and (2) the employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust. Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the FDIC.

(d)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless—

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (d)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 336.18 Purchase of liquidation assets.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank, regardless of how the property is sold.

(b) An employee who is involved in the disposition of liquidation assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such liquidation assets. The employee shall advise his or her immediate supervisor and the Ethics Counselor in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the FDIC confidential information regarding the sale or disposition of liquidation assets except as mandated by the employee's official responsibility to liquidate such assets and only as prescribed in Division of Liquidation guidelines applicable to such sale or disposition.

§ 336.19 Purchase of FDIC property.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its corporate capacity unless—

(1) The property has been declared excess property by, and is sold in accordance with standards and procedures prescribed by, the Director of the Division of Accounting and Corporate Services; and

(2) The property is sold by means, determined by the Director of the Division of Accounting and Corporate Services, which assure that the selling price is the property's fair market value.

(b) In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or indirectly purchase any property from the FDIC if—

(1) The employee is employed in the Facilities Management and Operations Section of the Division of Accounting and Corporate Services or is directly involved in the disposition of excess property;

(2) The property was last under the control or supervisory responsibility of the employee (except in the case of property sold by sealed bid or at public auction);

(3) He or she relied upon information regarding the property obtained by the employee in the course of his or her employment with the FDIC (other than knowledge of the proposed sale of the property), which is not available to the general public; or

(4) The employee is the head of the last known office using the property (except in the case of property sold by sealed bid or at public auction).

§ 336.20 Purchase of assets of insured banks.

An employee, the employee's spouse or dependent child, or a member of the employee's immediate household shall not, directly or indirectly, purchase an asset (for example, real property, automobiles, trucks, mobile homes, or repossessed goods) of an insured bank unless such asset is sold at public auction, is offered to the general public at the same price, or is sold by other means that assure that the selling price is the asset's fair market value. In no event shall an employee, an employee's spouse or dependent child, or a member of the employee's immediate household purchase an asset from any bank in reliance on information obtained in the course of the employee's performance of his or her official duties or from any other source not available to the general public. Employees have a responsibility to consult with the Ethics Counselor as to the propriety of the proposed purchase.

§ 336.21 Providing goods or services to the FDIC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the FDIC either in its corporate capacity or in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank unless the Director of the Division of Accounting and Corporate Services or the Director of the Division of Liquidation determines, in accordance with standards and procedures approved by the Board of Directors, that it is in the best interest of the FDIC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the FDIC.

§ 336.22 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her FDIC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the FDIC. Employment or activity which is not compatible with the employee's duties and responsibilities to the FDIC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the FDIC. Such employment or activity may involve—

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any financial institution, including a bank, a savings and loan association, or a credit union, except the FDIC Employees' Federal Credit Union; or

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services.

Any employee who engages in, or intends to engage in, outside employment or activity has the responsibility to consult with the Ethics Counselor as to whether such employment or activity is compatible with the employee's FDIC duties and responsibilities.

(b) An examiner shall not perform any service for compensation for any bank, for any officer, director, or employee thereof, or for any person connected therewith. (See 18 U.S.C. 1909)

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the FDIC (See 18 U.S.C. 209)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205)

(f) An employee must obtain the prior written approval of the Ethics Counselor in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205)

(g) This section does not preclude an employee from participating in the activities of (1) charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 336.16 or 18 U.S.C. 203 or 205 or (2) if not prohibited by law, national or state political parties.

§ 336.23 Employment of family members by persons other than the FDIC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the appropriate director director the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household by—

(1) An insured bank or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the FDIC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the FDIC; within 30 days of the

commencement of employment of the family member.

(b) Generally, a covered employee will not be assigned to any examination, investigation, application, or other matter involving the family member's employer unless the appropriate director, in consultation with the Ethics Counselor, makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the FDIC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

Subpart D—Report of Interest in Bank Securities, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests: Financial Disclosure Reports

§ 336.24 Report of interest in bank securities.

All covered employees must report, on the prescribed form, direct or indirect ownership of securities of insured banks within 30 days of commencement of employment, within 30 days of acquiring the interest if acquired subsequent to employment in accordance with § 336.17, or, if the interest was previously acquired, within 30 days of the entity's becoming an insured bank.

§ 336.25 Report of interest in FDIC decision.

Except for interests reported in accordance with §§ 336.17 and 336.24, an employee with a financial interest (other than a deposit or indebtedness) in a bank or other entity that may be affected by his or her participation in an FDIC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be made within 30 days of commencement of employment, or, if the interest was previously acquired, within 30 days of the bank's or other entity's becoming subject to an FDIC decision. Reports filed under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairman may determine for good cause shown.

§ 336.26 Report of employment upon resignation.

Each covered employee shall report to the Ethics Counselor or a prescribed form his or her resignation to accept employment in the private sector. such report shall disclose pertinent information regarding the prospective employment and shall be made at least two weeks prior to the effective date of resignation.

§ 336.27 Statement of employment and financial interests.

(a) *Employees required to file.* Unless they file statements pursuant to § 336.28, the following employees shall be deemed covered employees for the purpose of filing statements of employment and financial interests pursuant to this section:

(1) Assistants to assistants or deputies to the Board of Directors or to individual Board members (except persons employed by the Office of the Comptroller of the Currency);

(2) Holder(s) of the position(s) immediately subordinate to the director of a division of office;

(3) Branch or comparable office heads;

(4) Division of Bank Supervision employees at or above the grade 5 level in job series 570, 1160, 301 and 341;

(5) Division of Liquidation employees at or above the grade 5 level in job series 1160, 301, and 341;

(6) Office of Research and Strategic Planning employees serving as financial economists in job series 110.

(7) Assessment auditors at or above the grade 5 level;

(8) Employees of the Division of Accounting and Corporate Services at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials, and services;

(9) Persons employed by the FDIC as attorneys;

(10) Corporate auditors at or above the grade 5 level;

(11) Consumer Affairs Specialists at or above the grade 11 level;

(12) Voting members and designees appointed to any FDIC standing committee;

(13) The Alternate Ethics Counselor and Deputy Ethics Counselors; and

(14) The holders of any other positions determined by the Ethics Counselor to require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part, or other FDIC regulation; Provided, that reporting by holders of such positions below the grade 13 level will be subject to the prior concurrence of the U.S. Office of Government Ethics. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing a private or non-federal enterprise, or other activities where the decision or action has an economic impact on any bank or other enterprise.

(b) *Submission of Statements.* (1) Covered employees shall annually file statements of employment and financial interests with information as of December 31. Covered employees who have commenced employment within 90 days of December 31 need not submit another statement for such reporting period.

(2) The Ethics Counselor shall notify covered employees of the obligation to file annual statements and provide a copy of the prescribed reporting form no later than January 30 of each year, with instructions that statements are to be submitted in accordance with paragraph (b)(5) of this section not later than February 28.

(3) Covered employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statement within 30 days after commencement of employment, reassignment, or promotion.

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment in, or reassignment of promotion to, executive level positions and certain other senior positions.

(5) Statements required under this section shall be submitted to the appropriate reviewing as follows—

(i) Assistants to assistants or deputies to the Board of Directors or to individual Board members, holder(s) of the position(s) immediately subordinate to a director of a division or office, voting members and designees appointed to any FDIC standing committee, branch or comparable office heads, and assessment auditors and corporate auditors to the Alternate Ethics Counselor, Office of the Executive Secretary;

(ii) Division of Bank Supervision covered employees assigned to a regional office, to the designated Deputy Ethics Counselor for the region to which assigned;

(iii) Division of Bank Supervision covered employees assigned to the Washington Office or detailed to another division, to the designated Deputy Ethics Counselor for the Division of Bank Supervision;

(iv) Division of Liquidation covered employees assigned to regional or consolidated offices, to the designated Deputy Ethics Counselor for the region or consolidated office to which assigned;

(v) Division of Liquidation covered employees assigned to the Washington Office or detailed to another division, to the designated Deputy Ethics Counselor for the Division of Liquidation;

(vi) Division of Accounting and Corporate Services covered employees assigned to the Washington Office, a regional office, or consolidated office, to the designated Deputy Ethics Counselor for the branch to which assigned;

(vii) Legal Division covered employees assigned to a regional or consolidated office, to the appropriate regional counsel (Supervision or Liquidation) or, if applicable, to the designated Deputy Ethics Counselor for the consolidated office to which assigned;

(viii) Legal Division covered employees assigned to the Washington Office, to the appropriate Assistant General Counsel;

(ix) Deputy Ethics Counselors and Alternate Ethics Counselor, to the Ethics Counselor, Office of the Executive Secretary; and

(x) All other covered employees required to file, to the Alternate Ethics Counselor, Office of the Executive Secretary.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the covered employee's spouse or dependent child is considered an interest of the covered employee unless—

(1) The interest is solely the financial interest and responsibility of the spouse or the dependent child, and the covered employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets, or activities of the covered employee; and

(3) The covered employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not known by covered employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to a covered employee but is known to another person, the covered employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require a covered employee to submit on a statement of employment and financial interests any information relating to the covered employee's connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the government are deemed business enterprises and are required to be included in a covered employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the reviewing official, who shall be responsible for maintaining the statements in confidence. The secretary of the reviewing official shall have such access as necessary and then only to carry out the purposes of the review. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information in a statement will not otherwise be disclosed except as the Chairman or the Director of the U.S. Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the appropriate reviewing official no later than two months following the filing of the statements.

(2) Whenever a statement or other information indicates a possible conflict between the interest of a covered employee and the performance of his or her service to the FDIC—

(i) The reviewing official shall investigate the matter and allow the covered employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of a conflict exists; and

(ii) The Ethics counselor shall attempt to resolve the matter. If the matter cannot be resolved within 60 days, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairman for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of covered employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 336.28 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Individual Board members (except the Comptroller of the Currency), employees at or above Executive Level I, and employees whose positions are excepted from competition service by reason of being of a confidential or policy-making character (unless otherwise excluded by the U.S. Office of Government Ethics) must file—

(a) Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR part 734; and

(b) Confidential Reports of Indebtedness reporting all indebtedness to insured banks and any affiliates thereof, not otherwise reportable in accordance with the requirements of the Ethics in Government Act of 1978. Such statements shall be filed with the Ethics Counselor on or before May 15 for the preceding calendar year ended December 31.

Subpart E—Limitations on Activities of Former Employees

Note: This subpart relates to limitations of former employees, including special government employees, with respect to participation in matters connected with their former official duties and responsibilities with the FDIC.*

§ 336.29 Limitations on representation.

(a) No former employee or special government employee shall represent any other person, except the United States, in an appearance or by oral or written communication or personal representation before the FDIC on behalf of any person other than the United States, or an agency thereof, in connection with any judicial or other proceeding, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, the District of Columbia, or an agency thereof is also a party or has a direct and substantial interest, and in which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise. (See 18 U.S.C. 207(a))

(b) No former employee or special government employee, within two years after termination of employment with

* While the FDIC has not adopted rules with regard to the disclosure of unpublished information by former FDIC employees, it advises such persons not to disclose unpublished information of the FDIC obtained in the course of their work. Questions in this regard may be addressed to the FDIC's Ethics Counselor.

the FDIC, shall represent any other person, except the United States, in an appearance or by oral or written communication or personal representation before the FDIC on behalf of any person other than the United States, or any agency thereof, in connection with any judicial or other proceeding, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, the District of Columbia, or an agency thereof is also a party or has a direct and substantial interest, and which was in process during his or her period of employment, and under his or her official responsibility, at any time within a period of one year prior to the termination of such responsibility. (See 18 U.S.C. 207(b)(i))

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives.

(d) No former senior employee, within two years after termination of employment with the FDIC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance, before the FDIC in connection with any judicial or other proceeding, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, the District of Columbia, or an agency thereof is also a party or has a direct and substantial interest, and in which he or she participated personally and substantially while an employee. (See 18 U.S.C. 207(b)(ii))

(e) No former senior employee (other than a special government employee who serves for less than sixty (60) days in a calendar year), within one year after termination of employment with the FDIC, shall represent any other person, except the United States, in an appearance or by oral or written communication on behalf of any person other than the United States to the FDIC in connection with any judicial, rulemaking, or other proceeding, application, request for ruling or determination, or other particular matter, pending before the FDIC or in which the FDIC has a direct and substantial interest. (See 18 U.S.C. 207(c))

§ 336.30 Consultation as to propriety of appearance before the FDIC.

Any former employee who wishes to appear before the FDIC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the FDIC, may consult the Ethics Counselor as to the propreity of such appearance.

§ 336.31 Suspension of appearance privilege.

Subject to the provisions of 18 U.S.C. 207(j), if any former employee or special government employee knowingly fails to comply with the provisions of this subpart, the Chairman may prohibit such person from making an appearance before or an oral or written communication with the FDIC for such period of time as he or she determines, not to exceed five years, or may impose such other sanctions as he or she deems just and proper.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 336.32 Use of FDIC employment.

A special government employee shall not use his or her FDIC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 336.33 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her FDIC employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under FDIC authority which has not become part of the body of public information.

(b) The provisions of § 336.11 (a) through (d) with regard to employees shall be applicable to special government employees.

§ 336.34 Coercion.

A special government employee shall not use his or her FDIC employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 336.35 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, a special government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the FDIC anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(b) The exemptions of § 336.8(b) with regard to employees shall be applicable to special government employees.

§ 336.36 Miscellaneous statutory provisions.

Each special government employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as a special government employee of the FDIC and of the Government. In addition to the statutes cited in the body of the regulations in this part, the attention of each special government employee is directed to the statutory provisions listed in § 336.14(d).

§ 336.37 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special government employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports—

(1) All other employment; and

(2) The financial interests of the special government employee which the FDIC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special government employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the FDIC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or medical specialist whose services are procured to provide care and service to patients. Special government employees who are relieved of the requirement of filing a statement include, but are not limited to:

summer personnel, student interns, and individuals paid out of "Imprest Funds" to assist in bank liquidations.

(c) Special government employees at or above Executive Level I shall file Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 734.

(d) A statement of employment and financial interests required to be filed under this section shall be filed not later than the time of employment of the special government employee. Each special government employee shall keep his or her statement current throughout his or her employment with the FDIC by the submission of amended or annual statements as required.

(e) The provisions of §§ 336.27 (c) through (h) shall apply to statements filed under this section.

APPENDIX TO PART 336—MATRIX OF CREDIT PROHIBITIONS

Covered Employees	Credit Prohibitions	Exceptions to Credit Prohibitions
Members of the Board of Directors (except the Comptroller of the Currency), an assistant or deputy to the Board of Directors or to an individual Board member (except the Comptroller of the Currency), and any assistant thereto, directors of divisions or offices, holder(s) of position(s) immediately subordinate thereto, except as provided below.	Insured state nonmember banks	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Assumption of mortgage or renegotiation of pre-existing debt when prior review and concurrence by the Ethics Counselor is obtained.
The Director of the Division of Bank Supervision, holder(s) of position(s) immediately subordinate thereto, examiners, or any other covered employee of DBS at or above grade 11 assigned to the Washington Office or any region.	Insured state nonmember banks	(1) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained. (2) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000, the issuing bank is located outside the employee's official region of assignment, and notice is given on a prescribed form.
Division of Liquidation employees in job series 301, 1160, or 341 at or above grade 5 assigned to a regional or consolidated office;. Closed bank attorneys assigned to a regional or consolidated office; and. Supervisory accountants and supervisory field accountants assigned to a regional or consolidated office.	New extensions of credit from an assisted or assuming entity for so long as it remains an assisted or assuming entity. Prohibition extends to all branches within employee's region of assignment.	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained.
Open bank attorneys assigned to a regional office	Insured state nonmember banks headquartered in region of assignment.	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Assumption of mortgage or renegotiation of preexisting debt when prior written approval is obtained.
Assessment auditors	Insured banks subject to audit for deposit insurance assessment purposes.	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Credit extended by one particular insured bank subject to audit when prior written approval is received. (3) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained.
Consumer Affairs Specialists at or above grade 11	Insured state nonmember banks	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed $10,000. (2) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained.

General: All covered employees are disqualified from matters affecting any provider of credit unless amount of credit extended to employee is $10,000 or less. Covered employees of the Division of Bank Supervision are disqualified regardless of the amount of credit extended.

All covered employees who participated personally and substantially in any matter involving an assisted or assuming entity may not accept any extension of credit from that institution.

Note: See section 336.16 (b)(5) and (d) for prohibitions applicable to all covered employees generally.

By order of the Board of Directors.

Dated at Washington, D.C., this sixth day of July 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15591 Filed 7-11-88; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASO-6]

Proposed Designation of Transition Area; Jasper, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Jasper, Georgia, transition area to accommodate instrument flight rule (IFR) operations at the Pickens County Airport. This action will lower the base of controlled airspace from 1,200' to 700' above the surface in the vicinity of the airport. An instrument approach procedure is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations. Due to mountaineous terrain north, east, and southwest of the airport, the proposed transition area is enlarged to accommodate departing IFR aircraft.

DATE: Comments must be received on or before: August 11, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 88–ASO–6, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

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–ASO–6." 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 Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Jasper, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Pickens County Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA 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 area.

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; E.O. 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:

Jasper, Georgia [New]

That airspace extending upward from 700' above the surface within an 18.5-mile radius of the Pickens County Airport (Lat. 34°27'09" N., Long. 84°27'25" W), excluding those portions that coincide with the Dalton and Rome, Georgia, transition areas.

Issued in East Point, Georgia, on June 21, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–15519 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 88–ASW–23]

Proposed Removal of Transition Area; Welch, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Welch, OK. The cancellation of the standard instrument approach procedure (SIAP) serving the Patch Airport has made this proposal necessary. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft executing the SIAP to the Patch Airport. Coincident with this proposal would be the changing of the status of the Patch Airport from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before August 8, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88–ASW–23, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The office docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 524–5561.

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, 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–23." 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 Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date comments. A report summarizing each substantive public contract 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 Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, Tx 76193–0530. 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 § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Welch, OK. The cancellation of the SIAP serving the Patch Airport has negated the need for a 700-foot transition area, thus necessitating the proposal. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft to execute the SIAP to the airport. Coincident with this proposal would be the changing of the Patch Airport from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA 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; E.O. 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:

Welch, OK [Removed]

Issued in Fort Worth, TX on June 10, 1988.

Larry L. Graig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–15518 Filed 7–11–88; 8:45am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 88–ASW–12]

Proposed Revision of Transition Area; Anahuac, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Anahuac, TX. A review of the types of aircraft using the Chambers County Airport revealed a change in the category and size of aircraft using the airport, making this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedure (SIAP) serving the Chambers County Airport. A positive side effect of this proposal is that it will also provide adequate controlled airspace for aircraft executing a new SIAP to the R.W.J. Airpark. The status of both airports will remain unchanged.

DATES: Comments must be received on or before August 8, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88–ASW–12, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

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, 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–12." 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 Office of the Regional Counsel, 4400 Blue Mound Road, Forth Worth, TX, 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 Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. 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 § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Anahuac, TX. A review of the existing transition area revealed a change in the types of aircraft using the Chambers County Airport, Anahuac, TX, thus necessitating the proposal. The intended effect of this proposal is to increase the existing Anahuac, TX, Transition Area to provide adequate controlled airspace for all aircraft executing the SIAP serving the Chambers County Airport. In addition to this, a new SIAP has been developed for the R.W.J. Airpark. The R.W.J. Airpark is located just west of the Chambers County Airport and is included in the Houston, TX, Transition Area. By incresing the existing Anahuac, TX, Transition Area, it will provide adequate controlled airspace for aircraft executing this new SIAP to the R.W.J. Airpark without having to amend the Houston, TX, Transition Area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

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

Anahuac, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Chambers County Airport (latitude 29°46'12" N., longtitude 94°39'51" W.), and within 3 miles each side of the 137° bearing from the Anahuac NDB (latitude 29°46'23" N., longtitude 94°39'47" W.), extending from the 7-mile radius area to 8.5 miles southeast of the Anahuac NDB.

Issued in Fort Worth, TX on June 10, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–15516 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 87–ASW–67]

Proposed Establishment of Transition Area; Wheeler, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Wheeler, TX. The development of a new standard instrument approach procedure (SIAP) to the Wheeler Municipal Airport, utilizing the Sayre Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this proposal would be the changing of the status of Wheeler Municipal Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATE: Comments must be received on or before August 8, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–67, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5661.

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, 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–ASW–67." 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 Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, 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 Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being 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 § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Wheeler, TX. The development of a new SIAP to the Wheeler Municipal Airport, utilizing the Sayre VORTAC, has necessitated this proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this proposal would be the changing of the status of Wheeler Municipal Airport for VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria or 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 FAA 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; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Sections 71.181 is amended as follows:

Wheeler, TX (New)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Wheeler Municipal Airport (latitude 35°27'07" N., longitude 100°11'58" W.).

Issued in Fort Worth, TX, on June 10, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–15517 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–51–88]

Transitional Rule Relating to Certain Installment Sales by Manufacturers to Dealers; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to certain installment sales by manufacturers to dealers. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 12, 1988. The regulations are proposed to be effective for, and are applicable to, taxable years ending after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–51–88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention CC:LR:T), (202) 566–3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations to provide rules relating to section 811(c)(2) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) (the 1986 Act). Section 811(c)(2) relates to section 453C of the Internal Revenue Code of 1986, as enacted by the 1986 Act and amended by section 10202 of the Revenue Act of 1987 (Pub. L. 100–203, 101 Stat. 1330). Therefore, these regulations are added under section 453C.

For the text of the temporary regulations, see FR Doc. 88–15579 (T.D. 8213) published in the Rules and Regulations section of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who submitted comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author these proposed regulations is William L. Blagg of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service and Treasury Department participated in developing

the regulations, on matters of both style and substance.

List of Subjects in 26 CFR 1.441–1—1.483–2

Income taxes; accounting; deferred compensation plans.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–15580 Filed 7–11–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to standards for evaluation of revegetation success and recommended procedures for pre- and postmining vegetation assessments.

This notice sets forth the times and locations that the North Dakota program and proposed amendments to that program are available for public inspection, the comment period during which interested person may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before $4:00 p.m., m.s.t. August 11, 1988. If requested, a public hearing on the proposed amendments will be held on August 8, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., m.s.t. on July 27, 1988.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis at the address listed below. Copies of the North Dakota program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. B Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 265–5776

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5496

Edward J. Englerth, Director, Reclamation Division, North Dakota Public Service Commission, Bismarck, North Dakota 58505–0165, Telephone: (701) 224–4095

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, at the address or telephone number listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82246). Subsequent actions taken with regard to North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, and 934.15.

II. Proposed Amendments

By letter dated June 1, 1988, North Dakota submitted proposed amendments to its permanent regulatory program under SMCRA. The following are the State regulations that North Dalota proposes to amend: North Dakota Century Code (NDCC) Section 38–14.1–24.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by North Dakota satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the North Dakota program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., m.s.t. on July 27, 1988. Location and time of day of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 934

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

Date: June 30, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–15537 Filed 7–11–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 88-035]

Head of the Connecticut Regatta, Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal that would establish permanent special local regulations for the Head of the Connecticut Regatta. The Head of the Connecticut Regatta is an annual event on the Connecticut River that attracts some 2500 participants each year. The congestion on the river is such that each year, in the interest of safety of life on the navigable waters of the United States, the Coast Guard district commander has issued special local regulations governing the conduct of the regatta. By adopting permanent regulations, the Coast Guard will continue to provide the same level of public safety at reduced administrative cost. Public notice of the exact dates of the regatta will be published each year in the local Coast Guard Notice to Mariners and in a **Federal Register** notice.

DATE: Comments must be received on or before August 26, 1988.

ADDRESS: Comments should be mailed to Commander (bb), First Coast Guard District, Captain John Foster Williams Building, 408 Atlantic Avenue, Boston, MA 02210-2209. The comments and other materials referenced in this notice will be available for inspection and copying in Room 428 at the same address. Normal office hours are between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 88-035) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of these regulations are LT L. BROWN, project officer, First Coast Guard District Boating Affairs Branch and CDR M. A. LEONE, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The Head of the Connecticut regatta consists of approximately 550 racing shells and 2500 participants racing in heats throughout the day. During each heat, the shells will race against the clock and start in staggered intervals of 15 seconds. The purpose of the regulation is to close the portion of the Connecticut River off the towns of Cromwell, Portland, and Middletown to all traffic except participants, official regatta vessels, and patrol craft. Vessels under 20 meters will be allowed to transit the regulated area between each heat (approximately 15 to 18 times during the effective period of regulation); and vessels over 20 meters in length will be allowed to transit the regulated area during the lunch break between 12:30 p.m. and 1:45 p.m., or as directed by the Coast Guard patrol commander. The regulations are needed to provide for the safety of participants and spectators due to the traffic density and the swamping hazards inherent to the low freeboard racing shells. The regulated area and immediately adjacent waters will be patrolled by Coast Guard vessels and state and local law enforcement authorities. The Coast Guard Auxiliary may be patrolling to advise nearby traffic of the content of these regulations.

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a large number of spectators into the area that will easily compensate area merchants for the slight inconvenience of having navigation restricted. Larger commercial traffic will be given the opportunity to transit the area during the afternoon break (12:30 p.m. to 1:45 p.m.). There is minimal commercial traffic at this point in the Connecticut River, and as in past years, advance coordination between the Coast Guard and the oil facilities upriver of the regulated area will minimize or eliminate any potential inconvenience to the commercial users of the waterway. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.105 is added to read as follows:

§ 100.105 Head of the Connecticut Regatta

(a) Regulated Area. The regulated area is that section of the Connecticut River between the southern tip of Gildersleeve Island and Light Number 87.

(b) Special Local Regulations.

(1) The regulated area is closed to all transiting vessel traffic between 9:00 a.m. and 6:00 p.m. except for escorted passages as described in (2) and (3) below. All transiting vessel movement will be done at the direction of the Coast Guard patrol commander.

(2) Vessels less than 20 meters in length will be allowed to transit the regulated area, under escort, between each of the approximately 18 heats.

(3) Vessel over 20 meters in length will be allowed to transit the regulated area, under escort, from 12:30 p.m. to 1:45 p.m. or as directed by the Coast Guard patrol commander.

(4) All transiting vessels shall operate at "No Wake" speed or five (5) knots whichever is slower.

(5) Southbound vessels awaiting escort through the regulated area will be held in the vicinity of the southern tip of Gildersleeve Island. Northbound vessels awaiting escort will be held at Light Number 87.

(6) All vessels shall immediately follow any specific instructions given by Coast Guard patrol craft and exercise extreme caution while operating in or near the regulated area.

(7) No person shall enter or remain in the regulated area unless participating in the event or authorized by the event sponsor or Coast Guard patrol commander.

(8) The sponsor shall ensure that the event is concluded by 6:00 p.m. on the day of the event.

(c) Effective Dates. These regulations are effective from 9:00 a.m. to 6:00 p.m. on October 9, 1988 and each year thereafter during the same time period on the second Saturday of October or as published in the local Coast Guard Notice to Mariners and in a **Federal Register** notice.

Dated: June 28, 1988.

R.I. Rybacki,

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

[FR Doc. 88-15073 Filed 7-11-88; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 166

[CGD 88-041]

Port Access Routes; Approaches to Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of study.

SUMMARY: The Coast Guard is conducting a port access route study to evaluate the need for vessel routing measures in the approaches to Chesapeake Bay, VA. A U.S. Army Corps of Engineers (COE) channel deepening project at Hampton Roads will permit deeper draft vessels to call the port. The Coast Guard will, therefore, temporarily adjust the traffic separation scheme (TSS) by suspending the southern approach lanes on October 15, 1988, and will use a system of buoys to direct vessels to naturally occurring deeper waters in that area. The port access route study will determine what, if any, vessel routing measures are needed in the approaches to Chesapeake Bay. As a result of the study, a new or modified TSS may be proposed in the **Federal Register.**

DATE: Comments must be received on or before October 11, 1988.

ADDRESS: Comments should be mailed or delivered to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Room 509, Portsmouth, VA 23704-5004. Comments received will be available for examination or copying at this address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays .

FOR FURTHER INFORMATION CONTACT: Mr. John Walters, (804) 398-6230.

SUPPLEMENTARY INFORMATION:

Study Area

The study area is bounded by a line connecting the following geographic positions:

Latitude	*Longitude*
37°07′ N	76°05′ W
37°07′ N	75°35′ W
36°45′ N	75°35′ W
36°45′ N	75°05′ W

The study area encompasses the existing TSS which was implemented on December 1, 1969, and adopted by the International Maritime Organization (IMO) on October 12, 1971. The TSS consists of three parts as described below:

Part I, Precautionary Area—a two mile radius circle centered at 36°56′07.8″ N, 75°57′27″ W;

Part II, Eastern Approach to Chesapeake Bay—a traffic lane, ½ mile wide on either side of a line drawn between 36°58′40.3″ N, 75°48′39″ W and 36°56′48″ N, 75°55′06″ W; and,

Part III, Southern Approach to Chesapeake Bay—a traffic lane, ½ mile wide on either side of a line drawn between 36°51′21″ N, 75°50′55.8″ W and 36°54′46.8″ N, 75°55′37.2″ W.

A TSS is an internationally recognized routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. Vessel use of a TSS is voluntary; however, vessels operating in or near an IMO approved TSS are subject to Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

Background

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study be conducted prior to establishing or adjusting a TSS. The Coast Guard is undertaking a port access route study to determine the need for a TSS to increase vessel traffic safety in the study area.

The TSS in the Approaches to Chesapeake Bay was studied in 1979, and the results of the study were published on July 22, 1982, (47 FR 31766). The study concluded that the existing TSS was adequate for the foreseeable future.

The Water Resources Development Act of 1986, Pub. L. 99-662 dated November 17, 1986, authorized the deepening of the Thimble Shoals, Newport News, Craney Island Reach, Norfolk Harbor Reach and the Entrance Reach Channels in the port of Hampton Roads to a depth of 55 feet below mean low water (MLW). These channels are located west of the study area. Completion of Phase I (deepening of the outbound lanes of these channels to 50 feet) on October 15, 1988, will allow deeper draft vessels to call at Hampton Roads. The water depths of 48 feet in the existing southern approach of the TSS however, will not accommodate vessels drawing over 46 feet of water.

The Coast Guard has notified IMO that the TSS in the approaches to Cheaspeake Bay will be adjusted temporarily by suspending Part III, the Southern Approach. A COE survey of the southern approach to Chesapeake Bay indicates that there is naturally occurring deeper water to the northeast of the current TSS. The Coast Guard will use a system of buoys to direct vessels to these deeper waters.

The COE is authorized to dredge in inbound/outbound channel, to be known as the Atlantic Ocean Channel, 1,300 feet wide by 60 feet deep in the vicinity of the present TSS southern approach. The first phase, scheduled to occur between 1990 and 1992, will dredge an outbound channel 650 feet wide by 60 feet deep from position 36°55′02.5″ N, 75 °55′19.8″ W to 36°52′16.0″ N, 75°52′12.1″ W to 36°49′38.5″ N, 75°46′56.1″ W. The second phase which will complete the other 650 feet of the channel, is not currently scheduled.

Request for Comments

The Coast Guard is interested in receiving information and opinion from persons who have an interest in safe routing of ships in the study area. Vessel owners and operators are specifically invited to comment on any positive or negative impacts that they foresee, and to identify and support with documentation any costs or benefits which could result from the reconfiguration or elimination of the existing TSS.

Commenters should include their name and address, identify this notice (CGD 88-041), and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. In addition to the specific questions asked herein, comments from the maritime community, offshore development concerns, environmental groups and any other interested parties are requested. All comments received during the comment period will be considered in the study and in

development of any regulatory proposals.

The Fifth Coast Guard District will conduct the study and develop recommendations. Mr. John Walters, Chief, Planning and Waterways Management Section, Aids to Navigation Branch, (804) 398–6230, is the project officer responsible for this study.

Issues

Preliminary discussions with members of the Association of Maryland Pilots and the Virginia Pilot Association indicate there are numerous issues to be discussed by the time the Atlantic Channel outbound lane is dredged. The Coast Guard will study these issues to determine if a TSS is still required, or if the existing TSS needs to be adjusted.

Particular issues to be examined during the study are:

a. Should the Atlantic Ocean Channel, when dredged to 65 feet wide and 60 feet deep, be used by both inbound and outbound vessels?

b. Will the proximity of the U.S. Navy Firing Range off Dam Neck, VA, to the Atlantic Ocean Channel affect navigation safety?

c. Is there a continuing need for the eastern approach of the Chesapeake Bay TSS? If so, is the present configuration adequate?

In addition, the Coast Guard is also interested in comments concerning the color and configuration of buoys to be used to direct deep draft vessels to deeper water when the southern approach of the TSS is suspended. The following options are under consideration:

a. Center marking only with red and white striped buoys;

b. Red and green lateral markings; and

c. Centerline marking only with yellow buoys.

Procedural Requirements

In order to provide safe access routes for movement of vessel traffic proceeding to and from U.S. ports, the PSWA directs that the Secretary designate necessary fairways and traffic separation schemes in which the paramount right of navigation over all other uses shall be recognized. Before a designation can be made, the Coast Guard is required to undertake a study of the potential traffic density and the need for safe access routes.

During the study, the Coast Guard is directed to consult with federal and state agencies and to consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action.

In accordance with 33 U.S.C 1223(c), the Coast Guard will, to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved. The Coast Guard will also consider its experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions.

The results of this study will be published in the **Federal Register.** If the Coast Guard determines that new routing measures are needed, a notice of proposed rulemaking will be published. It is anticipated that the study will be concluded by October 1988.

Dated: July 6, 1988.

Signed:

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety Waterways Services.

[FR Doc. 88–15524 Filed 7–11–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–3412–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by North American Philips Consumer Electronics Corporation, Greeneville, Tennessee, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until August 26, 1988. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by July 27, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–88–NAEP–FFFFF."

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not theri waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing harzardous wastes also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach used to evaluate this petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of North American Philips Consumer Electronics Corporation's petitioned waste on human health and the environment. Specifically, the models will be used to predict a compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that these models represent a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill, and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because North American Philips Consumer Electronics Corporation utilizes off-site disposal of the petitioned waste, ground-water monitoring data collected from the petitioner's facility would not characterize the effects of the petitioned waste on the underlying aquifer at the off-site disposal facility. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

North American Philips Consumer Electronics Corporation, Greeneville, Tennessee

1. Petition for Exclusion

North American Philips Consumer Electronics Corporation (NAPCEC), located in Greeneville, Tennessee, etches circuits on fiberglass composition board. NAPCEC petitioned the Agency

to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents of concern for F006 waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed). NAPCEC petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. NAPCEC also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. NAPCEC further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of NAPCEC's petition.

2. Background

NAPCEC petitioned the Agency to exclude its wastewater treatment sludge on July 6, 1987. Additional information was submitted to the Agency on October 21, 1987 and December 21, 1987. In support of its petition, NAPCEC submitted (1) detailed descriptions of its manufacturing and wastewater treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent and EP toxicity analyses for all the EP toxic metals and nickel from representative samples of the wastewater treatment sludge; (4) results from total constituent analyses for total sulfide and total cyanide; and (5) results from total oil and grease analyses on representative samples.

The manufacturing processes contributing to the generation of the petitioned waste are the printing and etching of copper from fiberglass circuit boards, soldering, legend printing, punching or roll soldering, sealbrite coating, and deslugging. The wastewaters from the above operations flow to the wastewater treatment plant for neutralization. The wastewater then is sent to a series of electrochemical cells where iron and an electrical current are added in order to generate hydroxyl ions (ferrous ion) and hydrogen gas. Hydrogen gas (generated from the electrolysis of water) is vented from the electrolytic cell, and any remaining hydrogen gas is removed by degassing in a separate tank. The wastewater (containing metal hydroxides) then is sent to a clarifier where an anionic polymer is added to promote the precipitation of metal hydroxides. The effluent from the clarifier is sent to a publicly owned treatment works (POTW). The resulting underflow sludge (from the clarifier) is pumped to a sludge thickening tank for liquids removal using a filter press. Filtrate from the filter press is recycled back to the wastewater collection tank. The filter-pressed sludge is collected in 55-gallon drums and is currently disposed of off-site in a hazardous waste landfill.

To collect representative samples from 55-gallon drums like NAPCEC's, petitioners are normally requested to collect a minimum of four composite samples, each comprised of an independent full-depth core sample collected from one or more of the 55-gallon drums containing waste generated over a specific time period (*e.g.*, collect a full-depth core sample from each drum generated during the week and composite the samples weekly, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

NAPCEC collected a total of four composite samples from twelve drums containing all of the filter-pressed sludge generated during a seven week period. Each drum, when full, was sealed and dated. One full-depth core sample was collected from three consecutively dated drums, and the three core samples were mixed to produce one composite sample. This procedure was repeated three times to produce the other three composite samples. The four composite samples were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of all the EP toxic metals, nickel, cyanide, sulfide, and total oil and grease content. The four composite samples also were analyzed for the EP leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals and nickel. NAPCEC claims that, due to a consistent manufacturing and treatment process, the analyses from samples collected over the seven-week period are representative of any variation in the wastewater treatment sludge constituent concentrations.

3. Agency Analysis

NAPCEC used SW–846 method numbers 9010 and 9030 to quantify the total constituent concentrations of cyanide and sulfide, respectively. NAPCEC used EPA method numbers 206.2–272.1 to quantify the total constituent concentrations of the EP toxic metals and nickel. See "Methods for Chemical Analysis of Wastewater," U.S. EPA (EPA/600/4–79–020), March 1983. Additionally, NAPCEC used SW–846 method number 1310 (standard EP toxicity procedure) to quantify the leachable concentrations of the EP toxic metals and nickel in their waste. (Analysis for EP leachable concentrations of sulfide or reactive sulfide are not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide). Table 1 presents the maximum total constituent concentrations of the EP toxic metals, nickel, cyanide, and sulfide. Table 2 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide. These detection limits represent the lowest concentrations quantifiable by NAPCEC, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (FILTER CAKE)

Constituents	Total constituents concentration (mg/kg)
Arsenic	6.4
Barium	29
Cadmium	ND (detection limit of <0.1)
Chromium	85
Lead	65
Mercury	1.4
Selenium	ND (detection limit of <2)
Silver	79
Nickel	23
Cyanide	ND (detection limit of <0.5)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (FILTER CAKE)—Continued

Constituents	Total constituents concentration (mg/kg)
Total Sulfide	ND (detection limit of <20)

ND: Note detected. Denotes concentrations below the detection limit.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (MG/1) (FILTER CAKE)

Constituents	Maximum EP leachate concentrations (mg/1)
Arsenic	0.07
Barium	1.7
Cadmium	0.008
Chromium	0.08
Lead	0.1
Mercury	ND (detection limit of <0.001)
Selenium	ND (detection limit of <0.006)
Silver	ND (detection limit of <0.005)
Nickel	0.17
Cyanide	0.025 [1]

ND: Not Detected. Denotes concentrations below the detection limit.

[1] Calculated by assuming a dilution factor of twenty times (base on 100 grams of sample and dilution with 2000 mls of water) and a theoretical worst-case leaching of 100 percent.

Using EPA method number 413.1, NAPCEC determined that its waste had a maximum oil and grease content of 0.05 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, waste having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase which may be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of metals from the sample). See SW–846 method number 1330. None of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, 261.23.

NAPCEC also submitted a list of all raw materials used in its manufacturing and wastewater treatment processes. This list indicated that no hazardous constitutents (other than those tested for) are used in NAPCEC's processes and that the formation of any hazardous constituents (e.g., as reaction by-products) is highly unlikely.

NAPCEC submitted a signed certification stating that, based on current annual waste generation, their maximum annual generation rate of wastewater treatment sludge is 108 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts NAPCEC's certified estimate of 108 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some precentage of the submitted petitions and, as part of this program, conducted a spot-sampling visit a NAPCEC's facility. The results of this visit, including chemical analyses of waste samples from NAPCEC, are discussed later in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter cake wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 *FR* 7882 (February 26, 1985), 50 *FR* 48896 (November 7, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of NAPCEC's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except mercury, selenium, and silver—see explanation below) from NAPCEC's waste. The Agency's evaluation, using the waste volume of 108 cubic yards and the maximum EP leachate concentrations of all the inorganic constitutents of concern in the VHS model, has generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, mercury, selenium, silver, and cyanide) from NAPCEC's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (See Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constitutent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS WASTEWATER TREATMENT SLUDGE FILTER CAKE

Constituents	Compliance-point concentrations (mg/l)	Regulatory standards (mg/l)
Arsenic	0.0022	0.05
Barium	0.0526	1.0
Cadmium	0.0002	0.01
Chromium	0.0025	0.05
Lead	0.0031	0.05
Nickel	0.0053	0.50
Cyanide	0.00077	0.7

The sludge exhibited arsenic, barium, cadmium, chromium, and lead levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). See 40 CFR 141. The concentration of nickel at the compliance point is below the Agency's health-based level of 0.50 mg/l. See Hazardous Waste Management System; Land Disposal Restrictions: Notice of Availability and Request for Comment, 52 FR 29994, Proposed Health-Based Levels for Nickel and Cyanide, August 12, 1987. The concentration of cyanide at the compliance point is below the Agency's health-based level of 0.7 mg/l. See Verified Reference Doses of the U.S. EPA, Office of Health and Environmental Assessment (OHEA), Environmental Criteria and Assessment Office, Cincinnati, Ohio, 1988.

Additionally, because the total concentration of cyanide in NAPCEC's waste is less than 0.5 ppm, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985,

internal Agency memorandum is the RCRA public docket. Last, because the total constituent concentration of sulfide is less than 20 ppm, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency concluded, after reviewing NAPCEC's processes and raw materials list, that no other hazardous constituents of concern are being used by NAPCEC and that no other constituents of concern are likely to be present or formed as reaction products or by-products of NAPCEC's waste. On the basis of test results submitted by the petitioner, pursuant to 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

On November 18, 1987, staff under contract to the Agency conducted a site visit to NAPCEC as part of the Agency's spot-sampling and analysis program. The staff collected one grap sample directly from NAPCEC's filter press. The staff also randomly selected three drums from a group of six and withdrew a single full-depth core sample from each drum. A fourth full-depth core sample of newly generated material was collected from a drum located next to NAPCEC's filter press. All five samples were analyzed for the total constituent concentrations and EP leachate concentrations of all the EP toxic metals, nickel, and cyanide. The five samples also were analyzed for the total constituent concentrations of all the priority pollutants.

The evaluation of the spot-sampling samples for the total constituent concentrations of all the EP toxic metals, nickel, and cyanide are reported in Table 4. The evaluation of the spot-sampling samples for the EP leachate concentrations of all the EP toxic metals and nickel are reported in Table 5. (EP leachate analysis for cyanide was not performed due to the non-detectable total constituent concentrations of cyanide—see Table 5.)

TABLE 4—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS SPOT-SAMPLING VISIT SAMPLES

(Filter Cake)

Constituents	Total constituent concentrations (mg/kg)
Arsenic	21
Barium	210

TABLE 4—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS SPOT-SAMPLING VISIT SAMPLES—Continued

(Filter Cake)

Constituents	Total constituent concentrations (mg/kg)
Cadmium	ND (detection limit of <0.5)
Chromium	310
Lead	430
Mercury	ND (detection limit of <0.1)
Selenium	ND (detection limit of <0.5)
Silver	ND (detection limit of <5)
Cyanide	ND (detection limit of <1.84)
Nickel	89

ND: Not Detected. Denotes concentrations below the detection limit.

TABLE 5—MAXIMUM EP LEACHATE CONCENTRATIONS SPOT-SAMPLING VISIT SAMPLES

(Filter Cake)

Constituents	Maximum EP leachate concentrations (mg/l)
Arsenic	ND (detection limit of <0.25)
Barium	ND (detection limit of <2)
Cadmium	ND (detection limit of <0.05)
Chromium	ND (detection limit of <0.2)
Lead	ND (detection limit of <0.25)
Mercury	ND (detection limit of <0.001)
Selenium	ND (detection limit of <0.02)
Silver	ND (detection limit of <0.005)
Nickel	0.27
Cyanide	NA

ND: Not Detected. Denotes concentrations below the detection limit.
NA: Not Analyzed.

Comparison of NAPCEC's data with the Agency's spot-sampling data indicates some variation in the constituent concentrations reported. The Agency, however, is not concerned with the variation between the NAPCEC's and the Agency's analytical data because: (1) NAPCEC's samples were collected over the course of seven weeks, while the Agency's samples consisted of waste generated over the course of only three weeks; (2) NAPCEC's samples were composite samples comprised of three full-depth core samples and the Agency's samples were not composited; and (3) the analyses were conducted by different laboratories using different analytical detection limits. Variation between NAPCEC's samples and the Agency's samples is, therefore, expected. Additionally, the Agency is not concerned with the small variation between the two sample sets because NAPCEC's compositing procedure would tend to average any particular daily peak in constituent concentrations observed in the Agency's non-composited samples.

Leachable concentrations of nickel, when evaluated using the VHS model, produced a compliance-point concentration of 0.084, which is below the regulatory standard for nickel of 0.5 mg/l. The Agency did not evaluate the mobility of any of the EP toxic metals from NAPCEC's waste because they were not detected in the EP extract (see Table 5). The Agency also did not evaluate the mobility of cyanide from NAPCEC's waste because an EP extraction for cyanide was not performed (see above).

Although no other Appendix VIII hazardous constituents were expected to be present in NAPCEC's waste, the Agency's spot-sampling visit samples are routinely analyzed for the presence of the priority pollutants (which account for most of the analytically feasible Appendix VIII constituents). Results of the Agency's spot-sampling visit data indicated that no priority pollutant volatile or semi-volatile organic constituent, priority pollutant pesticide, or polychlorinated biphenyls were detected at or above their respective detection limits, using SW–846 method numbers 8240, 8270, and 8080, respectively, except for bis(2-ethylhexyl) phthalate, which is a common plasticizer. Bis(2-ethylhexyl) phthalate was detected at a maximum total constituent concentration of 28 mg/kg. Since NAPCEC does not use bis(2-ethylhexyl) phthalate in its manufacturing or treatment processes, the Agency believes that the presence of this constituent may be caused by laboratory contamination from plastic containers.

The Agency evaluated the mobility of bis(2-ethylhexyl) phthalate using the VHS model. The Agency used the organic leachate model (OLM) to predict the leachable concentration of bis(2-ethylhexyl) phthalate in NAPCEC's wastewater treatment filter cake. The resulting leachable concentration and the estimated annual waste volume of 108 cubic yards were then used as inputs in the VHS model in order to assess the potential impacts of bis(2-ethylhexyl) phthalate upon the ground water. The Agency requests comments on the use of the OLM as applied to the evaluation of NAPCEC's waste.

The OLM/VHS analysis calculated a compliance-point concentration of 0.00044 mg/l for bis(2-ethylhexyl). This compliance-point concentration is below the regulatory standard of 0.0042 mg/l set for bis(2-ethylhexyl) phthalate. See Carcinogenic Risk Assessment Verification Endeavor (CRAVE), Risk Estimate for Carcinogenicity, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, Ohio, 1988.

5. Conclusion

The Agency believes that NAPCEC's wastewater treatment system renders the F006 wastes non-hazardous. NAPCEC's manufacturing and wastewater treatment processes are believed to be uniform and consistent because the facility does not perform as a job shop or have seasonal product variations. The Agency believes that the analyzed samples of treated waste reflect the day-to-day variations in manufacturing and treatment processes intended to be used thereafter. The Agency, therefore, is proposing that NAPCEC's wastewater treatment filter cake be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to North American Philips Consumer Electronics Corporation, located in Greeneville, Tennessee, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the wastewater treatment sludge would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site treatment, storage, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date six months after promulgation, and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Section 3001 RCRA, 42 U.S.C. 6921.

Date: **June 30, 1988.**

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
North American Philips Consumer Electronics Corp.	Greeneville, Tennessee.	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule's publication].
•	•	•

[FR Doc. 88–15569 Filed 7–11–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85–388]

Amendment of the Commission's Rules for Rural Cellular Service

ACTION: Proposed rule; correction.

SUMMARY: This document makes certain corrections to the proposed rule in this proceeding concerning the Rural Cellular Service. Although the comment/reply comment periods have long since passed, the Commission is publishing this correction to clarify pertinent identifying numbers associated with this action for reference purposes.

FOR FURTHER INFORMATION CONTACT: Ronald Jackson, (202) 632–4178.

SUPPLEMENTARY INFORMATION: In the Preamble of this action, published at 53 FR 5020 on February 19, 1988, in the heading of the document, "General Docket No. 85–388" should read "CC Docket No. 85–388" and "FCC 86–449", should read "FCC 88–57". In addition, in the second paragraph following "**FOR FURTHER INFORMATION CONTRACT**", the adopted and release dates should read February 17, 1988 and February 19, 1988, respectively.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88–15446 Filed 7–11–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 653

[Docket No. 88–F]

Control of Drug Use in Mass Transit Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of public hearings.

SUMMARY: On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking in the **Federal Register** entitled "Control of Drug Use In Mass Transit Operations" [53 FR 25910]. In that notice, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times, and locations were not yet available. This notice provides that information.

DATES: Public hearings are scheduled as follows (local time):

1. July 22, 1988, 9:30 a.m., Washington, DC.
2. July 25, 1988, 10:00 a.m., New York City.
3. August 1, 1988, 9:30 a.m., Chicago, Illinois.
4. August 31, 1988, 10:30 a.m., Los Angeles, California.

ADDRESSES: Written comments should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88–F, 400 7th Street, SW., Room 9316, Washington, DC 20590. The locations for the public hearings are as follows:

1. Washington, DC, U.S. Department of Transportation, Room 2230, 400 7th St., SW.
2. New York City: U.S. Court of International Trade, Ceremonial Court Room (2nd Floor), One Federal Plaza.
3. Chicago, Illinois: Dirksen Federal Building, Room 2541, 219 South Dearborn Street.
4. Los Angeles, California: Exact location to be announced in later **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Holly Vandervort, Office of the Chief Counsel, (202) 366–1936 to register to make a statement at a hearing or to inquire about the logistics.

SUPPLEMENTARY INFORMATION: On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) entitled "Control of Drug Use in Mass Transit Operation". The proposed rule would require a recipient of Federal transit funding to certify that it has established a comprehensive anti-drug program. The impetus for this action is the safety concern associated with the use of drugs by mass transportation workers in sensitive safety positions. The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in mass transit operations. Among other things, a recipient's anti-drug program would be required to mandate chemical testing for the use of drugs by those in certain sensitive safety positions. The testing would apply in four situations: pre-employment, post-accident, reasonable cause, and on a random basis. In addition, the NPRM sets out four options concerning rehabilitation for certain employees. Finally, a recipient's program would be required to include an employee assistance program.

At the time the NPRM was published, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times and locations were not yet available. This notice provides that information. Statements made at the public hearings will be included in UMTA Docket No. 88–F and will be reviewed and evaluated by UMTA in conjunction with the rulemaking proceeding.

It is not necessary to make a statement at a public hearing in order to participate in this rulemaking proceeding. Any individual or organization may submit written comments regarding the NPRM to UMTA Docket No. 88–F instead of, or in addition to, making a statement at a public hearing. Additionally, individuals or organizations do not need to make a statement at more than one public hearing.

Written comments must be received by September 6, 1988. Written comments should be sent to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Room 9316, Docket No. 88–F, 400 7th Street, SW., Washington, DC 20590. All comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

The following procedures are established by UMTA to facilitate the hearings:

Individuals interested in making a statement at a hearing should contact Holly Vandervort at (202) 366–1936, at least 3 days before the hearing is to be held. Individuals will testify in the order their registration is received. UMTA encourages pre-registration; however, witnesses may register to testify on the date of the hearing, at each location during the hour before the hearing is scheduled to begin.

An individual, whether speaking in a personal or private capacity or speaking in a representative capacity on behalf of an organization, is limited to a 10-minute statement at a hearing. The amount of time for testimony may be further limited, in order to accommodate all witnesses wishing to testify.

Hearings will begin at the time specified for each location. Hearings may be extended in order to accommodate the number of witnesses.

UMTA requests that individuals testifying at a hearing provide 3 copies of their prepared written statement to UMTA officials at the hearing. Individuals testifying are welcome to submit additional material as well. All statements and material received at a hearing will become part of the official rulemaking Docket No. 88–F.

The hearings officer may make statements to clarify issues or facilitate discussion during the hearing. Any statements the hearing officer makes during a hearing are not intended to be, and should not be construed as, a position of UMTA with respect to the rulemaking proceeding.

The hearings will be recorded by a court reporter. A transcript of the hearings will be included in the official rulemaking Docket 88–F. Any person

interested in purchasing a copy of a transcript of a hearing should contact the court reporter directly.

The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual making a statement at a hearing will not be subject to cross-examination by any other participant. However, the hearing officer may ask questions in order to clarify statements made at the hearing.

Issued on: July 8, 1988.

Edward J. Gill, Jr.,

Deputy Chief Counsel.

[FR Doc. 88–15704 Filed 7–8–88; 4:32 pm]

BILLING CODE 4910–57–M

Notices

Federal Register
Vol. 53, No. 133
Tuesday, July 12, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-095]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test a Genetically Engineered Plant-Associated Microorganism

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Crop Genetics International to allow the field testing in the State of Maryland of a genetically engineered plant-associated microorganism, designed to act as an insecticide to lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of this genetically engineered plant-associated microorganism does not present a risk of introduction or dissemination of a new plant pest and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Payne, Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7908. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 87-355-01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906 June 16, 1987).

Crop Genetics International of Hanover, Maryland (Crop Genetics), has submitted an application for a permit for release into the environment of a genetically engineered plant-associated microorganism (recombinant bacterium). The permit would allow Crop Genetics to conduct a limited field test of a recombinant bacterium, *Clavibacter xyli* subsp. *cynodontis* genetically engineered to express the delta-endotoxin gene of *Bacillus thuringiensis* var. *kurstaki*. The field test is to be carried out in two small test plots on agricultural land in Queen Annes and Prince Georges Counties, Maryland. The delta-endotoxin gene has been inserted into *C. xyli* subsp. *cynodontis* to enable the recombinant bacterium to act as an insecticide against the larval stages (caterpillars) of lepidopteran insects.

In the course of reviewing the permit application, APHIS concluded that the field testing will not present a risk of introduction or dissemination of a new plant pest and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by Crop Genetics, as well as review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The inserted delta-endotoxin gene is lost rapidly from *C. xyli* subsp. *cynodontis*. Both the revertant (which has lost the delta-endotoxin gene) and the naturally occurring *C. xyli* subsp. *cynodontis* strains grow faster than the recombinant bacterium. This information shows that the delta-endotoxin gene will eventually be lost from the recombinant bacterium.

2. The genetic alterations are not expected to enhance any plant pathogenic property of the recombinant as compared to the parental strain of *C. xyli* subsp. *cynodontis* that occurs naturally in Maryland where this test is to take place.

3. Transfer to other plants of the recombinant bacterium by mechanical transfer, e.g., by cutting tools, will be minimized in the field test design and field test protocol which include buffer zones and tool disinfestation. In addition, regular monitoring for the recombinant bacterium will ensure that if it spreads to plants at the edge of the test plot it will be detected.

4. Dissemination of *C. xyli* subsp. *cynodontis* can occur in seed, so all seed not used for research purposes (in containment) will be destroyed, preventing transfer by this mechanism.

5. Data have been provided by the company to demonstrate that the probability of transfer of the delta-endotoxin gene from the recombinant bacterium to other microorganisms is extremely remote.

6. The recombinant bacterium has a relatively low order of toxicity to susceptible insects. The field test plots are very small. Therefore, the introduction of the recombinant bacterium poses no significant impact on insect populations.

7. No threatened or endangered insect species are present in Maryland, so the introduction of the recombinant bacterium poses no threat to these insects.

8. The inherent properties of *C. xyli* subsp. *cynodontis* and the recombinant bacterium indicate that there are no human health risks. The recombinant bacterium does not grow at human body temperature. This bacterium has been demonstrated not to be pathogenic or toxic in mammalian tests. In addition, all crops will be used for research purposes or destroyed so there will be no dietary exposure to humans.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 6th day of July 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-15507 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

Food Stamp Program; Electronic Benefit Transfer Alternative Issuance Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Amended General Notice.

SUMMARY: The Department is hereby amending its General Notice for the Electronic Benefit Transfer (EBT) Alternative Issuance Demonstration Project in Reading, Pennsylvania to extend project operations for two years. During this extension, the State may seek the Department's approval to expand the EBT service population to include all Berks County Food Stamp Program (FSP) participants.

The continuing project is being conducted under the research, demonstration and evaluation authority of section 17 of the 1977 Food Stamp Act, as amended. FNS is continuing to evaluate the project's impact on the program.

EFFECTIVE DATE: Upon Publication.

FOR FURTHER INFORMATION CONTACT: Art Foley, Acting Chief, Administration and Design Branch, Program Development Division; Food Stamp Program; Food and Nutrition Service, USDA; Alexandria, Virginia 22302, telephone (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This Notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1, and has been classified "not major". The Notice will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Because this Notice will not have a major effect on the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This Notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96–354. Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities because it will be conducted in a limited area. The State and local welfare agencies will be affected to the extent that they are involved in administering this alternative system. Food retailers and banks will be affected to the extent that they agree to participate. Individuals participating in the Food Stamp Program and living within the Reading, Pennsylvania demonstration project area in Berks County will be affected to the extent that they will continue using an alternative benefit issuance instrument and continue to be subject to the alternative issuance procedures. Individuals participating in the Food Stamp Program and living in Berks County outside the existing demonstration project area who have been receiving their benefits in the form of food coupons, may be introduced to the new benefit issuance procedures if the decision is made and approved to expand the project. At that time, additional food retailers may participate in this alternative system.

Paperwork Reduction Act

This Notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Comments

This Notice provides for a further extension of two years and a potential modest expansion of a current operating system without any significant changes to the demonstration's operating procedures. (The enhancements and the potential expansion beyond the Reading, Pennsylvania, pilot area throughout Berks County, are described later in this Notice.) Consequently, comments are not being requested and the provisions of this Notice will be effective upon publication.

Background

On July 8, 1983, the Department of Agriculture published a General Notice in the **Federal Register** (48 FR 31431) which, in accordance with 7 CFR 282.5, established the specific operational procedures and explained the basis and purpose for the Alternative Issuance Demonstration Projects, including the EBT demonstration. On August 21, 1984, the Department published an Amended General Notice in the **Federal Register** (48 FR 33152) which provided additional details on the operational procedures of the project.

The Original Demonstration Project

Implementation of the EBT system began in October 1984. Following the phase-in of participating recipients, the system became fully operational in February 1985. USDA contracted with Planning Research Corporation (PRC) of

McLean, Virginia for the administration of EBT system operations through December 1985.

Reaction to the system by the different groups participating in the demonstration has been favorable. Recipients have had few problems using the system. Retailers and banks have expressed their pleasure regarding the time and effort saved by not having to process coupons. While there were some system problems during early stages of the test which raised concern by all parties, system improvements were implemented to minimize the chance for problem recurrence and to satisfy the retailers and recipients. Further enhancements were not viewed as appropriate by the Department during this initial phase because of the limited time available. The extension of the project provided the opportunity to examine issues relating to long term EBT project operation.

The final evaluation report for the initial period of EBT operations was published in May 1987, and is available for inspection at FNS Headquarters in Alexandria, Virginia.

The Extended Demonstration Project

In consultation with the State of Pennsylvania, the Department decided to extend demonstration project operations. An evaluation of the EBT demonstration is continuing through the extension period. The purpose of the extended EBT demonstration project evaluation is to obtain data that will provide recommendations for management of the EBT system, and guide other State or Federal EBT initiatives. Included in the more specific objectives are collection and assessment of data on administrative costs, system security, and impact on EBT users.

On December 30, 1985, the Department published an Amended General Notice in the **Federal Register** (50 FR 53170) to extend the project for 15 additional months. During this phase, the operating procedures remained as published in the August 1984 Amended General Notice except that the EBT Center was operational 24 hours per day instead of the 18 hours stated in the Notice.

For the first three months of the extended demonstration, PRC continued to operate the EBT system under contract with the Pennsylvania State agency. Subsequent to this period, Pennsylvania assumed responsibility for operating the EBT system and moved the EBT equipment and EBT Center operations to their own offices in Harrisburg, Pennsylvania. During the second phase, all operations were coordinated by State personnel in Harrisburg. The State's operation of the EBT Demonstration Project is governed by an amendment to the State Plan of Operation. In this amendment the State agreed to maintain the EBT system performance at a level which met or exceeded the pre-existing acceptable levels of performance, with no degradation of system operations or performance, and to include a back-up system which provided continuous processing to minimize system down time and manual processing.

System enhancements which accompanied the extension were for the most part transparent to users. (The changes improved internal systems accountability and cost performace.) One exception for recipients was the additional ability to make a voice and data call for an account balance inquiry by touch tone phone. This Sperry Voice Information Processing System is also used by retailers for daily deposit inquiries, and internal systems reporting. The account information in the computer is translated to voice communication heard on the phone.

The Department has also allowed expansion of the EBT service population to occur with the addition of 500–800 FSP households who were customers of retailers already participating in the demonstration.

Current Action

If further expansion is approved, the base of retailer participation may be broadened to include all of Berks County and approximately 1,500 additional FSP households. The Department's approval of this expansion shall require the State to submit an acceptable Advance Planning Document (APD) to FNS. Procedures for the submission and approval of an APD shall be consistent with Appendix A of 7 CFR Part 277. The APD's implementation plan must include the State's provisions to notify retailers of the impact of EBT on their operations and to invite retailer comments. The State shall report on these comments to the Department. The plan must also include provision for notices to recipients and for training to familiarize new users with the EBT system operating procedures. In any system expansion, the current hotline for information must be maintained so as to allow the State to respond to retailer and recipient questions. Retailers must be able to obtain balances for individual cash registers at various times during the day in addition to "end-of-day" deposit figures. The back-up system for continuous processing must also be maintained.

Performance standards for this extension will be the same as those previously negotiated by the Department with the State of reflect expected improvements in performance. These standards are in the areas of: transaction time at check-out counters; processing time and timelines for batch jobs; system accessibility/reliability; completeness and accuracy of accounts maintained; accuracy and timeliness of operating information reported; and system security and accuracy of executing system operations.

FNS liability shall be limited to that prescribed under the Food Stamp Act and program regulations and procedures. The State remains strictly liable for losses sustained by the Federal Government, in connection with benefits issued through this project, in excess of amounts authorized to be issued through the certification process and as set forth in 7 CFR Part 276.

This extension will allow the extended EBT demonstration to continue to operate under demonstration project authority, provided that the assurances made to this Department by the State in its FSP Plan of Operation are met and that the project continues to produce valuble information in the judgment of the Department. The Department may, with reasonable notice, suspend or terminate the project if it determines that continued operation of the project is no longer in the interest of the government. Suspension or termination, if undertaken by the Department, would be accomplished consistent with Attachment L of OMB Circular A–102 as applicable.

The success of this demonstration, among others, may led to the widespread use by EBT systems. As an outgrowth of the EBT demonstration in Reading, the Department has issued a request for applications to sponsor additional EBT demonstration projects, to gain further knowledge of the impact of on-line electronic issuance technologies on the Food Stamp Program.

Date: July 5, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–15542 Filed 7–11–88; 8:45 am]

BILLING CODE 3410-30-M

Food Stamp Program: Simplified Application and Standardized Benefit Projects

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of intent.

SUMMARY: This Notice announces the Department of Agriculture's intention to conduct Simplified Application/ Standardized Benefit Projects for recipients of certain types of categorical aid, and solicits Work Plans from prospective project operators. These projects are intended to reduce administrative costs and error rates through a streamlining of procedures used to determine household eligibility and benefit levels. A Work Plan Guide is available from FNS to assist in preparation of Work Plan submissions. Legislation limits operation to a maximum of ten projects, distributed among five States and five political subdivisions; selection will be competitive. Final rulemaking to implement the authorizing legislation (Pub. L. 99–198, December 23, 1985) is being published simultaneously with this notice and can be found elsewhere in this **Federal Register** under 7 CFR 272.1, 272.2 and 273.23. Proposed rulemaking was published in the **Federal Register** on April 23, 1987, at 52 FR 13450.

DATE: Work Plans must be postmarked November 9, 1988 or earlier for States and December 9, 1988 or earlier for local areas/political subdivisions.

ADDRESS: Work Plans should be submitted to Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to Russ Gardiner, Supervisor, Research and Demonstration Projects Section, Administration and Design Branch, Program Development Division, Family Nutrition Programs, at the above address, or by telephone at (703) 756–3387.

Classification

Executive Order 12291. This notice has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1, and has been classified not major because the provisions will not result in: 1) An annual effect on the economy of $100 million or more; 2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical regions; or 3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

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

Regulatory Flexibility Act. This notice also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant impact on a substantial number of small entities.

Reporting and Recordkeeping. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget. The reporting and recordkeeping requirements contained in the regulations which come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) will be submitted to OMB for their review and approval. Such reporting requirements will not be put into effect until OMB approval is received.

Background. Legislative requirements governing the Food Stamp Program have led to the development of a complex set of regulations governing eligibility and benefit determinations. Eligibility and benefit determinations are based on a wide variety of household circumstances including income, assets, and work status. Although these regulations provide extensive guidelines for eligibility staff, they also create a lengthy eligibility determination process that is expensive to perform and is often subject to error.

The Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97–98) authorized the Simplified Application Demonstration Project. The Simplified Application Demonstration was an attempt to reduce the administrative burden of food stamp benefit calculations by simplifying program rules while still maintaining the efficient "targeting" of benefits to households which need them the most. The demonstration tested how different approaches to standardizing and simplifying policy affect benefits, administrative costs, and errors in the Food Stamp Program. The States of Oklahoma and Illinois, and San Diego and Fresno Counties, California participated in the demonstration. Results were sufficiently positive for Congress to authorize follow-up projects in a limited number of locations.

Section 1520 of the Food Security Act of 1985 (Pub. L. 99–198) added a new section 8(c) to the Food Stamp Act (7 U.S.C. 2017(e)) which authorized the operation of Simplified Application/ Standardized Benefit (SA/SB) Projects. As with the demonstration, these projects are intended to reduce administrative costs through a streamlining of procedures used to determine household eligibility and benefits. There are no time limitations on their operation. The legislation permits the use of SA/SB procedures as an alternative to regular Food Stamp Program (FSP) procedures, but limits operation of these projects to a maximum of five States and five political subdivisions. Given the potential outcomes of these projects, i.e., reduced administrative costs and reduced error rates, FNS expects that many sites will want to take part in the project and that, as a result, a competitive selection will be necessary. To accomplish this selection, prospective project operators will be required to submit Work Plans containing detailed information on implementation and operational procedures, and expected project outcomes.

Notice of Intent

This notice solicits Work Plans from States and local political subdivisions wishing to operate SA/SB Projects. The Work Plan Guide noted earlier presents basic information which will aid potential operators in preparing their Work Plans. Its focus is on helping applicants respond to the evaluation criteria, assisting particularly in simulating the effects of the SA/SB procedures. FNS' selection of project sites will be based on the Work Plan's responsiveness to the published evaluation criteria. Accepted sites' Work Plans will be included in the State Plan of Operations and will serve as the basis for operation of the project.

Selection of Project Operators

The legislation limits the operation of the project to a maximum of five States and five political subdivisions. For the purposes of these projects, eligible applicants are Food Stamp Program "State agencies" and local "project areas" as defined in program regulations at 7 CFR 271.2, which reads, in part, as follows:

"State agency" means: (1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the

counterpart local agencies which administer such assistance programs for the State agency * * *

"Project area" means the county or similar political subdivision designated by a State as the administrative unit for program operations * * *

A State with a centralized, State-run food stamp system may, under certain circumstances, make overlapping Work Plan submissions. For example, if a State-run system is divided into administrative units which are themselves political subdivisions, such as counties, then the State could file a separate Work Plan for the entire State as well as one for a specific administrative unit/political subdivision.

Application Process

Application is made by submitting a Work Plan which provides complete information on how the State and/or political subdivision intends to implement and operate the project. The Work Plan must be signed by the representative of the State government with authority to commit the State or political subdivision to project operations. This will generally be the person who signs the State Plan of Operations. The Work Plans of successful applicants will become amendments to the State Plan of Operations for their respective States. If you would like to have notice that your Work Plan has been received by FNS, we ask you to mail the application "Return Receipt Requested." The Work Plans will be reviewed by FNS staff against the technical evaluation criteria, and rated and ranked by the technical panel.

Guidelines for the development and presentation of the information requested in this notice are more fully presented in a published guide for preparing the Work Plan. Due to the level of complexity, accuracy, and comparability required in the information, applicants are advised to read the Work Plan Guide carefully. The availability of the draft guide was announced in the Preamble of the proposed rulemaking published April 23, 1987. Persons who previously requested a copy of the draft guide or the final version of the guide have been placed on a mailing list and will be automatically receiving a copy of the final guide. New requests for the guide can be made to the office of Mr. Gardiner at the address and phone number given earlier in this notice.

Work Plans for Statwwide projects must be submitted in 10 copies to the FNS National Office no later than 120 days from publication of final regulations. Because local agency Work Plans will have to have the approval of their governing State agencies, local applications will not be due until 150 days from publication of final regulations.

All offerors will be notified of the results of the selection process and negotiations will be conducted as necessary.

Notification

Selection is expected to occur on or before (210 days from date of publication) and it is planned that project operations will commence as quickly as possible after that date. Applicants will be notified when selected, or scheduled as a potential replacement site, or evaluated as not competitive for the purposes of this project. While five States and five local political jurisdictions will be selected to operate projects, a list of additional acceptable qualified sites will be established and replacement projects selected from this list in the event that any of the ten originally selected operators are unable either to implement or continue operations.

Duration and Performance

These projects are not demonstration projects, and do not have durational limits except as established by law and regulation. At this time, there are no prescribed durational limits to project site operations that are operating in compliance with the law, regulations, the State Plan and the project Work Plan. However, FNS reserves the right to terminate any project at the convenience of the government. If this should occur, adequate advance notice will be given to project operators to effect a smooth transition to normal processing for project eligible households under routine benefit administration procedures. Operators, of course, will have the right of withdrawal.

Funding

No special fiscal incentives relative to administrative cost-sharing are being offered. Administrative cost-sharing for this project will conform to usual program rules.

Reporting

Ongoing project reporting requirements will be limited to reporting on the project's error rate impact. This data will be due to FNS on the annual quality control reporting schedule established at § 275.21(d).

Evaluation

Each selected project site will be required to perform a self-evaluation shortly after project implementation. The evaluation will verify the projected project impacts provided in the Work Plan submission. Actual information on the project's impact on administrative costs, benefits and participation will be collected. This data will be due to FNS within six months of implementation. Actual error rate impacts will be separately reported due to the necessity of collecting this information over a long time period.

Work Plan Contents

The outline is to be followed in developing your proposed Work Plan. The information requested below must be presented in as clear and complete a manner as possible to assure maximum competitive status. It is particularly important that all offerors present data on project effects in a manner which will facilitate comparative analysis. The last part of this discussion suggests how to analyze project effects and describes how to present the results of that analysis.

A. Background

1. Overview of Proposed Project and Expected Effects of Operating the Projects.

a. What types of populations of households will be covered by the project (i.e., pure AFDC, pure SSI, mixed AFDC, mixed SSI, etc.)? How many households of each type are there? What proportion of the total number of food stamp households do they represent?

b. How is the project different from current procedures applied to these household?

c. What effects are expected from operating the project and why are these desirable from local, State and Federal perspectives?

2. Site Description. a. At what location(s) with the project operate?

b. How would you describe these sites from a demographic standpoint and what is your rationale for selecting them?

c. What are the demographic characteristics of all other households compared to project eligible households served at the project site(s)? (If Statewide implementation is proposed, the caseload may be described in aggregate terms rather than by individual sites.)

3. Current Operating Procedures and the Level of Automation. a. How are project eligible cause currently processed (i.e., forms required, flow of

work, types of staff, degree to which process is automated, characteristics of automated systems, etc.) If more than one type of household, AFDC, SSI, etc., will be included in the project, describe each type separately or specifically note that procedures are the same.

b. What regularly produced data are available through automated systems? (Include record layouts if possible.)

c. To whom are these data available and with what frequency?

4. Current Requirements of Other Programs. a. What requirements or procedures of other programs have you considered in designing the project?

b. How will these contribute to or constrain project design?

B. Project Design

1. Method for Establishing Project Allotments. a. Provide a clear explanation of the benefit calculation methodology which you plan to use. This would include a clear explanation of the formula which will be used, how the formula was developed, and what was considered in developing the formula.

(1) By what criteria will project households be grouped?

(2) What special procedures, requirements, and/or formulas will be applied to these groups? (Carefully and completely explain all elements of proposed changes.)

(3) How have you designed your project procedures to ensure that they will not unduly affect households with lowest incomes?

b. Describe how benefits will be updated over the life of the project to reflect changes in the FSP, household characteristics, or applicable categorical-aid programs.

c. How will you ensure that average benefits for each household size and type, i.e., pure AFDC, pure SSI, etc., are no less than average benefits would have been without the project? How will you continue to ensure this over the life of the project?

2. Operational Procedures. a. Describe what administrative controls will be used to ensure the disposition of food stamp applications within the time requirements.

b. What will the new application procedures be and how will they differ from the current system?

c. Through what process will determinations of eligibility and allotments be made and how does this differ from the current system?

d. What changes will project procedures make in the type of actions taken or documentation provided by applicants and participants?

e. Describe how your current ADP system will be adapted to handle project procedures.

3. Need for Waivers. a. Will any aspects of the planned project require waivers beyond the scope of treatments allowed by 273.23?

b. Describe the need for such waivers and their impact.

C. Implementation and Monitoring Plan

1. Implementation Requirements. a. To what extent will project procedures be implemented through a centralized automated system?

b. How will the issuance of project policy and procedures be accomplished?

c. How will project eligible and potentially-project eligible households be notified of project requirements? (For example, how will AFDC households be notified?)

d. What additional or changed staffing will be required during implementation and during project operations?

e. What staffing provisions will be made for monitoring the progress of implementation and later project operations?

f. What staff training will be required during implementation and during project operations?

g. Will contracted services be required for any part of implementation and/or continuing operation?

2. Implementation Plan. a. Display in a Gantt Chart the key activities that must take place in order to meet the implementation requirements discussed above.

b. What is your projected start-up date?

c. If the implementation date is not met, what difficulties, if any, do you anticipate?

3. Staffing and Management Plan. a. What organizational unit will be responsible for implementing and operating the project?

b. Will staff responsible for operating the project be different than staff generally responsible for operating the Food Stamp Program?

c. If so, in what ways will project staff be different and for what period of time? (Chart project positions and their organizations relationships.)

d. What are the qualifications and experience of the type of individuals required to run this project?

e. How do you feel you are uniquely qualified to operate this project based on prior experience and current abilities?

D. Estimate of Project Impacts

1. Implementation Costs. a. What are total anticipated costs for project implementation?

b. What are the major components of these costs and when are they expected to be incurred in relation to the planned implementation schedule?

2. Ongoing Operating Costs. a. What new, ongoing operating costs will be generated by project procedures? (Provide these on an average monthly per case basis.)

b. Are these expected to be offset by savings generated by the project in other areas? (For example, if ADP costs will increase, will staffing requirements decrease?)

3. Administrative Cost Impacts.

Note 1.—For the Simplified Application Demonstration Project, estimates of case-processing time were based on staff interviews. However, other means of documenting current and changed costs are acceptable as long as they are clearly explained and reasonable for the operating system.

Note 2.—FNS will be weighting each proposer's administrative cost savings by a factor which compares a State's current administrative case-month cost to the National average.

a. For each population of project eligible household, what is the current average monthly case-processing cost on a per-case basis? What is the total monthly case processing cost for each population? For the total project-eligible population?

b. How have you developed the cost estimates described in (a)?

Note.—It is recognized that many different systems may be used for documenting case-processing costs and the expected effects of the project in this area. Offerors are free to develop their estimates of case-processing cost effects in any way appropriate to their data systems. However, these estimates should be fully documented and reproducible. They should provide the sources of the data; the time period from which they are drawn; assumptions which have been applied; and an explanation of computations in an easily followed manner.

c. Once the project is implemented, for each type of project-eligible household, what will be the average monthly case-processing cost on a per-case basis? The total monthly case-processing cost?

d. How have you developed the cost estimate described in (c)? To show this, you need to provide separate tables which show the following:

(1) Estimated average difference in the time required to process an AFDC/Food Stamp case due to the changes induced by the demonstration for intakes, recertifications, and interim changes.

(2) Potential monthly cost savings from reduce staff time for intake, ongoing case processing, and supervision.

(3) Estimated change in staff time induced by the demonstration for intake, recertification, interim changes, and total ongoing case processing time.

(4) Potential hours saved per month in case-processing time, for intake and ongoing case-processing.

(5) Potential monthly time savings by supervisory staff for intakes and ongoing case processing.

(6) Potential monthly cost saving from reduced staff time for case processing and supervision.

e. What is the total projected annual savings in case-processing costs for all proposed project populations?

f. What percentage of total case-processing costs for the project populations does this (e) represent?

g. What were total FS administrative costs for FY 87? What percentage of total food stamp administrative costs do your projected case-processing cost savings (e) equate to?

h. Are there any planned reallocations or shifts of resources associated with the project? (For example, will some time saving attributable to the project be shifted to error reduction strategies, such as moving staff over to non-project food stamp caseloads, or computer matching, etc.?) Will positions be dropped?

4. Effects on Measured Error (This information is needed for planning and evaluation purposes. A State or political subdivision's current QC error rate and the effect of the project on that error rate will not be a selection factor.)

Note.—The amount of error reduction which sites can expect to achieve is highly dependent upon the benefit methodology which has been chosen. For every benefit component that has been standardized and as a result eliminated as a potential source of error, the error attributable to that factor will likewise be eliminated. Indirect error rate effects can also occur if time freed up through simplification is devoted to other activities designed to reduce error. By analyzing current error sources from the most recent annual IQCS sample, conclusions can be drawn about potential error reduction. Site are not expected to make predictions on indirect error rate effects.

a. As categorized by the Integrated Quality Control System (IQCS) or other available data sources, what errors exist for project eligible households and what is the dollar value of such errors?

b. Based on new project procedures, what change is expected in the overall dollar error rate and in errors by source for project-eligible households? (Discuss both payment error and underissuance in a format which breaks out error by source including, at least, earned income, unearned income, household composition, shelter deduction, application of demonstration policies, and other.)

c. What assumptions apply to the estimated changes in error sources?

5. Impacts on Food Stamp Benefits.

Note.—Once sites have developed a benefit methodology, they must test its effects on the existing caseload to satisfy this portion of the Work Plan. How this test is completed will depend on the benefit methodology chosen, the current level of program automation, and the amount of data which is contained in the master file. Some sites may be able to directly simulate effects for all households. Others may have to select a statistically valid sample of households and use hard copy casefile information. This Work Plan must describe in detail how the simulation was done and what, if any, limitations exist on the data presented. The more serious the caveats, the less confidence we will have in the presented effects. Congress requires that average benefits for each category of household must not be less than the average would have been under the conventional Food Stamp Program. It is also essential to minimize monthly losses experienced by individual households. As a guide, offerors should keep monthly losses to no more than $10 per household or 20 percent of the original benefit, whichever is less.

a. What is the current average monthly benefit issued to each type of project-eligible household? What are the total monthly food stamp benefits issued to each type of project-eligible household? What is the sum of monthly benefits issued to all project-eligible households?

b. Describe how project participants are distributed based upon the following characteristics: Net food stamp income, food stamp benefit amount, earned income, gross income by poverty level, shelter deduction, dependent care cost, presence of elderly/disabled, receipt of recoupment and whether household is a regular AFDC case or an AFDC–UP.

c. How will current benefits change as result of the project? Develop tables for all project-eligible households which show, by household size and increments of $5, monthly benefit changes in dollars and percentages. Then, using a similar table, show what pattern of household gains and losses is expected for each project-eligible population and for each sub-category of households, as applicable, within project populations. (Prior experience has shown that households experiencing significant gains and losses (outlyers) are most probably incorrectly certified.)

d. What will be the average change in benefits, if any, among all project households, and among these households according to their proverty status, i.e., gross food stamp income as a percentage of the current poverty standard. Show the distribution of expected monthly benefit gains and losses for all project-eligible households and for each category of project-eligible household. Include mean dollar changes in benefits, number of households, and percent of households.

Selection Criteria

1. Benefits—40 points

- Average benefits are no less than averages would have been for the project populations affected by the new procedures, i.e., AFDC, SSI, etc.
- Poorest households are protected from excessive loss so that households in the lowest twenty percent of gross income do not receive greatest percentage decreases in benefits.
- No household experiences benefit losses greater than $10 or 20 percent, whichever is less. (Failure to achieve this goal will not necessarily result in elimination from competition, however its competitive impact is high.)
- Net additional program costs are no more than administrative cost savings. (Failure to achieve this goal will not necessarily result in elimination from competition. However, again, its competitive impact is high.)

2. Program Design—15 points

- Simplification is considered for
—Processing procedures, and
—Demands made on applicants
- Creativity

3. Administrative Savings—15 points

- Maximum percentage change in case processing costs
- Maximum percentage administrative cost savings

4. Technical Quality—15 points

- Responsiveness to project requirements.
- Clarity and completeness of proposal.

5. Operational Potential—15 points

- Prior successful experience is designing and implementing program changes and/or
- Expected ability to carry out project as proposed.
- Capability of automated system to handle or be adapted to proposed project procedures.

6. Dispersion within the seven FNS Regions—This factor will serve as a final delineator in the event of tied proposals.

Date: June 5, 1988.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 88–15541 Filed 7–11–88; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Outfitter Caches in Frank Church-River of No Return Wilderness, Idaho

AGENCY: Forest Service, USDA.

ACTION: Request for comment.

SUMMARY: The Forest Service gives notice that a task force has been established to study the issue of outfitter and guide caches in the Frank Church-River of No Return Wilderness in Idaho. The agency invites organizations and individuals to submit comments and suggestions for the Task Force's consideration.

DATE: Comments must be received in writing by September 15, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2320). Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director, Recreation Management Staff, Room 4231, South Building, 14th and Independence SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Anne S. Fege, Recreation Management Staff, (202) 447–2422.

SUPPLEMENTARY INFORMATION: The Management Plan for the Frank Church-River of No Return Wilderness (adopted February 1985) specified that outfitters and guides must remove permanent camps and caches over a 10-year period, and that no new caches will be allowed. Under the plan, caches of "dismantled structure frames and poles made of native materials" may remain. This policy was challenged by the Idaho Outfitter and Guides Association in U.S. District Court in Boise, Idaho (IOGA vs. U.S. Attorney, No. N–87–0426). The lawsuit was dismissed after the Forest Service and the Association reached an out-of-court settlement on January 28, 1988.

As part of the settlement agreement, the Forest Service agreed to establish a task force to study and address the issue of outfitter and guide caches in the Frank Church-River of No Return Wilderness. Under terms of the agreement, the task force was selected by the Chief and will report its results directly to him. The Chief will take what action he deems appropriate in response to the task force's recommendations.

The charter of the Task Force is to:

1. Study and address the issue of outfitter and guide caches in the Frank Church-River of No Return designated wilderness area.

2. Solicit and consider input from the Idaho Outfitters and Guides Association and its individual members as well as from other interested organizations and individuals.

3. Make on-site visits to selected cache locations in the Frank Church-River of No Return Wilderness as part of their study.

4. Report the results of its study and recommendations directly to the Chief by December 31, 1988.

A cache is defined as "the storage of anything transported into the wilderness, and any unauthorized native material structures."

The Agency invites comments and suggestions on the requirement that outfitters and guides in the Frank Church-River of No Return Wilderness remove permanent camps and caches over a 10-year period, and that new caches are not allowed. This is not a review of national cache policy, nor a review of cache policy in any other wildernesses. No public hearings will be held.

Date: June 30, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88–15547 Filed 7–11–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Export Now Advisory Committee; Open Meeting

A meeting of the Export Now Advisory Committee will be held on July 19, 1988, 1:30 p.m.–4:30 p.m., at the U.S. Chamber of Commerce, Briefing Center, 1615 H Street NW., Washington, DC 20062. This meeting will be in lieu of the July 12, 1988 meeting previously announced in the **Federal Register** (53 FR 16177, May 5, 1988). The meeting will be open to the public with a limited number of seats available. Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting.

The Committee was established by the Secretary of Commerce on February 25, 1988 to advise Department officials on the objectives and conduct of the Export Now Program, including methods of increasing public awareness of the advantages of exporting, improving Federal coordination with state, local and private sector export activities, and implementing programs of education and training to increase the export effectiveness of all segments of the U.S. economy.

The purpose of the meeting is to report on the status of the Export Now Program and to receive advice from the public on the conduct and future implementation of the program. A more specific agenda will be available to the public at the beginning of the meeting.

For further information or copies of the minutes, contact Lew W. Cramer or Don Forest, Export Now Program, Herbert C. Hoover Building, Room 5835, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–2073.

Date: July 7, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88–15584 Filed 7–11–88; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than July 31, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceeding:	
Canada: Certain Dried Heavy Salted Codfish (A–122–402)	07/01/87–06/30/88
Canada: Pig Iron (A–122–020)	07/01/87–06/30/88
German Democratic Republic: Solid Urea (A–429–601)	01/02/87–06/30/88

	Period
Iran: Certain In-shell Pistachios Nuts (A-507-502)	07/01/87-06/30/88
Japan: Fabric Expanded Neoprene Laminate (A-588-404)	07/01/87-06/30/88
Japan: High-Power Microwave Amplifiers and Components Thereof (A-588-005)	07/01/87-06/30/88
Japan: Malleable Cast Iron Pipe Fittings (A-588-605)	02/13/87-06/30/88
Japan: Synthetic Methionine (A-588-041)	07/01/87-06/30/88
Socialist Republic of Romania: Solid Urea (A-485-601)	01/02/87-06/30/88
Union of Soviet Socialist Republics: Solid Urea (A-461-601)	01/02/87-06/30/88
Requests for review of the following June cases will be accepted during this opportunity period.	
Taiwan: Fireplace Mesh Panels (A-583-003)	06/01/87-05/31/88
Taiwan: Oil Country Tubular Goods (A-583-505)	06/01/87-05/31/88
Taiwan: Polyvinyl Chloride Sheet and Film (A-583-081)	06/01/87-05/31/88
Countervailing Duty Proceeding:	
European Communities: Sugar (C-408-046)	01/01/87-12/31/87
India: Industrial Fasteners (C-533-066)	01/01/87-12/31/87
Uruguay: Leather Wearing Apparel (C-355-001)	01/01/87-12/31/87
Suspended Investigation:	
Brazil: Certain Forged Steel Crankshafts (C-351-609)	07/28/87-12/31/87

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by July 31, 1988.

If the Department does not receive by July 31, 1988 a request for review of entries covered by an order of finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: July 6, 1988.

[FR Doc. 88-15583 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-602-801]

Initiation of Antidumping Duty Investigation; Calcined Bauxite Proppants From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of CBP materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 29, 1988. If that determination is affirmative, we will make a preliminary determination on or before November 21, 1988.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On June 14, 1988, we received a petition filed in proper form by Carbo Ceramics, Inc. on behalf of the domestic CBP industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of CBP from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

The petitioner has alleged that they have standing to file the petition. Specifically, petitioner has alleged that they are an interested party as defined under section 771(9)(C) of the Act, and that they have filed the petition on behalf of the U.S. industry manufacturing the product that is subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with Commerce official cited in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for CBP produced in Australia and sold in the United States, less foreign inland freight, ocean freight, marine insurance, and U.S. brokerage and handling.

Petitioner's estimate of foreign market value was based on Australia home market prices.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins of approximately 64 to 86 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on CBP from Australia and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of CBP from Australia are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the costs of production. If our investigation proceeds normally, we will make our preliminary determination by November 21, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff Schedules of the

United States Annoted (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is calcined bauxite proppants from Australia currently provided for under TSUSA item number 521.1720 and currently classifiable under HS item number 2606.00.00.60. The subject merchandise is used in oil and gas wells to cause hydraulic fracturing to promote product extraction.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 29, 1988, whether there is a reasonable indication that imports of CBP from Australia materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

July 5, 1988.

[FR Doc. 88-15582 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Kenneth S. Norris and Dr. William T. Doyle

On June 2, 1988, notice was published in the **Federal Register** (53 FR 20156) that an application had been filed by Dr. Kenneth S. Norris, and Dr. William T. Doyle, Long Marine Laboratory, University of California, Santa Cruz, California 95060 for a permit to take two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) for cognitive research at the Long Marine Laboratory.

Notice is hereby given that on July 6, 1988, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC 20009;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: July 6, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88–15515 Filed 7–11–88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Civilian Validation of ASVAB–14; Supplemental Information Form, Behaviorally-Anchored Rating Scales (BARS), Importance of Occupational Dimensions; and No OMB Control Number.

Type of Request: New.

Annual Burden Hours: 1,634.

Annual Responses: 6,535.

Needs and Uses: Three types of instruments will be used to determine the validity of ASVAB 14 for predicting performance in 12 civilian occupations. The Supplemental Information Form will ask employees who take the ASVAB certain background information about themselves. The Behaviorally-anchored Rating Scales will ask supervisors their employees' performance, and the third instrument, Importance of Occupational Dimensions, will ask supervisors to indicate importance of the occupational dimensions covered in the scales.

Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; and Non-profit institutions.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposed may be obtained from, Ms. Rascoe-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.

July 7, 1988.

[FR Doc. 88–15553 Filed 7–11–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Applications Submitted Under Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice for Individuals Interested in Reviewing Applications Submitted Under Direct Grant Programs Administered by the Office of Bilingual Education and Minority Languages Affairs.

SUMMARY: The Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), Department of Education (ED), invites interested individuals to apply to serve as Field Readers for programs administered by OBEMLA. OBEMLA administers programs authorized by the Bilingual Education Act 20, U.S.C. 3221–3262 as amended by Pub. L. 100–297 (April 28, 1988) and 34 CFR Parts 500, 501, 524, 525, 526, 561, 573, and 574.

Each year the Secretary selects Field Readers to evaluate grant applications based upon criteria published in program regulations and, where applicable, additional criteria published in the application notices in the **Federal Register.**

Expertise is desirable in areas including evaluation, curriculum and materials development, personnel and parent training, education administration, research, Bilingual Education, English as a second language, teaching English to speakers of other languages (TESOL), second language acquisition, adult education, special education, and vocational education. This list is not intended to be all inclusive and individuals with expertise in related fields are encouraged to apply. Individuals selected as reviewers will be compensated for their services as needed. Individuals interested in serving as Field Readers for the fiscal year 1989–1990 funding cycle should mail or hand-deliver their resumes to OBEMLA no later than August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Rudy Munis, Director, Division of State and Local Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Rm. 5086, Switzer Bldg.), Washington, DC 20202–2518. Telephone: (202) 732–5700.

Dated: July 7, 1988

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

Catalog of Federal Domestic Assistance Program No. 84.003, Bilingual Education:

Part A—

I. Transitional Bilingual Education
II. Developmental Bilingual Education
III. Special Alternative Instructional Program
IV. Academic Excellence
V. Family English Literacy
VI. Special Populations Program

Part C—

I. Training Programs
II. Training Development and Improvement Program
III. Short-Term Training Program

[FR Doc. 88–15605 Filed 7–11–88; 8:45 am]

BILLING CODE 4000–01–M

Pell Grant et. al.; Revision of the Need Analysis Systems for the 1989–90 Academic Year

AGENCY: Department of Education.

ACTION: Notice of revision to the Congressional Methodology and the Family Contribution Schedule Methodology for the 1989–90 award year; correction.

On May 31, 1988, the Secretary of Education published in the **Federal Register** (53 FR 19876–78) a notice of revision to the Congressional Methodology and the Family Contribution Schedule Methodology for the 1989–90 award year. This document corrects two typographical errors that were made in that notice. The corrections are as follows:

1. In the heading, "1988–89" is corrected to read "1989–90."

2. In the summary, "1988–89" is corrected to read "1989–90."

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Leibovitz, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, ROB–3), Washington, DC 20202. Telephone (202) 732–4888.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program)

Dated: July 6, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–15578 Filed 7–11–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Award Grant to Electric Power Research Institute (EPRI)

AGENCY: Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it plans a noncompetitive award under Grant number DE–FG01–88FE61544 to Electric Power Research Institute (EPRI) for co-funding the conduct of a seminar on fuel cells.

Scope: The grant will co-fund a 4-day seminar on fuel cell technologies which will highlight U.S. and international research and development activities in this field. The goals of the seminar are to identify new, viable applications for fuel cells, discuss opportunities or barriers to commercialization of fuel cells and review advancements in fuel cell technologies.

Eligibility for award of this grant is being limited to Electric Power Research Institute (EPRI). Since 1977, EPRI has been a member of the National Fuel Cell Coordinating Group which sponsors the fuel cell seminars. These seminars, occurring every 18 months, are the only U.S. seminars or conferences held to review all aspects of U.S. and international fuel cell activities. The aim of the conference is to disseminate research information and stimulate further research activity. Only EPRI has the experience necessary to coordinate the activities of the seminar and bring together the key electric power generation personnel from throughout the world as it has done this several times before, in prior fuel cell seminars. Because of the importance of this seminar, which is only held every year and a half and is the only one of its kind, it is necessary that an experienced organization manage coordination of the event.

The seminar would be conducted by the applicant (EPRI) and an EPRI contractor using EPRI resources as well as those provided by the Gas Research Institute. DOE support of the seminar will enhance the public benefits by increasing the cooperative information exchange among the fuel cell development programs being funded by DOE, EPRI and GRI. The participation by DOE will also greatly increase the participation and information obtained from other government programs, particularly in Europe and Japan.

The term of this grant shall be from approximately August 1, 1988, through October 26, 1988. The project cost is estimated at $14,215.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Gretchen Hukill, MA–452.1, 1000 Independence Avenue SW., Washington, DC 20585, Telephone No. (202) 586–6753..

Edward Lovett,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 88–15596 Filed 7–11–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88-23-NG]

Mobil Gas Co. Inc., Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Mobil Gas Company Inc. (MOGASCO) blanket authorization to export natural gas. The order issued in ERA Docket No. 88-23-NG authorizes MOGASCO to export up to 100 Bcf of natural gas to Canada over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, July 6, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-15595 Filed 7-11-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10016-001]

Perkinsville Hydro Associates; Surrender of Preliminary Permit

July 7, 1988.

Take notice that the Perkinsville Hydro Associates, permittee for the Perkinsville Project No. 10016, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 10016 was issued on October 7, 1986, and would have expired on September 30, 1989. The project would have been located on the Black River, in Windsor County, Vermont.

The permittee filed the request on June 7, 1988, and the preliminary permit for Project No. 10016 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-15509 Filed 7-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-473-000]

Southland Royalty Co.; Petition for Declaratory Order or in the Alternative Application for Blanket Certificate Authority with Pregranted Abandonment and Abandonment Authorization

July 6, 1988.

Take notice that on May 23, 1988, Southland Royalty Company (Southland) filed with the Commission a petition for declaratory order and application for blanket certification authority with pregranted abandonment and abandonment authorization if necessary, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA). Southland states that it and its predecessors have made sales to Sunterra Gas Gathering Company (Sunterra) and its predecessors-in-interest in and around San Juan County, New Mexico. Southland states that the sales were initially for intrastate use but that ultimately Sunterra sold some of the gas in interstate commerce to El Paso Natural Gas Company (El Paso). Southland asserts that Southland's and Sunterra's interstate service obligation was measured by the amount of gas El Paso was ready, willing, and able to purchase from Sunterra in excess of the level of Sunterra's intrastate sales which would allow Sunterra to meet purchase requirements under New Mexico's ratable take regulations.

Southland states that since El Paso has not taken any gas from Sunterra since 1985 and since Southland's dedication obligation was measured by that amount which El Paso was willing to purchase to maintain Sunterra's ratable takes, Southland does not require abandonment authorization. Southland requests that the Commission issue a declaratory order to clarify the scope and effect of any abandonment authorization that may be granted to Sunterra in Docket Nos. GP84-55-000, CI88-119-000, and CI88-140-000.[1]

Southland also seeks an order declaring that Southland's sales of gas to Sunterra in excess of El Paso's needs and in excess of the ratable take yardstick of dedication were not dedicated to interstate commerce and that the termination of purchases by El Paso from Sunterra resulted in the termination of Southland's interstate sales obligation to Sunterra. Southland submits that absent such clarification, the Commission should specify that abandonment authorization of Sunterra's downstream sales to El Paso in Docket No. CI88-119 effectively confers abandonment authorization upon the upstream sales by Southland to Sunterra.

In the alternative, if the Commission determines that the gas is dedicated and that abandonment authorization is necessary, Southland requests authority to (i) abandon sales for resale of the subject NGA gas and (ii) make sales for resale in interstate commerce, without supply or market limitations, of the subject NGA gas with pregranted abandonment. Southland also requests cancellation of Rate Schedule Nos. 47 and 48, and waiver of the regulations contained in 18 CFR 154 and 271 concerning the maintenance of rate schedules and filing obligations. In addition, Southland seeks a waiver of any applicable orders, rules, regulations, or reporting requirements, to the extent inconsistent with the authority requested. If the Commission fails to grant either the petition for declaratory order or abandonment authorization, Southland requests a hearing.

Any person desiring to be heard or to protest this petition and/or application should file a motion to intervene or protest in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All motions to intervene or protest should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register.** All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15510 Filed 7-11-88; 8:45am]

BILLING CODE 6717-01-M

[1] Southland also filed a motion to intervene in those proceedings. An order dismissing the petition and applications in those proceedings in view of the automatic abandonment provisions of Order No. 490 was issued by the Commission on June 2, 1988. 43 FERC ¶ 61,434.

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for the disbursement of $60,000 (plus accrued interest) obtained as a result of a Consent Order that the DOE entered into with Evett Oil Company (Case No. KEF–0020), a reseller-retailer of petroleum products located in Comanche, Texas. The fund will be available to firms that purchased Evett product during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed in duplicate no later than February 1, 1989 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF–0020.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a July 1, 1985 consent order between the DOE and Evett Oil Company (Evett). That consent order settled certain disputes between the firm and the DOE concerning Evett's possible violations of DOE regulations in its sales of refined petroleum products. The consent order covers the period March 1, 1979 through March 31, 1980 (the consent order period).

The Decision sets forth the procedures and standards that the DOE has formulated to distribute the contents of an escrow account in the amount of $60,000 funded by Evett pursuant to the consent order. Under the procedures adopted, purchasers of Evett refined products during the consent order period may file claims for refunds from the escrow fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the Evett consent order fund. In order to receive a refund, a claimant must furnish the DOE with evidence that it was injured by the alleged overcharges. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms that file refund claims in amounts of $5,000 or less. The specific requirements for proving injury are set forth in the Decision and Order.

Applications for Refund must be postmarked no later than February 1, 1989. Refund applicants must file two copies of their submission. All applications will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: July 6, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: Evett Oil Company
Date of Filing: March 25, 1986
Case Number: KEF–0020

On March 25, 1986, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA) requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Evett Oil Company (Evett). 10 CFR Part 205, Subpart V. This Decision and Order sets forth the procedures that the OHA has formulated to govern the distribution of the Evett settlement fund.

1. Background

Evett was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firm's pricing practices during the period March 1, 1979 through March 31, 1980 (the consent order period), the ERA alleged in a Proposed Remedial Order (PRO) that Evett committed pricing violations with respect to its sales of motor gasoline.[1] In order to settle all claims and disputes between Evett and the DOE, the two parties entered into a consent order that became final on July 1, 1985. The Consent Order covers Evett's sales of refined petroleum products during the consent order period.

This Decision and Order concerns the distribution of $60,000, plus accrued interest, that Evett remitted to the DOE pursuant to the Consent Order. The consent order monies were paid in full on July 16, 1985. On April 20, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Evett settlement fund. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 53 FR 15127 (April 27, 1988). We received no comments concerning the proposed procedures for the distribution of the Evett settlement fund. Consequently, they will be adopted as proposed.

II. Refund Procedures

As we indicated in the PD&O, firms and individuals that purchased Evett refined products during the consent order period may file claims in this proceeding. From our experience with Subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, i.e., consumers that used Evett refined products; (2) regulated non-petroleum industry entities that used Evett products in their businesses, or cooperatives that purchased product; and (3) resellers, retailers or refiners that resold Evett products.

As in many prior special refund cases, we are adopting certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable to OHA to consider refund applications in the most efficient manner possible. *See* 10 CFR 205.282(e), Subpart V; American Pacific International, 14 DOE ¶85,158 at 88,293 (1986) (*API*). First, we are adopting a presumption that the alleged overcharges were dispersed equally among all sales of refined petroleum products made by Evett during the consent order period and that refunds should therefore be made on a volumetric basis. In the absence of better information, a volumetric refund presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[2]

[1] The ERA issued a PRO to Evett on September 20, 1982. *See Evett Oil Company*, No. HRO–0098 (dismissed on November 26, 1985).

[2] Nevertheless, we recognize that the impact of Evett's pricing practices on an individual purchaser may have been greater than the apportioned amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharge that it incurred in order to be eligible for a larger refund. See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶85,015 (1984).

Under the volumetric refund approach, a claimant will be eligible to receive a refund equal to the number of gallons it purchased times the per gallon refund amount, plus accrued interest. Allocating the alleged violations on a volumetric basis results in a maximum refund amount of $.0133 per gallon (hereinafter referred to as the volumetric refund amount).[3]

We are also adopting a number of injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by Evett's alleged overcharges. We will discuss these presumptions and the showing that each type of applicant must make in Section II(A) below.

(A) Specific Application Requirements for Each Category of Refund Applicants

(1) Refund Applications of End-Users

End-users, i.e., ultimate consumers of Evett refined products, will be presumed to have been injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See, e.g., Dorchester Gas Corp., 14 DOE ¶85,240 at 88,450 (1986). Consequently, end-user applicants need only document their purchase volumes of Evett products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications of Cooperatives and Regulated Firms

Firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement will not be required to submit detailed proof of injury. Although such firms, e.g., public utilities and agricultural cooperatives, generally would pass through any overcharges to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a detailed explanation of how they plan to accomplish this restitution to their customers, and to explain how they will notify the appropriate regulatory body or membership group of the receipt of refund money. See Office of Special Counsel, 9 DOE ¶82,538 at 85,203 (1982). We note, however, that a cooperative's sales of Evett products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners

We are adopting a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Evett's pricing practices. See, e.g., Urban Oil Co., 9 DOE ¶82,541 at 85,244–25 (1982). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Evett products it purchased during the consent order period. See Texas Oil & Gas Corp., 12 DOE ¶ 85,069 at 88,210 (1984).

A reseller, retailer or refiner whose claim exceeds $5,000 will be required to document its injury. Such a claimant is generally required to provide a monthly schedule of its "banks" of unrecouped increased product costs for each product that it purchased from Evett during the consent order period.[4] In addition, the claimant must show that market conditions forced it to absorb the alleged overcharges. Such a showing might be made through a demonstration of lowered profit margins, decreased market share or depressed sales volume during the period of purchases from Evett. *API*, 14 DOE at 88,295. If a claimant elects not to submit a detailed demonstration of injury, it may still apply for a small claims refund of $5,000, plus accrued interest.

(4) Refund Applications of Spot Purchasers

If a claimant made only sporadic purchases of significant volumes of Evett product, we will consider that claimant to be a spot purchaser. We are adopting a rebuttable presumption that claimants who made only spot purchases from Evett were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases. Therefore, they generally would not have made spot purchases from Evett unless they were able to pass through the full amount of any price increases to their own customers. See Office of Enforcement, 8 DOE ¶ 82,597 at 85,396–97 (1981). Therefore, a firm that made only spot purchases from Evett will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured.

(5) Refund Applications of Consignees

Finally, as in previous cases, we are adopting a rebuttable presumption that consignees of Evett refined products were not injured by Evett's alleged pricing violations. See, e.g., Jay Oil Co., 16 DOE ¶ 85,147 at 88,286 (1987). A consignee agent is an entity that distributed products pursuant to an agreement with its supplier, under which the supplier retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). A consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's pricing] practices. See Gulf Oil Corp./C.F. Cantor Oil Co., 13 DOE ¶ 85,388 at 88,962 (1986).

(B) General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased refined petroleum products sold by Evett during the consent order period. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the consent order firm, Evett Oil Company, the case number, KEF–0020 and the applicant's name should be prominently displayed on the first page.

(2) The name, title, address and telephone number of a person who may

[3] To compute this figure, we estimated that Evett's sales of refined products during the consent order period totalled approximately 4,500,000 gallons. This figure was obtained from sales data supplied by Evett and verified by Mr. Clarence Evett, president and owner of Evett Oil Company. See memorandum of March 21, 1988 telephone conversation between Mr. Clarence Evett of Evett Oil Company and Marisa T. Arico, OHA Staff Analyst. Dividing this total volume into the $60,000 received from Evett yields a volumetric refund amount of $.0133, exclusive of interest. Each successful applicant will also receive a pro rata share of interest, which will increase over time and will be computed for each refund at the time of payment.

[4] A "bank" must be equal to the amount of the refund claimed beginning with the first month of the period for which a refund is claimed through the date on which either that product was decontrolled or the banking regulations expired.

be contacted for additional information concerning the Application.

(3) The manner in which the applicant used the Evett product, i.e. whether it was a reseller, retailer, refiner, end-user or consignee.

(4) The volume of Evett refined products that the applicant purchased during each month of the consent order period (March 1, 1979 through March 31, 1980) in which it claims that it was injured by the alleged overcharges. If the applicant is an end-user or a reseller, retailer or refiner claiming $5,000 or less, it may instead submit a certification that it purchased Evett products on a regular basis during the consent order period.

(5) If the applicant is a reseller, retailer or refiner claiming a refund in excess of $5,000, it should also:

(a) State whether it maintained banks of unrecouped increased product costs and furnish the OHA with monthly bank calculations, and

(b) Submit evidence to establish that it did not pass through the alleged overcharges to its customers. For example, a firm may compare the prices it paid for Evett products with average prices in the firm's market area for each month in which it seeks a refund. (In the absence of an accurate market survey provided by the applicant, the OHA will use the market price information contained in Platt's Oil Price Handbook and Oilmanac).

(6) A statement of whether the applicant was in any way affiliated with Evett. If so, the applicant should explain the nature of the affiliation.

(7) A statement of whether there has been any change in ownership of the entity that purchased the Evett product. If so, the name and address of the current (or former) owner should be provided.

(8) A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. See 10 CFR 205.9(d).

(9) The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All applications for Refund must be filed in duplicate and must be filed no later than February 1, 1989. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is priveleged or confidential. All Applications should be sent to:

Evett Oil Company Refund Proceeding, Case No. KEF-0020, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(C) Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been paid, those funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session., Cong. Rec. H11319-21, (Daily E. October 17, 1986).

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Evett Oil Company pursuant to the Consent Order finalized on July 1, 1985, may now be filed.

(2) All Applications must be filed no later than February 1, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: July 6, 1988.

[FR Doc. 88-15597 Filed 7-11-88; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Sam Rayburn Dam Power Rate; Order Confirming, Approving and Placing Increased Sam Rayburn Dam Power Rate in Effect on an Interim Basis

AGENCY: Department of Energy, Southwestern Power Administration.

ACTION: Notice of power rate order.

SUMMARY: The Under Secertary of Energy, acting under Delegation Order No. 0204-108, as amended May 30, 1986 (51 FR 19744), has confirmed, approved and placed in effect on an interim basis, an increased annual power rate of $1,810,368 for the sale of power and energy by the Southwestern Power Administration from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc. The rate supersedes the annual rate of $1,715,040 that was placed in effect by the Under Secretary of Energy on October 1, 1986, and approved on a final basis by the Federal Energy Regulatory Commission (FERC) March 13, 1987, and will produce additional annual revenue of $95,328, or 5.6 percent beginning July 1, 1988, to recover increased annual operating costs of the project.

EFFECTIVE DATES: Rate Order No. SWPA-20 specifies July 1, 1988, through September 30, 1991, as the effective period for the annual rate of $1,810,368 for the sale of power and energy from Sam Rayburn Dam.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

SUPPLEMENTARY INFORMATION: The SWPA Administrator has prepared the 1986 Sam Rayburn Dam Current Power Repayment Study based on the annual power rate of $1,715,040, that has been in effect since October 1, 1986. The study indicates that the power rate is no longer adequate to satisfy cost recovery criteria for the sale of power and energy from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. 14-02-0001-1124. The administrator prepared a 1987 Revised Sam Rayburn Dam Power Repayment Study which indicates that additional annual revenue of $95,328, or 5.6 percent, is required and will begin July 1, 1988, to satisfy the provisions of section 5 of the Flood Control Act of 1944 and Department of Energy Order No. RA 6120.2. In this regard, the Administrator has determined that the annual rate of $1,810,368 is the lowest possible rate to the customer consistent with sound business principles. The rate has been approved on an interim basis through September 30, 1991, or until confirmed and approved on a final basis by the FERC.

Issued in Washington, DC, this 24th day of June, 1988.

Joseph. F. Salgado,

Under Secretary.

[Rate Order No. SWPA-20]

In the matter of Southwestern Power Administration—Sam Rayburn Dam Rate; Order Confirming, Approving and Placing Increased Power Rate in Effect on an Interim Basis.

June 24, 1988.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the

functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested and the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secreatary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place into effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204–33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664 (December 14, 1983) the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This rate order is issued pursuant to the delegation to the Under Seretary of Energy.

Background

The existing annual Sam Rayburn Dam power rate of $1,715,040 has been in effect since confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) for the period October 1, 1986, through September 30, 1990. The 1987 Sam Rayburn Dam Current Power Repayment Study indicates that the rate is no longer adequate to satisfy cost recovery criteria for the isolated project. The 1987 Sam Rayburn Dam Revised Power Repayment Study indicates that an annual rate of $1,810,368 will be required to repay the project's investment and annual costs in accordance with Department of Energy Order No. RA 6120.2 and section 5 of the Flood Control Act of 1944. The proposed increase in revenue amounts to $95,328, or 5.6 percent annually and will begin July 1, 1988, in accordance with Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR 903), "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" (50 FR 37837). SWPA published notice in the **Federal Register** November 18, 1987, (52 FR 44217) announcing a 90-day period for public review and comment concerning the proposed rate adjustment as required by 10 CFR 903. By letter dated November 17, 1987, SWPA mailed a preliminary copy of the **Federal Register** notice and supporting data for the 1987 Power Repayment Studies to the customer for information and review. A public information forum was held on December 15, 1987, followed by a public comment forum on January 12, 1988. Oral comments were received on behalf of the Sam Rayburn Dam Electric Cooperative and were supported by written comments received by letter dated February 8, 1988. Based on the date of publication, written comments from the customer and interested parties were accepted through February 16, 1988, and are contained along with SWPA's responses in the Comments and Responses Section of this Rate Order.

Discussion

The 1987 Current Power Repayment Study tests the adequacy of the existing rate based on the latest cost evaluation period extending from FY 1988 through FY 1991. The 1987 Repayment Study that was made available for public comment was based on a cost evaluation period extending from FY 1987 through FY 1991. Since that time, actual data for FY 1987 has been incorporated in the 1987 Repayment Study, which has had some effect on future estimates. With actual data for FY 1987, the cost evaluation period now extends from FY 1988 through FY 1991. This study is an update of the 1986 Power Repayment Study which was based on a cost evaluation period of FY 1986 through FY 1990. The most significant difference in the two studies results from extending the cost evaluation period the additional year and updating costs to current levels. The Schedule of Significant Changes and Comparison of Previous Forecast with Actual Results and Present Forecast of the 1987 Power Repayment Study compares the 1986 and 1987 Studies.

SWPA continues to make significant progress toward repayment of the Federal investment in the Sam Rayburn Dam. Through FY 1987, repayment status for the Sam Rayburn Dam Project is $5,540,871, which represents approximately 23 percent of the $23,822,361 Federal investment in the project. The status of repayment has increased almost 18 percent above the $4,537,000 noted by the FERC in their Order issued March 13, 1987.

The FERC also previously indicated an interest in SWPA's progress toward repayment as compared to various amortization methods which assume scheduled payments without ever falling behind. SWPA has prepared an analysis which indicates that under such a scheduled compound interest amortization method SWPA would have repaid approximately 23 percent of the Federal investment through FY 1987. The 1987 Power Repayment Study shows that Sam Rayburn Dam repayment status will reach the level of the scheduled compound interest amortization method by the end of FY 1988. As an additional matter of interest, SWPA's financial records indicate that through FY 1987, amortization for the project exceeds accumulated depreciation of $2,215,434 (based on compound interest depreciation and an average service life exceeding 80 years) by $3,325,437.

Comments & Responses

The Southwestern Power Administration received one written reply concerning the notice published in the **Federal Register**, November 18, 1987, announcing the proposed Sam Rayburn Dam power rate increase.

Comment:

By letter dated February 8, 1988, Sam Rayburn Dam Electric Cooperative, Inc., (SRDEC) expressed no opposition or objection to the implementation of the proposed annual rate of $1,810,368 for the sale of power and energy from Sam Rayburn Dam. SRDEC expressed their concern that the Corps O&M expenses comprise a major portion of the rate increase and there is little supporting detail on how the Corps of Engineers arrive at their estimate.

Response:

The Southwestern Power Administration continues to work closely with the Corps of Engineers in preparing estimates of O&M expenses. The O&M estimates prepared by the Corps of Engineers appear to have been relatively consistent with actual expenses incurred.

The Sam Rayburn Dam Electric Cooperative has proposed that a working group, comprised of the Corps of Engineers, Sam Rayburn Dam Electric Cooperative and Southwestern Power Administration, meet to discuss issues of mutual interest related to the Sam Rayburn Dam. SWPA fully supports this proposal and will be scheduling a meeting in the near future.

Availability of Information

Information regarding this rate proposal including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, 333 West 4th, Tulsa, Oklahoma 74103.

Administrator's Certification

The 1987 Revised Sam Rayburn Dam Power Repayment Study indicates that the increased annual Sam Rayburn Dam power rate of $1,810,368 will repay all costs of the project including amortization of the power investment consistent with provisions of Department of Energy Order No. RA 6120.2. In accordance with section 1 of Delegation Order No. 0204–108, as amended May 30, 1986 (51 FR 19744), the Administrator has determined that the proposed Sam Rayburn Dam power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles in accordance with section 5 of the Flood Control Act of 1944.

Environment

The environmental impact of the proposed Sam Rayburn Dam power rate has been analyzed in consideration of the Department of Energy "Environmental Compliance Guide". The amount of the proposed increase does not warrant an Environmental Assessment or an Environmental Impact Statement in accordance with these regulations.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective July 1, 1988, the proposed annual rate of $1,810,368 for the sale of power and energy from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. 14–02–0001–1124, as amended November 1, 1980. The rate shall remain in effect on an interim basis through September 30, 1991, or until the FERC confirms and approves the rate on a final basis.

Issued at Washington, DC, this 24th day of June 1988.

Joseph F. Salgado,

Under Secretary.

[FR Doc. 88–15594 Filed 7–11–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59261A; FRL–3413–1]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–88–13. The test marketing conditions are described below.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202–328–7800).

SUPPLEMENTARY INFORMATION: Section 5 (h)(1) TSCA authorizes EPA to exempt persons from premanufacture notification (PMM) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury

EPA hereby approves TME–88–13. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–88–13. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T–88–13

Sate of Receipt: May 11, 1988.

Notice of Receipt: June 13, 1988 (53 FR 22044).

Applicant: Confidential.

Chemical: (G) Organic dye.

Use: (G) Electrostatic imaging toner additive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Thirty days, commencing on first day of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 23, 1988.

Wendy Cleland-Hamnett,

Deputy Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 88–15567 Filed 7–11–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59260A; FRL–3413–2]

Certain Chemicals; Approval of a test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–88–12. The test marketing conditions are described below.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–613, 401 M St. SW., Washington, DC 20460, (202–382–7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–88–12. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–88–12.

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. The applicant must ensure that all persons who may be dermally exposed to the TME substance during manufacturing and processing are provided with and required to wear gloves determined by the applicant to be impervious to the TME substance under the conditions of exposure, including duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential dermal and mechanical degradation by the TME substance and associated chemical substances.

3. The Applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

A. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

D. Any determination by the applicant that gloves used by persons who may be dermally exposed to the TME substance are impervious to the TME substance.

T–88–12

Date of Receipt: May 2, 1988.

Notice of Receipt: May 23, 1988 (53 FR 18341).

Applicant: Confidential.

Chemical: (G) Acidified epoxy resin.

Use: (G) Coatings.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year, commencing on first day of manufacture.

Risk Assessment: EPA identified concerns for mutagenicity on oncogenicity based on analogous chemical substances. However, because persons who may be dermally exposed to the TME substance will be required to wear impervious gloves and no exposures via routes other than the dermal route are expected, EPA does not believe the substance will present an unreasonable risk to human health. EPA also identified ecotoxicity concerns based on acute aquatic test data. However, EPA does not believe the TME substance will present a significant risk to the environment because it will not be released to water during manufacturing, processing, or use.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 15, 1988.

Wendy Cleland-Hamnett,

Deputy Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 88–15568 Filed 7–11–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Withdrawal of Statement of Policy Regarding Loans to Corporation Examiners by National Banks, District Banks and State Member Banks of Federal Reserve System

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Withdrawal of policy statement.

SUMMARY: The Federal Deposit Insurance Corporation (the "FDIC") is withdrawing its July 31, 1973 statement of policy (published at 38 FR 21210, Aug. 6, 1973) which provides that no loan to an FDIC examiner should be made by a national bank, district bank, or state member bank which is affiliated in a holding company system or otherwise with an insured state nonmember bank (i.e., the only category of insured banks which the FDIC routinely examines and supervises), and no such loan should be accepted by an FDIC examiner. Concurrent with the withdrawal of this policy statement, the Board of Directors of the FDIC approved a proposed revision of Part 336 of the FDIC's regulations, entitled "Employee Responsibilities and Conduct," published elsewhere in this issue of the **Federal Register**, which, in pertinent part, would prohibit an FDIC examiner from becoming obligated on an extension of credit, including credit extended through the use of a credit card, only from an insured state nonmember bank but would disqualify an examiner from participating in any examination, audit, visitation, or investigation of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to the examiner.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, (202) 898–7272.

By order of the Board of Directors.

Dated at Washington, D.C., this sixth day of July, 1988.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-15592 Filed 7-11-88; 8:45 am]
BILLING CODE 6714-01-M

Privacy Act of 1974; Amendment to Existing System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed changes to system of records: "Employee Financial Disclosure Statements."

SUMMARY: The FDIC is issuing for public comment a revision of its system of records for Employee Financial Disclosure Statements. This change is being proposed to (1) reflect the addition of the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation to the system; (2) reflect the addition of the Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification; (3) delete Financial Disclosure Reports submitted pursuant to title II of the Ethics in Government Act of 1978 from the FDIC system because they are already included in Office of Personnel Management government-wide system OPM/Govt-4; (4) reflect a change in system location from one location in Washington, D.C., to designated divisional, regional, and consolidated offices of the FDIC; and (5) generally clarify and update the system.

DATES: Comments must be submitted by September 12, 1988.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or hand-delivered to Room 6108 at the same address, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, 550 17th Street, NW., Washington, DC 20429, (202) 898-7272, or Donald L. Rosholt, Deputy Ethics Counselor, 550 17th Street, NW., Washington, DC 20429, (202) 898-7271.

SUPPLEMENTARY INFORMATION: The FDIC is publishing elsewhere in this issue of the **Federal Register**, concurrent with this proposed revision to its Privacy Act system of records entitled "Employee Financial Disclosure Statements," a proposed revision to Part 336 of its regulations (12 CFR Part 336) entitled "Employee Responsibilities and Conduct." That proposed revision to Part 336 would, among other things, eliminate one semiannual filing of the Confidential Report of Indebtedness required to be filed by certain FDIC employees and decentralize the collection and retention of the records in the system to designated divisional, regional, and consolidated offices of the FDIC. The latter change necessitates a companion change in the system of records. Another change is being brought about by the existence of an Office of Personnel Management government-wide system, found at 49 FR 36949, 36962 (Sept. 20, 1984), which covers Financial Disclosure Reports (Standard Form 278). Those reports are currently listed as a covered record category in the existing FDIC system. The FDIC therefore intends to delete this category from its system and follow the government-wide system with respect to such reports. The system will be amended to include within the categories of covered records the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation, that is designed to identify compliance with Part 336, which requires that all employees receive a copy of the standards of conduct within 30 days of commencement of employment. It will also be amended to include within the categories of covered records the Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification, that is designed for the purpose of providing a system for examiners and other covered employees of the Division of Bank Supervision to report compliance with credit card restrictions and self-disqualification from the examination and supervision processes.

Finally, the proposed changes reflect a general clarification and update of the language in the system. Accordingly, the Board of Directors of the FDIC proposes to revise the Employee Financial Disclosure Statements system to read as follows:

FDIC 30-64-0006

SYSTEM NAME:

Employee Financial Disclosure Statements System.

SYSTEM LOCATION:

Confidential Statements of Employment and Financial Interests, Reports of Interest in Bank Securities and Interest in FDIC Decision, Confidential Reports of Employment Upon Resignation, Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation, Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification, and related records are located in designated divisional, regional, or consolidated offices to which individuals covered by the system are assigned. Duplicate copies of the above records are maintained in the Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, for the purpose of certification of review and resolution of conflicts of interest disclosed therein. Confidential Reports of Indebtedness and related records are located in the Office of the Executive Secretary. A list of the FDIC's divisional and regional offices is available from the Office of Corporate Communications, FDIC, 550 17th Street, NW., Washington, DC 20429, (202) 898-6996. A list of the FDIC's consolidated offices is available from the Operations Branch, Division of Liquidation, FDIC, 550 17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FDIC officers, employees, and special government employees required to file any of the following forms: (1) Confidential Statement of Employment and Financial Interests; (2) Confidential Report of Indebtedness; (3) Report of Interest in Bank Securities and Interest in FDIC Decision; (4) Confidential Report of Employment Upon Resignation; (5) Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation; (6) Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes data directly furnished by the individual on the following six forms or related records that may be generated in the course of the FDIC's administration of Executive Orders 11222 and 12565 and/or 12 CFR Part 336:

(1) Confidential Statement of Employment and Financial Interests—Contains statements of personnal and family holdings, interests in business enterprises and real property, creditors, and outside employment.

(2) Confidential Report of Indebtedness—Contains information on extensions of credit (loans and credit cards) by FDIC-insured banks and affiliates of FDIC-insured banks and non-insured banks; may also contain memoranda and correspondence

relating to requests for approval of certain loans extended by insured banks or affiliates thereof.

(3) Report of Interest in Bank Securities and Interests in FDIC Decision—Contains information on whether or not an employee owns or controls, directly or indirectly, any securities of insured banks or affiliates thereof, and if so, lists specific securities, the nature and extent of such interests and the manner of acquisition, contains information on other outside interests which may have an impact on an employee's official duties, and may contain memoranda and correspondence relating to requests for approval of retention of bank securities by employees.

(4) Confidential Report of Employment Upon Resignation—Contains information as to the employee's prospective employer, the nature of the business or organization activities of the prospective employer, the position the employee will occupy, dates of negotiation for such employment, and the employee's official involvement, if any, with the prospective employer.

(5) Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation—Contains employee's certification and acknowledgment that he or she has received a copy of the standards of conduct, has viewed the FDIC Orientation Ethics Video, and has a positive responsibility to comply with the standards of conduct.

(6) Standards of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification—Contains a Division of Bank Supervision employee's disclosure of credit extended through the use of a credit card by a bank headquartered outside of the employee's region of assignment and acknowledgement of disqualification from participating in any manner affecting the creditor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of E.O. 11222, 3 CFR Part 306 (1964–1965), as amended by E.O. 12565, 3 CFR Part 229 (1987); section 9 of the Federal Deposit Insurance and Act (12 U.S.C. 1819).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed, where the Director of the U.S. Office of Government Ethics or the Chairman of the FDIC's Board of Directors determines that good cause has been shown for such use:

(1) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order when the information indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by regulation, rule, or order issued pursuant thereto.

(2) To a congressional office in response to an inquiry made at the request of the individual.

(3) To any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

(4) To a court, magistrate, or administrative tribunal in the course or presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, or in connection with the criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name and, in the Office of the Executive Secretary, on an automated system also indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets in lockable offices and, in the Office of Executive Secretary, on a password-protected automated index system.

RETENTION AND DISPOSAL:

Retained for six years and then destroyed by shredding except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Ethics Counselor, Federal Deposit Insurance Corporation, 550–17th Street NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550–17th Street N.W., Washington, DC 20429. The request must contain the name and office of the individual covered by the system.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained or a person designated by him or her and from the FDIC's Ethics Counselor and support personnel. Information may also be obtained from other parties to whom the FDIC has supplied information in connection with evaluating the records maintained in the Employee Financial Disclosure Statements system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT: None.

By order of the Board of Directors.

Dated at Washington, DC this sixth day of July, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–15593 Filed 7–11–88; 8:45 am]

BILLING CODE 6714-01-M

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed new system of records: "Fitness Center Records System."

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Deposit Insurance Corporation (FDIC) gives notice of the establishment of a new system of records entitled "Fitness Center Records System."

DATE: Comments on the establishment of the system must be submitted by August 11, 1988. The system will become effective on September 26, 1988, unless a superseding notice to the contrary is published before that date.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, or hand-delivered to the same address between 9:00 a.m. and 5:00 p.m., Monday through Friday. Comments are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Deputy Executive Secretary, tel: (202) 898–3811, or Nancy Beth Spence, Attorney, tel: (202) 898–3504, FDIC, 550 17 Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is establishing a new system of records, the Fitness Center Records System, as part of its opening of an

employee Fitness Center. The system consists of the following documents for each employee Fitness Center member: a medical history questionaire, a fitness evaluation form and subsequent reevaluation forms, an index card showing the dates of fitness evaluations, a prescribed program of exercise, a copy of the payroll deduction form authorizing payment of Fitness Center membership fees, and, where applicable, an exit questionaire, completed upon termination of membership and a form to stop payroll deduction. The purpose of the system is to assure the safety and appropriateness of any program of exercise undertaken by the member and to measure the success of the program.

Information in the system will be furnished primarily by the Fitness Center member and includes the member's name, gender, age and history of certain medical conditions; the name of his or her physician and of any prescription or over-the-counter medicines taken on a regular basis; the name and address of a person to be notified in case of emergency. Also included is information on the member's degree of physical fitness and his or her fitness activities and goals. Information in the system will be available to the individual member.

Accordingly, the Board of Directors proposes the establishment of the following system of records:

FDIC 30-64-0021

SYSTEM NAME:

Fitness Center Records System.

SYSTEM LOCATION:

Fitness Center, Division of Accounting and Corporate Services, FDIC, 550 17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FDIC employees who apply for membership in the Fitness Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Principally contains the individual's name, gender, age, history of certain medical conditions; the name of the individual's personal physician and of any prescription or over-the-counter drugs taken on a regular basis; the name and address of a person to be notified in case of emergency. Also contains information on the individual's degree of physical fitness and his or her fitness activities and goals. Also contains forms, memoranda, or correspondence, as appropriate, related to the employee's membership in Fitness Center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1819.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed:

(1) To the FDIC's staff nurse for inclusion in Health Unit files.

(2) To a physician retained by the FDIC in order to determine whether a physical examination is necessary before a program of exericise is undertaken by a member.

(3) To a member's personal physician where it is determined that a physical examination is necessary before commencement of a program of exercise.

(4) To the individual listed as an emergency contact, in the event of an emergency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Information recorded on paper forms is stored in folders in file cabinets. Information recorded on index cards is stored in a card file box.

RETRIEVABILITY:

Indexed by name of Fitness Center member.

SAFEGUARDS:

Completed forms will be stored in lockable file cabinets. Only authorized personnel will have access to areas in which information is stored.

RETENTION AND DISPOSAL:

All records are updated when necessary to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Fitness Director, Division of Accounting and Corporate Services, FDIC, 550 17th Street, NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550 17 Street, NW., Washington, DC 20429. Individuals requesting their own records must provide their names and addresses.

RECORD ACCESS PROCEDURES:

Same as "NOTIFICATION" above.

CONTESTING RECORD PROCEDURES:

Same as "NOTIFICATION" above.

RECORD SOURCE CATEGORIES:

Information is principally obtained from the individual upon whom the record is maintained. Some information will be provided by the Fitness Director and, in certain cases, by a physician retained by the FDIC and by the individual's personal physician.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By direction of the Board of Directors.

Dated at Washington, DC., this 6th day of July 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15598 Filed 7-11-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-724]

The Lincoln Savings Bank, F.S.B., New York, NY; Final Action Approval of Conversion Application

Date: July 6, 1988.

Notice is hereby given that on December 30, 1987, the General Counsel and the Director of the Office of Regulatory Policy, Oversight and Supervision (or their respective designees), acting pursuant to delegated authority, approved the application of The Lincoln Savings Bank, F.S.B., New York, New York ("Lincoln"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the Application H-(e)1 filed by Lincorp, Inc., Unicorp American Corporation, Unicorp Canada Corporation, and Townsview Properties Limited, to acquire control of Lincoln.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-15602 Filed 7-11-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-725]

Riverhead Savings Bank, F.S.B., Riverhead, NY; Final Action Approval of Conversion Application

Date: July 6, 1988.

Notice is hereby given that on April 26, 1988, the General Counsel and the Director of the Office of Regulatory Policy, Oversight and Supervision (or their respective designees), acting pursuant to delegated authority,

approved the application of Riverhead Savings Bank, F.S.B., Riverhead, New York ("Riverhead"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the Application H-(e)1 filed by American Savings Bank, F.S.B., New York, New York, to acquire control of Riverhead.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-15603 Filed 7-11-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 6, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Proposal to Approve Under OMB Delegated Authority the Revision of the Following Report

Report title: Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 Million or More or with More than One Subsidiary Bank.

Agency form number: FR Y-9C.

OMB Docket Number: 7100-0128. (This OMB docket number includes the FR Y-9c, Y-9LP and Y-9SP. The revision relates only to the FR Y-9c).

Reporters: Bank holding companies.

Annual reporting hours: 144,260.

Report	Number of respondents	Frequency	Avg. hours per response
FR Y-9c and Y-9LP:			
For bank holding companies with total consolidated assets of $150 million or more.	847	Quarterly	25.25
For bank holding companies with consolidated assets of less than $150 million in total assets but which have more than one subsidiary bank.	491	Quarterly	14.25
FR Y-9SP	5,121	Semiannually.	3

Significant effect on small businesses is not expected.

General description of report: This report is required by law (12 U.S.C. 1844). Certain portions may occasionally be given confidential treatment (5 U.S.C. 552 (b)(4) and (b)(6)).

This report is the primary source of information for the Federal Reserve System's bank holding company surveillance function in its ongoing monitoring of the financial conditions of these institutions. One revision is proposed, to collect separate data on federal funds and securities repurchase transactions.

Board of Governors of the Federal Reserve System, July 6, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15530 Filed 7-11-88; 8:45 am]

BILLING CODE 6210-01-M

Correction; Business Bancorp

This notice corrects a previous **Federal Register** notice (FR Doc. 88-14817) published at page 25010 of the issue for Friday, July 1, 1988.

Under the Federal Reserve Bank of San Francisco, the comment period for Business Bancorp is changed to close on July 21, 1988.

Board of Governors of the Federal Reserve System, July 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15534 Filed 7-11-88; 8:45 am]

BILLING CODE 6210-01-M

Community Bank System, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community Bank System, Inc.*, Dewitt, New York; to merge with Communicorp, Inc., Addison, New York, and thereby indirectly acquire Community National Bank, Addison, New York.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mechanicsville Trust & Savings Bank*, Trustee of The Mechanicsville Trust & Savings Bank Employee Stock

Ownership Plan & Trust, Mechanicsville, Iowa; to become a bank holding company by acquiring 75 percent of the voting shares of Mechanicsville Bancshares, Inc., Mechanicsville, Iowa, and thereby indirectly acquire The Mechanicsville Trust & Savings Bank, Mechanicsville, Iowa.

2. *Merchants National Corporation,* Indianapolis, Indiana; to merge with BSB Bancorp, Batesville, Indiana, and thereby indirectly acquire Batesville State Bank, Batesville, Indiana.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *M.O. Packard Investment Company,* Springville, Utah; to merge with Kolob Investment Company, Springville, Utah, and thereby indirectly acquire Central Bank and Trust Company, Springville, Utah.

2. *U.S. Bancorp,* Portland, Oregon; to acquire 100 percent of the voting shares of Northwestern Commercial Bank, Bellingham, Washington. Comments on this application must be received by August 4, 1988.

Board of Governors of the Federal Reserve System, July 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15531 Filed 7-11-88; 8:45 am]

BILLING CODE 6210-01-M

Firstshares of Texas, Inc., Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under sections of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under section 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggreived by approval of the proposal.

Coments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *FirstShares of Texas, Inc.,* Marshall, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Marshall, Marshall, Texas.

In connection with this application, Applicant also proposes to acquire The First National Company of Marshall, Marshall, Texas, and thereby engage in making, acquiring and/or servicing loans for itself or for others pursuant to section 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15532 Filed 7-11-88; 8:45 am]

BILLING CODE 6210-01-M

Texas Commerce Bancshares, Inc. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Texas Commerce Bancshares, Inc.,* Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Information Systems, Inc., Houston, Texas, in the provision to others of data processing and data transmission services, facilities, data bases, or access to such services, facilities, or data bases by any technological means in connection with any financial, banking or economic data pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. *Westpac Banking Corporation,* Sydney, Australia; to engage *de novo* through its subsidiary, Mase Westpac, Inc., New York, New York, in bullion industry financing pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted on a worldwide basis.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Community Corporation,* Oklahoma City, Oklahoma; to engage *de novo* in providing tax planning and tax preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. *Comments on this application must be received by July 29, 1988.*

Board of Governors of the Federal Reserve System, July 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15533 Filed 7-11-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., July 26, 1988.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, N.W., Washington, D.C.

Status: Open.

Matters to be considered: Approval of the minutes of the April 19, 1988 meeting; report of Executive Director on Thrift Savings Plan status; interfund transfers; selection of asset managers—process and status; frequency of Employee Thrift Advisory Council meetings; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara on (202) 523-6367.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 88-15606 Filed 7-11-88; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0256]

Animal Drug Export; Erythromycin Thiocyanate Bulk

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ANGUS Biotech, Inc., has filed an application requesting approval for the export of the animal drug Erythromycin Thiocyanate Bulk to Italy.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that ANGUS Biotech, Inc., 700 Henry Ford Ave., P.O. Box 787, Wilmington, CA 90748-0787, has filed an application requesting approval for the export of the animal drug Erythromycin Thiocyanate Bulk to Italy. The drug is intended for further manufacture as an active ingredient in medicated feeds for animals. The application was received and filed in the Center for Veterinary Medicine on July 5, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 22, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: July 6, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-15527 Filed 7-11-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0220]

Paragon Optical, Inc.; Premarket Approval of FluoroPerm ™ (Paflufocon A) Rigid Gas-Permeable Contact Lens (Clear and Tinted) for Extended Wear

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Paragon Optical, Inc., Mesa, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the spherical FluoroPerm™ (paflufocon A) Rigid Gas-Permeable Contact Lens for extended wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 31, 1988, of the approval of the application.

DATE: Petitions for administrative review by August 11, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On March 9, 1988, Paragon Optical Inc., Mesa, AZ 85201-0171, submitted to CDRH a supplemental application for premarket approval of the FluoroPerm™ (paflufocon A) Rigid Gas-Permeable Contact Lens. The lens is indicated for daily and extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye care practitioner, and for the correction of visual acuity in not-aphakic persons

with nondiseased eyes that are myopic or hyperopic and may correct corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from −20.00 D to +8.00 D and is to be disinfected using the chemical lens care system specified in the approved labeling. The blue-tinted lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On Apil 22, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On May 31, 1988, CDRH approved the supplemental application by letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved soft contact lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 U.S.C. 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 U.S.C. 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 11, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–15529 Filed 7–11–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Common Working File (CWF)", HHS/HCFA/BPO NO. 09–70–0526. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB), on July 1, 1988. The new system of records, including routine uses, will become effective September 12, 1988, unless HCFA receives comments which would warrant modification of the notice.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G–M–1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: John Van Walker, Task Force for Standard Systems, Office of Program Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, Room G–C–7 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966–6965.

SUPPLEMENTARY INFORMATION: This system of records contains beneficiary specific Medicare entitlement, utilization and claims history information and is designed to house this data in one location. This will allow HCFA to properly and expeditiously pay Medicare benefits to or on behalf of the beneficiary in question. Claims would be processed to this file prior to payment. This concept, at the least, provides work simplification for Medicare contractors. In addition, it is expected that several other benefits will accrue, such as, enhancing the ability to apply uniform program safeguards and providing for a quicker and more uniform response to changes in Medicare policy. This system also has a high potential for saving benefit dollars.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. We anticipate that disclosure under the routine uses will not result in any

unwarranted adverse effects on personal privacy.

Dated: June 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0526

SYSTEM NAME:

Common Working File (CWF).

SECURITY CLEARANCE:

None.

SYSTEM LOCATION:

Contact system manager for location of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all information on Medicare Part A and Part B beneficiary enrollment, entitlement, utilization, query and reply activity, worker's compensation, Veterans Administration (VA) entitlement, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment. The categories of records are Health Insurance Master Record, Part A Intermediary Medicare Claims Record, Part B Carrier Claims Record, Medicare Secondary Payer Record, Third Party Liability Record, Medicaid Entitlement Record, Health Maintenance Organizations Record, and Hospice Record.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

Seconds 1816 and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395h and 1395kk).

PURPOSE OF THE SYSTEM:

To properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made to:

(1) Claimants, their authorized representatives or representatives payees to the extent necessary to pursue claims made under Title XVIII of the Social Secuirty Act (Medicare).

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for respresenting the Secretary, and for investigating issues of fraud by agency officer or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Peer Review Organizations in connection with their review of claims, or in connection with studies of other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Board for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability; or the restoration or maintenance of health, if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except for:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of

assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicare eligibility considerations. Disclosures of physicians' customary charge data are made to State audit agencies in order to ascertain the correctness of title XIX charges and payments.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Peer review groups, consisting of members of State, County, or local medical societies or medical care foundations (physicians), appointed by the medical society or foundation at the request of the carrier to assist in the resolution of questions of medical necessity, utilization of particular procedures or practices, or overutilization of services with respect to Medicare claims submitted to the carrier.

(17) Physicians and other suppliers of services who are attempting to validate individual items on which the amounts included in the annual Physician/Supplier Payment List or similar publications are based.

(18) Senior citizen volunteers working in intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries' requests for assistance.

(19) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(20) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to coordinate benefits payable under the Medicare program with benefits payable under workers' compensation programs.

(21) Insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

(a) To certify that the individual on whom the information is being provided is one of its insureds;

(b) To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

(c) To safeguard the confidentiality of the data and to prevent unauthorized access to it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media (Magnetic Tape, Disks, Microfiche).

RETRIEVABILITY:

Records are retrieved by the Health Insurance Claim Number.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services (HHS). Safeguards for automated records have been established in accordance with the HHS' Automated Data Processing Manual, Part 6, "ADP System Security".

RETENTION AND DISPOSAL:

Records are retained for an indefinite period of time dependent on individual beneficiary coverage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, Room 300, Meadows East Building, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the Health Insurance Claim Number.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current). (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORY:

The data contained in these records is furnished by the individual. In most cases, the identifying information is provided to the physician by the individual. The record source categories are the Health Insurance Master Record, Part A Intermediary Medical Claims Record, Part B Carrier Medicare Claims Record, Medicare Secondary Payer Record, Third Party Liability Record, Medicaid Entitlement Record, Health Maintenance Organizations Record, and Hospice Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-15573 Filed 7-11-88; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-88-1824; FR-2484]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of recognition of substantially equivalent law.

SUMMARY: This notice states that the Department recognizes the fair housing law of Hazel Crest, Illinois as one which provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968).

FOR FURTHER INFORMATION CONTACT: Wagner D. Jackson, Acting Director, Office of Fair Housing Enforcement and Section 3 Compliance, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 426-3500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 7, 1986, the Department published a notice in the **Federal Register** (51 FR 595) seeking public comment on the fair housing law of Hazel Crest, Illinois pursuant to 24 CFR Part 115. The notice invited comments on the Department's determination that the fair housing law of Hazel Crest, Illinois "on its face" provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided under the Federal Fair Housing Act (Act). Comment was also invited on the present and past performance of the agency (or agencies) administering the law.

Several comments were received supporting substantial equivalency recognition. The Chicago Far South Suburban Branch of the National Association for the Advancement of Colored People (Branch) and the National Association of Realtors (NAR) submitted comments opposing recognition.

The objections centered on language in the Hazel Crest Fair Housing Ordinance. That Ordinance provides at Sec. 14-24:

> Declaration of Policy.
>
> (a) It is hereby declared to be the policy of the village to provide, within constitutional limitations, for fair housing throughout the village, to assure that all persons have full and equal opportunity to consider all available housing and obtain fair and adequate housing for themselves and their families within the village without discrimination because of race, color, religion, sex or national origin, and to promote a stable, racially integrated community.

NAR and the Branch object to the final clause. While some may not consider the promotion of racial integration a laudable goal, such a policy may not properly be said to conflict with Title VIII. Indeed, residential integration is one of the goals of Title VIII. (See *U.S.* v. *Starrett City*, No. 1483, slip op. at 10 (2d Circuit, Mar. 1, 1988)).

The Branch and NAR also object to language in the Ordinance which reads:

> Provided that nothing in this section shall be construed to prohibit special outreach efforts conducted by or under the authority of units of local government (including agencies, departments and commissions thereof) or nonprofit fair housing agencies to ensure that persons of minority groups are fully informed of available dwelling opportunities in areas of present or prospective majority group concentration, or to ensure that persons of the majority group are fully informed of available dwelling opportunities in areas of present or prospective minority group concentration. (Ord. Sec. 14-29, final paragraph (Ord. No. 9-1983, § 1, 5-24-83)).

The objecting organizations argue that the provision gives approval for groups to steer blacks away from Hazel Crest and to steer whites to Hazel Crest. We do not so read the provision. The provision ensures that blacks may be fully informed of housing opportunities in those sections of the city where blacks are least concentrated, and whites may be fully informed of housing opportunities in those sections of the city where whites are least concentrated. To provide such information is patently neither discriminatory nor a violation to Title VIII and there is not the slightest implication that any information regarding housing opportunities may be denied. (See *Steptoe* v. *Beverly Area Planning Association* (No. 84C 10926, N.D. Ill., November 23, 1987)). Further, the Haxel Crest Fair Housing Ordinance specifically prohibits steering (Sec. 14-29g) and the section complained of exempts only special outreach efforts that provide information.

The Affirmative Marketing Plan language of the ordinance is set forth in Division 5 thereof. The objections to the affirmative marketing plans seem premised on the perceived stigma associated with keeping records based on race. We see no such stigma and recognize that such data may be useful in furthering the purposes of Title VIII.

Finally, NAR suggests that HUD defer recognition until a lawsuit questioning the propriety of "Hazel Crest's overall program of integration maintenance" is decided: *South Suburban Housing Center* v. *Greater South Suburban Board of Realtors, et al.*, No. 83 C 8149 (N.D. Ill., filed November 7, 1983). While the court's opinion may prove instructive when given, we are not persuaded that the ruling of the court will adversely affect the substantial equivalency recognition of the Village of Hazel Crest.

The ordinance, at Sec. 14-26, provides that if any court finds any section or provision of Article III, Fair Housing, to be unconstitutional, void or ineffective, such judgment will not affect any other section or provision not specifically included in said judgment. Further, Section 815 of Title VIII provides that any law that purports to require or permit any action that would be a discriminatory housing practice under Title VIII shall to that extent be invalid. While we remain convinced that the provisions causing NAR and the Branch concern are compatible with Title VIII, the severability provision of the Ordinance and Section 815 of Title VIII provide safeguards against determinations or procedures which are found not so compatible.

To assure that the Hazel Crest Fair Housing Ordinance was being administered in a manner consonant with Title VIII, the Department conducted two on-site reviews. Further, two meetings were held with a representative of the Branch. The Department determined that the current practices and past performance of Human Relations Commission of the Village of Hazel Crest met the performance standards of Sec. 115.4 and that in operation the Hazel Crest Fair Housing law does in fact provide substantially equivalent rights and remedies. Neither the Branch nor NAR has cited occasions where the Hazel Crest Ordinance was interpreted or administered in a way which was violative of Title VIII. Nor has either organization cited incidents in which the Hazel Crest Human Relations Commission's practices and procedures were not consonant with Title VIII. The Department has found no basis for a conclusion that the fair housing law of the Village of Hazel Crest is administered in a manner which is in conflict with Title VIII.

Accordingly, this publication gives notice of the Department's recognition of the fair housing law of Hazel Crest,

Illinois in accordance with 24 CFR 115.6(c).

Date: June 28, 1988.

William E. Wynn,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88-15564 Filed 7-11-88; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-88-1826; FR-2527]

Office of Lender Activities and Land Sales Registration Interstate Land Sales Registration Division; Order of Suspension

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Lender Activities and Land Sales Registration Interstate Land Sales Registration Division, HUD.

ACTION: Order of suspension.

SUMMARY: The Department is issuing an Order of Suspension to each developer listed on the attached Appendix. Each listed developer has failed to file amendments to its registration, or to file documents establishing that no amendment is necessary.

The Order of Suspension is issued under the Interstate Land Sales Full Disclosure Act

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Branch Chief, Land Sales Enforcement Branch, Interstate Land Sales Registration Division, Department of Housing and Urban Development, Room 6278, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-0502. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The HUD Interstate Land Sales Registration Division gives public notice of its attempt to serve upon the listed Developers at their last known address a notice requiring that each Developer make revisions to its Statement of Record. Although service of notice by certified mail was attempted in accordance with 24 CFR 1720.170, the notice was undeliverable. Consequently, on April 14, 1988 the Department of Housing and Urban Development, in accordance with 44 U.S.C. 1508, published in the **Federal Register** a Notice of Proceedings and Opportunity for Hearing (53 FR 12469) effecting constructive notice on the listed Developer respondents. The Notice informed these Developers of omissions, in their Statements of Record and Property Reports, of material provisions required by law, and advised each Developer of its right to request a hearing within 15 days of publication of the Notice. More than 15 days have now elapsed since the publication of the Notice, and the entities listed in the attached Appendix and referred to in the Order of Suspension as "Developer" have not requested a hearing; therefore, the Department is issuing this Order of Suspension.

Order of Suspension

1. Each Developer listed in the Appendix is subject to the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701-1720) and to HUD regulations promulgated under 15 U.S.C. 1718. Each Developer has filed for its subdivision a Statement of Record and Property Report which became effective in accordance with 24 CFR 1710.21. The Statement remains in effect.

2. As authorized by 15 U.S.C. 1715, the authority and responsibility for administration of the Interstate Land Sales Full Disclosure Act has been vested in the Secretary or the Secretary's designee.

3. Under 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), if it appears to the Secretary or the Secretary's designee that a Statement of Record includes any untrue statement of a material fact, or omits to state any material fact required to be stated or necessary to prevent the Statement of Record from being misleading, the Secretary or designee, after notice and opportunity for a hearing requested within 15 days of receipt of the notice, may issue an order suspending the Statement of Record.

4. A Notice of Proceedings and Opportunity for Hearing was published in the **Federal Register** on August 18, 1987, informing each listed Developer of information obtained by the Interstate Land Sales Registration Division indicating that the Developer's Statement of Record contained an untrue statement of material fact or an omission of a material fact required to be stated or necessary to prevent the Statement of Record from being misleading. The Notice stated that failure to request a hearing would be treated as a default and that the allegations contained in the Notice would be taken to be true. Each listed Developer has failed to answer or to request a hearing under 24 CFR 1720.220 within 15 days of publication of HUD's Notice of Proceedings and Opportunity for Hearing.

Therefore, in accordance with 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), the Statement of Record filed by the Developer covering its subdivision is suspended, effective July 12, 1988. This Order of Suspension shall remain in effect until the Statement of Record has been properly amended as required by the Interstate Land Sales Full Disclosure Act and HUD's implementing Regulations.

Publication of this Order in the **Federal Register** constitutes constructive notice to each respondent developer. Unless otherwise exempt, any sales or offers to sell made by a listed Developer or by its agents, successors, or assigns while this Order of Suspension is in effect will be in violation of the provisions of the Interstate Land Sales Full Disclosure Act.

Date: June 29, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix

The captioned matters in this Appendix are listed alphabetically by subdivision in each State. The list contains the name of the subdivision, developer, representative and title, OILSR number and Land Sales Enforcement Division Docket number.

Arizona

Desert Vista Place, Richard G. Davis and Carolyn E. Davis, sole proprietors; C 0-06385-02-1130; M-87-037.

Colorado

Douglas Mountain Ranch, Donald McClure, sole proprietor, 0-05104-05-0528; M-88-034.

Illinois

Valley of the Pines Sections 1 and 2, Meister Development Corporation, Robert L. Meister, President, 0-04873-15-76, M-88-029.

[FR Doc. 88-15563 Filed 7-11-88; 8:45 am]

BILLING CODE 4210-27-M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D-88-881]

Acting Manager, Region IV (Atlanta); Designation for Knoxville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Knoxville Office.

EFFECTIVE DATE: April 12, 1988.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Manager for Knoxville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Director, Housing Development Division
3. Director, Housing Management Division
4. Director, Community Planning and Development Division
5. Chief Counsel
6. Director, Fair Housing and Equal Opportunity Division
7. Director, Administration Division

This designation supersedes the designation effective February 25, 1987, (52 FR 17481, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of April 12, 1988.

Richard B. Barnwell,

Manager, Knoxville Office.

Kenneth E. Williams,

Acting Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 88–15565 Filed 7–11–88; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Ranking of Applications for Juvenile Detention Facilities for Indian Youth

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of ranking.

This notice is published to inform all Tribal applicants of the ranking for renovation and/or construction for Juvenile Detention Facilities for Indian Youth pursuant to Pub. L. 99–570, section 4220(a) the Anti-Drug Abuse Act of 1986.

Forty-six (46) applications were received and evaluated by a five member committee with representation from Bureau of Indian Affairs, Division of Law Enforcement Services, The Facility Management Construction Center, Office of Construction Management, Indian Health Service, and National Indian Justice Center.

None of the applications were disqualified, although two different applications were submitted on behalf of one consolidated tribal entity.

The forty-six (46) applications were scored by each of the five committee members based upon established criteria and point values. The individual criteria scores were then accumulated, averaged and totaled. The results of this evaluation process are as follows:

Ranking and Applicant's Name:

1. Cheyenne River Sioux Tribe
2. Navajo Tribe—Tuba City
3. Navajo Tribe—Chinle
4. Oglala Sioux Tribe
5. Ute Mountain Ute Tribe
6. Navajo Tribe—Crownpoint
7. Tohono O'Odham Nation
8. Navajo Tribe—Kayenta
9. Navajo Tribe—Shiprock
10. Mississippi Band of Choctaw Indians
11. Zuni Pueblo
12. Confederated Salish & Kootenni Tribes
13. Lower Brule Sioux Tribe
14. Southern Ute Tribe
15. Three Affiliated Tribes
16. Quileute Tribe
17. Mescalero Apache Tribe
18. Navajo Tribe—Navajo
19. Navajo Tribe—Tohatchi
20. Ute Tribe
21. Makah Tribe
22. Chippewa Cree Tribe
23. Shoshane—Bannock Tribes
24. Gros Ventre & Assiniboine Tribe
25. Confederated Tribes & Bands of the Yakima Indian Nation
26. Shoshone & Arapahoe Tribes
27. Chemawa India School
28. Spokane Tribe of Indians
29. Standing Rock Sioux Tribe
30. Rosebud Sioux Tribe
31. San Carlos Apache Tribe
32. Sisseton—Wahpeton Sioux Tribe
33. Otoe—Missouria Tribe
34. Crow Creek Sioux Tribe
35. Tonkawa Tribe
36. Fort Mojave Tribe
37. Albuquerque Area Tribal Coordinating Committee
38. Colville Confederated Tribes
39. Pascua Yaqui Tribe
40. Picuris Tribe
41. Eight Northern Indian Pueblos
42. Northern Cheyenne Tribe
43. Cheyenne—Arapahoe Tribes
44. Devil's Lake Sioux Tribe
45. Juneau
46. Kaw Tribe.

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets, NW., Mail Stop 2415, Washington, DC 20240, (202) 343–3404.

Rick Ventura,

Assistant Secretary Policy, Budget & Administration.

July 6, 1988.

[FR Doc. 88–15590 Filed 7–11–88; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Proposed Contractual Actions Pending Through September 1988.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish a notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1988. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) **Federal Register**
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P–SMBP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, telephone (208) 334–1160.

1. *Cascade Reservoir water users, Boise Project, Idaho:* Repayment contracts for irrigation and M&I; 59,721 acre-feet of stored water in Cascade Reservoir.

2. *Brewster Flat ID, Chief Joseph Dam Project, Washington:* Amendatory repayment contract; land reclassification of approximately 360 acres to irrigable; repayment obligation to increase accordingly.

3. *Individual Irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington:* Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. *Rogue River Basin water users, Rogue River Basin Project, Oregon:* Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. *Willamette Basin water users, Willamette Basin Project, Oregon:* Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. *IDs and similar water user entities:* Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. *Fifty-nine Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming:* Contract amendments to extend term for which contract water may be subleased to other parties.

8. *South Columbia Basin ID, Columbia Basin Project, Washington:* Supplemental repayment contract for Irrigation Block 24; 1,892 irrigable acres.

9. *City of Cle Elum, Yakima Project, Washington:* Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

10. *Three IDs, Flathead Indian Irrigation Project:* Repayment of costs associated with rehabilitation of irrigation facilities.

11. *Baker Valley ID, Baker Project, Oregon:* Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

12. *Crooked River Project, Oregon:* Repayment of water service contracts with several individuals for a total of approximately 1,100 acre-feet of project water; contract terms of up to 40 years for the purpose of supplying water under the project water right held by the United States.

13. *Various Projects, Pacific Northwest Region:* R&B contracts for replacement of needle valves at storage dams.

14. *Palisades Water Users Inc., Minidoka-Palisades Project:* Repayment contract for an additional 500 acre-feet of storage in Palisades Reservior.

15. *Willow Creek Project, Oregon:* Repayment of water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

16. *State of Wyoming, Minidoka-Palisades Project:* Repayment contract for 33,000 acre-feet of storage space in Palisades Reservoir reserved under the Snake River Compact.

17. *Roza ID, Yakima Project, Washington:* Proposed supplementary deferment contract. Defer 1 year (2 installments) of construction payments because of cost incurred by the district to obtain additional water supplies in anticipation of drought.

Mid-Pacific Region

Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5030.

1. *Colusa Drain Mutual Water Company, CVP, California:* Water right settlement contract; FR notice published July 25, 1979, Vol. 44, page 43535.

2. *Tuolumne Regional Water District, CVP, California:* Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

3. *Calaveras County Water District, CVP, California:* Water service contract; 1,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. *Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada:* Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-fee of water annually.

Note.—Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

5. *Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California:* Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1989-1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

6. *South San Joaquin ID and Oakdale ID, CVP, California:* Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. *San Luis Water District, CVP, California:* Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. *ID's and similar water user entities:* Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

9. *State of California, CVP, California:* Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operations Agreement.

10. *Madera ID, Madera Canal, CVP, California:* Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

11. *County of Tulare, CVP, California:* Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

12. *Panoche Water District, CVP, California:* Amendatory water service contract providing for change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

13. *Shasta Dam Area Public Utilities District, CVP, California:* Renewal of M&I water supply contract. Less than 6,000 acre-feet.

14. *U.S Fish and Wildlife Service, CVP, California:* Long-term contract for water supply for Federal refuge in Grasslands area of California.

15. *City of Redding, CVP, California:* Amendatory M&I water supply contract.

16. *Washoe County Water Conservation District, Truckee Storage Project, Nevada:* Repayment contract for the replacement of two needle valves at Boca Dam.

17. *Glide Water District, CVP, California:* Amendatory Public Law 84–130 repayment contract.

18. *Kanawha Water District—Improvement District No. 2 and 3, CVP, California:* Amendatory Public Law 84–130 repayment contracts.

19. *Union Public Utility District, CVP, California:* Water service contract, up to 1,000 acre-feet annually for M&I water from New Melones Reservoir for up to 15 years.

20. *Kern County Water Agency, CVP, California:* Temporary agricultural water supplies of up to 100,000 acre-feet for 1 year.

21. *City of Dos Palos, CVP, California:* Contract for the use of surplus capacity in the San Luis Canal pursuant to the Warren Act. The contract will allow the exchange of water with Central California Irrigation District and transportation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

22. *North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California:* Amendatory contract to provide storage space for M&I water.

23. *Contra Costa Water District, CVP, California:* Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Low Vaqueros project. Amendment will also conform contract to current water ratesetting policies.

24. *East Bay Municipal Utility District, CVP, California:* Temporary M&I water service contract for 75,000 acre-feet of water for up to one year.

25. *East Bay Municipal Utility District, CVP, California:* Amend Contract No. 14–06–200–5128A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

26. *San Juan Suburban Water District, CVP, California:* Amend Contract No. 14–06–200–152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

27. *El Dorado Irrigation District, CVP, California:* Amend Contract No. 14–06–200–1357A to provide for additional points of delivery under the contract and to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546, if requested by the district.

28. *Placer County Water Agency, CVP, California:* Amend existing water right and water service contract to include current water rates, standard contract language and deliveries of Project water at other than the Auburn Dam site.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. *Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico:* Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

(b) The Morrison, Knudsen-Ferguson Company: Water service contract for 104 acre-feet of San Juan River water to be diverted in Utah downstream from Navajo Reservoir. The contract is for 2 years.

2. *Revised Hydrological Determination:* A hydrologic determination was last made for the Upper Colorado River in December 1984 with the principal conclusion that the Upper Basin could support a depletion level of at least 5.8 million acre-feet. Upon the request of the Secretary of the New Mexico Interstate Stream Commission, a review of water availability in the Upper Basin has been undertaken with regard to the water supply available for use in New Mexico.

3. *La Plata Conservancy District, Animas-La Plata Project, New Mexico:* Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

4. *San Juan Water Commission, Animas-La Plata Project, New Mexico:* M&I repayment contract; 30,800 acre-feet per year. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

5. *Southern Ute Indian Tribe, Animas-La Plata Project, Colorado:* Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement, in principle.

6. *Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico:* Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

7. *Navajo Indian Tribe, Animas-La Plata Project, New Mexico:* Repayment contract; 7,600 acre-feet per year for M&I use.

8. *Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado:* Contract to continue O&M of Grand Valley powerplant

9. *Ute Mountain Ute Indian Tribe, Dolores Project, Colorado:* Agreement

for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

10. *Moon Lake Water Users Association, Moon Lake Project, Utah:* Repayment contract for R&B of facilities including replacement of needle valve.

11. *Central Utah Water Conservancy District, Bonneville Unit, CUP, Utah:* D&MC contract; Advancement of $65.7 million for construction of laterals and drains of the irrigation and drainage system.

12. *Uintah Water Conservancy District, Jensen Unit, CUP, Utah:* Amendatory repayment contract to reduce M&I Water supply and corresponding repayment obligation.

13. *Florida Water Conservancy District, Florida Project, Colorado:* Lease of power privileges to develop the hydroelectric power potential of the Florida Project.

14. *Vermejo Conservancy District, Vermejo Project, New Mexico:* Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

15. *Rio Grande Water Conservation District, Alamosa, Colorado:* Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

16. *Conejos Water Conservancy District, San Luis Valley Project, Colorado:* Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

17. *Carlsbad ID, Carlsbad Project, New Mexico:* Repayment contract for the costs incurred by the United States for replacing the needle valves at Fort Sumner Dam.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,000 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. Water delivery contracts, BCP, Arizona: For a yet undetermined amount of Colorado River water for M&I use on State-owned land.

9. Contract with the State of Arizona, BCP: For a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 4.5 acre-feet, pursuant to the January 9, 1979, Suplemental Decree of the United States Supreme Court in *Arizona* v. *California* (439 U.S. 419).

11. AK-Chin Farm, Maricopa, Arizona: Repayment contract for $6.1 million SRPA escalation loan.

12. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.

13. Central Arizona Water Conservation District, CAP, Arizona: Amendatory contract to increase the district's CAP repayment ceiling and to update other provisions of the contract.

14. Maricopa-Stanfield and Central Arizona IDDs, CAP, Arizona: Contract to transfer O&M of the Santa Rosa Canal to Maricopa-Stanfield.

15. Imperial ID and/or the Coachella Valley Water District, BCP, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

16. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

17. Golden Shores Water Conservation District, BCP, Arizona: M&I water service for lands within the district and adjacent areas for delivery of up to 2,000 acre-feet of Colorado River water per year pursuant to the recommendation of the Arizona Department of Water Resources.

18. Hutchison Present Perfected Rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in *Arizona* vs. *California* and BCP.

19. Winterhaven Present Perfected Rights contract for portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in *Arizona* v. *California* and BCP.

20. County of San Bernardino, San Bernardino, California: Repayment contract for $28.6 million SRPA loan.

21. Yuma County and Yuma County Water Users' Association, Yuma Project, Arizona: Contract for O&M of 18 drainage wells in Yuma County, Colorado River Front Work and Levee System, Arizona.

22. Maricopa-Stanfield Irrigation and Drainage District, CAP, Arizona: D&MC contract for $5 million to complete the district's distribution system.

23. Central Arizona Irrigation and Drainage District, CAP, Arizona: D&MC contract for $20 million to complete the district's distribution system.

Missouri Basin Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 585–6413.

1. *Individual irrigators, M&I, and miscellaneous water users, Missouri Basin Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, and Nebraska:* Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. *Nokota Company, Lake Sakakawea, P–SMBP, North Dakota:* Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. *Fort Shaw ID, Sun River Project, Montana:* R&B loan repayment contract; up to $1.5 million.

4. *ID's and similar water user entities:* Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. *Oahe Unit, P–SMBP, South Dakota:* Cancellation of master contract and participating and security contracts in accordance with Public Law 97–293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

6. *Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming:* Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

7. *Green Mountain Reservoir, Colorado-Big Thompson Project:* Water service contract; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

8. *Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado:* Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

9. *Fryingpan-Arkansas Project, Colorado:* East Slope Storage system consisting of Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

10. *Cedar Bluff ID No. 6 and the State of Kansas, Cedar Bluff Unit, P–SMBP, Kansas:* Repayment contract; Negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservoir for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation. Amend the Cedar Bluff ID's contract to relieve it of all contract obligations.

11. *Department of Natural Resources and Conservation, SRPA, Montana;* Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

12. *Garrison Diversion Unit, P–SMBP, North Dakota:* Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

13. *Gray Goose ID, Gray Goose Unit, P–SMBP, South Dakota:* Contract negotiations to integrate Gray Goose ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

14. *Pacific Power and Light Company, Glendo Unit, P–SMBP, Wyoming;* Contract negotiations for renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

15. *Corn Creek ID, Glendo Unit, P–SMBP, Wyoming:* Repayment contract for 10,100 acre-feet of supplemental irrigation water from Glendo Reservoir.

16. *City of Dickinson, North Dakota:* Cancellation of Contract No. 9–07–60–WR052 pursuant to the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100–202. The contract will be replaced with a new contract for the repayment of $1,625,000 over a period of 40 years at 7.21 percent and payment of operation, maintenance, and replacement costs.

17. *West Bench ID, SRPA:* Amendatory contract to extend the repayment period by 12 years by giving the district the maximum repayment term of 40 years allowed under the contract.

18. *Lavaca-Navidad River Authority, Palmetto Bend Project, Texas:* Amendatory contract to increase repayment ceiling to cover repairs to a drop structure.

19. *Hidalgo County ID No. 1, Lower Rio Grande Valley, Texas:* Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

20. *Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma:* Amendatory repayment contract for remedial work.

21. *Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma:* Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Date: July 6, 1988.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 88–15514 Filed 7–11–88; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Elwood O'Dell, Pinetop, AZ—PRT–727598.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of F. Bowker, Thornkloof, Grahamstown, Republic of South Africa for enhancement of survival of the species.

Applicant: E.G. & G. Energy Measurements, Goleta, CA—PRT–683011.

The applicant requests an amendment to their permit to conduct the following

activities: (1) Live-trap, ear-tag, weigh, handle and release giant kangaroo rats (*Dipodomys ingens*) in developed and undeveloped areas in California to collect information on population size as part of applicant's study on San Joaquin kit fox (*Vulpes mutica*) food habits and how they are affected by availability of prey. Kangaroo rats found dead will be salvaged for scientific analysis; (2) Applicant also proposes to live-trap San Joaquin kit foxes on property within sections in T28 and 29N, and R27 and 28E Mt Diablo Meridian that is proposed for development. The foxes will be measured, fitted with ear tags, weighed and sampled for ectoparasites and the overall condition of each animal will be determined by a veterinarian. Blood samples will be taken and sent to a laboratory for analysis. The animals will be transported to Naval Petroleum Reserve #1 where they will be confined in fenced kennels and radio-controlled prior to release.

Applicant: Cincinnati Zoo, Cincinnati, OH—PRT–728935.

The applicant requests a permit to import one pair of babirusa (*Babyrousa babyrussa*) and one pair of anoa (*Bubalus depressicornis*), captive born in Holland, from the Blijdorp Zoo, Rotterdam, Holland, for purposes of captive propagation and public display.

Applicant: Regional Director, Region 2, U.S. Fish and Wildlife Service, Albuquerque, NM—PRT–729031.

The applicant requests a permit to take (conduct management studies, anesthetize, capture, recapture, mark, radio-tag, track, translocate and salvage) Mt. Graham red squirrels (*Tamiasciurus hudsonicus grahamensis*) for purposes of scientific research and enhancement of propagation or survival of the species.

Applicant: Paul Dennington, Duncanville, TX—PRT–728663.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of F.M. Bowker, Grahamstown, South Africa, for enhancement of survival of the species.

Applicant: Wilma Lea McQueen, Livingston, TX—PRT–728661.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Theo Erasmus, Orange Free State, South Africa, for enhancement of the survival of the species.

Applicant: William Karesh, Seattle, WA 98103—PRT–721552.

The applicant requests a permit to import nineteen skin biopsies taken with a projectile dart from both wild and captive orangutans (*Pongo pygmaeus*) in Indonesia for the purpose of enhancement of propagation and survival of the species. This would be in addition to a previous import of 45 skin biopsies imported for the same purpose.

Applicant: John Klauss, San Antonio, TX 78217—PRT–728768.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of V.L. Pringle, Huntley Glen, Bedford Cape Province, Republic of South Africa for enhancement of survival of the species.

Applicant: Riverbanks Zoo, Columbia, SC—PRT–728978.

The applicant requests a permit to import ten golden-headed lion tamarins [(*Leontopithecus rosalia* (includes *chrysomelas*) from French Guiana or Brazil. One male and one female were taken from the wild in Brazil and eight offspring were born in captivity. The animals will remain property of the Brazilian government. The import is for the purpose of enhancement of propagation and survival of the species.

Applicant: National Zoo, Washington, DC—PRT–728824.

The applicant requests a permit to import one male and two female maned wolves (Chrysocyon brachyurus) from Curitiba Zoo, Sao Paulo, Brazil. Male was captive born, two females were wild caught now held in captivity. One female will be sent to Little Rock Zoo, Arkansas. The wolves remain property of I.B.D.F. (government of Brazil), but offspring will belong to zoo where animals are born. These animals would be part of a cooperative breeding program; therefore, import is for enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: July 5, 1988.

S.M. Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–15608 Filed 7–11–88; 8:45 am]

BILLING CODE 4310–AN–M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Landmark Services Tourmobile, Inc., authorizing it to continue to provide interpretive transportation facilities and services for the public in the National Capital Region for a period of approximately seventeen (17) years through December 31, 2005.

This proposed contract requires/authorizes a construction and improvement program. The improvement program required/authorized was previously addressed in the National Environmental Policy Act document, Record of Decision, that was prepared in conjunction with the management objectives for the areas.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Regional Office located at 1100 Ohio Drive SW., Room 339, Washington, DC 20242.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defiend in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposals, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242, for information

as to the requirements of the proposed contract.

Manus J. Fish,

Regional Director, National Capital Region.

Date: March 1, 1988.

[FR Doc. 88-15599 Filed 7-11-88; 8:45am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 2, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 27, 1988.

Carol D. Shull,

Chief of Registration, National Register.

DELAWARE

New Cartle County

Newark, *Chambers House*, Hopkins and Creek Rds.
Wilmington vicinity, *Montgomery House*, 2900 Old Limestone Rd.

FLORIDA

Sarasota County

Englewood, *Lemon Bay Woman's Club*, 51 N. Maple St.

LOUISIANA

DeSoto County

Keachi vicinity, *Allen House*, Smyrna Rd. and LA 5

MISSISSIPPI

Hancock County

Three Sisters Shell Midden (22-Ha-596)
Williams Site (22-Ha-585)

Madison County

Ridgeland vicinity, *Old Agency Road*, Between I-55 and Livingston Rd.

Panola County

Fredrickson No. 2

Sharkey County

Savory Site (22-Sh-518)

Yazoo County

Dump Lake Site (22-Yz-622)
Mabin Site (22-Yz-587)
Waller Site (22-Yz-585)

NEW JERSEY

Hunterdon County

Little York, *Little York Historic District*, CR 614 and Sweet Hollow Rd.

OKLAHOMA

Osage County

Hominy, *Hominy School*, 200 blk., S. Pettit St.

OREGON

Douglas County

Roseburg, *First Presbyterian Church of Roseburg*, 823 SE Lane St.
Roseburg, *Howell—Kohlhagen House*, 848 SE Jackson St.

Hood River County

Hood River, *Oregon-Washington Railroad & Navigation Company Passenger Station*, Foot of First St.

Yamhill County

Amity vicinity, *Briedwell School*, 11935 SW Bellevue Hwy.

PENNSYLVANIA

Allegheny County

Crafton, *Campbell Building*, Three Crafton Sq.
Pittsburgh, *Firstside Historic District*, 211-249 Fort Pitt Blvd; 1-7 Wood St.

Chester County

West Whiteland, *Pickwick (West Whiteland Township MRA)*, N side of Swedesford Rd.
West Whiteland, *Williams Deluxe Cabins (West Whiteland Township MRA)*, Lincoln Hwy.
West Whiteland, *Woodledge (West Whiteland Township MRA)*, 525 W. Lincoln Hwy.

Fayette County

Uniontown, *Conn, John P., House*, 84 Ben Lomond St.

Franklin County

Scotland, *Corker Hill*, 1237 Garver La.

Jefferson County

Punxsutawney, *Kurtz, T.M., House*, 312 W. Mahoning St.

Northampton County

Nazareth, *Nazareth Historic District*, Centered on Center and Main Sts.

Philadelphia County

Philadelphia, *Dobson Mills*, 4001-4041 Ridge Ave.; 3503-3530 Scott's La.

PUERTO RICO

San Lorenzo County

San Lorenzo, *Residencia Machin*, Calle Eugenio Sanchez Lopez

TENNESSEE

Decatur County

Brownsport I Furnace (40DR85) (Iron Industry on the Western Highland Rim 1790s-1920s MPS)
Decatur Furnace (40DR84) (Iron Industry on the Western Highland Rim 1790s-1920s MPS)

Humphreys County

Fairchance Furnace (40DR168) (Iron Industry on the Western Highland Rim 1790s-1920s MPS)

TEXAS

Bexar County

San Antonio, *Barnes-Laird House*, 103 W. Ashby Pl.

Midland County

Midland, *Turner, Fred and Juliette, House*, 1705 W. Missouri

UTAH

Wasatch County

Midway vicinity, *Huber, John, House and Creamery*, Off Snake Creek Rd.

VIRGINIA

Pulaski County

Pulaski, *Pulaski Historic Residential District*, Roughly bounded by Eleventh St., Prospect, Madison and Washington Aves., Second St., and Henry Ave.

WISCONSIN

La Crosse County

Midway Archaeological District

Outagamie County

Greenville, *Kronser, Joseph, Hotel and Saloon*, 246 Municipal Dr.

Portage County

Stevens Point, *Jensen, J.L., House*, 1100 Brawley St.

Sheboygan County

Sheboygan, *Windway*, CTH Y, N of CTH O

[FR Doc. 88-15577 Filed 7-11-88; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Initial Regulatory Program; 30 CFR Part 710

Abstract: Information collected in § 710.4(b) is used to ensure States are conducting minesite inspections under

the initial regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Information collected under 710.11(d)(2)(ii) is used to bring pre-existing, nonconforming structures into compliance during the phase-in of the initial regulatory program under SMCRA. Information collected under § 710.12(e) is used to grant small operators exemptions from some of the initial regulatory program requirements

Bureau Form Number: None
Frequency: On occasion
Description of Respondents: State Regulatory authorities and Surface Coal Mining Operators
Annual Responses: One
Annual Burden Hours: One
Average Burden Hours Per Response: One
Bureau Clearance Officer: Nancy Ann Baka (202) 343–5981.

Date: June 28, 1988.

Andrew F. DeVito,

Acting Chief, Regulatory Development and Issues Management.

[FR Doc. 88–15512 Filed 7–11–88; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–106 (Sub-No. 1X)]

The Colorado & Wyoming Railway Co. Exemption for Abandonment in Platte County, WY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its Northern Division Line, a 6–mile line of railroad between milepost 1.0 at or near Guernsey and milepost 7.0 near Sunrise in Platte County, WY.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) 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.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 10, 1988 (unless stayed pending reconsideration). 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 July 21, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 31, 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 representatives:

F. J. Villa, Jr. President, The Colorado & Wyoming Railway Company, P.O. Box 316, Pueblo, CO 81002.
and
Randall J. Feuerstein, 1700 Broadway, Suite 1100, Denver, CO 80290–1199.

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 July 16, 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: June 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–15657 Filed 7–11–88; 8:45 am]

BILLING CODE 7035–01–M

[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 or 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* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 22, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 22, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 5th day of July 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/worker/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
American Felt & Filter Co. (workers/firm)	Staffordville, CT	7/5/88	6/22/88	20,750	Felt parts.
Avery Label Co. (Company)	North Brunswick, NJ	7/5/88	6/15/88	20,751	Pressure sensitive.
Brevel Motors (IUE)	Carlstadt, NJ	7/5/88	6/21/88	20,752	Electrical motors.
Consolidation Coal Co. (UMW)	Osage, W. VA	7/5/88	6/23/88	20,753	Bituminous coal.
Dynamit Nobel of America (company)	Rockleigh, NJ	7/5/88	6/17/88	20,754	Extruded plastics and chemicals.
Franklyn Veal Co. (workers)	Paterson, NJ	7/5/88	5/13/88	20,755	Meat cutters.
General Electric Co., Motor Mfg. Dept. (IUE)	Decatur, IN	7/5/88	6/13/88	20,756	Fractional horsepower motors.
Kason Merchandising Fixtures, Inc. (workers)	Binghamton, NY	7/5/88	6/16/88	20,757	Clothing racks and fixtures.
Lockwood Product, Inc. (workers)	Leonmister, MA	7/5/88	6/21/88	20,758	Plastic flower pots.
Material Things, Inc. (ILGWU)	Braintree, MA	7/5/88	6/23/88	20,759	Ladies' sportswear.
Merrill and Ring, Inc. (IWA)	Port Angeles, WA	7/5/88	6/20/88	20,760	Lumber.
Patterson Gear Motor (company)	Patterson, NJ	7/5/88	6/20/88	20,761	Gear motors and speed reducers.
Pioneer Parachute Co. (ACTWU)	Manchester, CT	7/5/88	6/22/88	20,762	Parachutes.
R.G. Lawrence Co., Inc. (company)	Tenafly, NJ	7/5/88	6/21/88	20,763	Custom-built valves.
Safeway Stores, Inc. (UFCW)	Alamogordo, NM	7/5/88	6/23/88	20,764	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Albuquerque, NM	7/5/88	6/23/88	20,765	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Artesia, NM	7/5/88	6/23/88	20,766	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Belen, NM	7/5/88	6/23/88	20,767	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Carlsbad, NM	7/5/88	6/23/88	20,768	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Clovis, NM	7/5/88	6/23/88	20,769	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Deming, NM	7/5/88	6/23/88	20,770	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Espanola, NM	7/5/88	6/23/88	20,771	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Hobbs, NM	7/5/88	6/23/88	20,772	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Las Cruces, NM	7/5/88	6/23/88	20,773	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Las Vegas, NM	7/5/88	6/23/88	20,774	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Los Alamos, NM	7/5/88	6/23/88	20,775	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Lovington, NM	7/5/88	6/23/88	20,776	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Portales, NM	7/5/88	6/23/88	20,777	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Roswell, NM	7/5/88	6/23/88	20,778	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Ruidoso, NM	7/5/88	6/23/88	20,779	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Santa Fe, NM	7/5/88	6/23/88	20,780	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Silver City, NM	7/5/88	6/23/88	20,781	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Socorro, NM	7/5/88	6/23/88	20,782	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Taos, NM	7/5/88	6/23/88	20,783	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Tucumcari, NM	7/5/88	6/23/88	20,784	Grocery stores—production plants.
Simmons-Rand Co. (workers)	Charleori, PA	7/5/88	6/24/88	20,785	Mining equipment.
U.S. Electrical Motors Division of Elec. Co. (UAW)	Milford, CT	7/5/88	6/9/88	20,786	Electric motors parts.
Universal Foods, Inc.	Carlstadt, NJ	7/5/88	6/20/88	20,787	Cheese.
Winjack, Inc. (ACTWU)	Milwaukee, WI	7/5/88	6/23/88	20,788	Women's sports wear.

FR Doc. 88-15601 Filed 7-7-88; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 27, 1988-July 1, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,645; MKS Company, Inc., Elizabethton, TN

TA-W-20,634; American Silk Mills Corp., Orange, VA

TA-W-20,637; Durex, Inc., Union, NJ

TA-W-20,643; Jacobson Manufacturing Co., Kenilworth, NJ

TA-W-20,644; Jacobson Manufacturing Co., Union, NJ

TA-W-20,655; Capri Textile Processors, Fall River, MA

TA-W-20,663; P & E Woodworking, Inc., Newport, WA

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,679; Robes, Inc., Newark, NJ

U.S. imports of choir robes are negligible.

Affirmative Determinations

TA-W-20,654; Bilt-Rite Juvenile, Orangeburg, NY

A certification was issued covering all workers separated on or after April 26, 1987.

TA–W–20,664; Lee-Mar Shirt Co., Inc., Pulaski, TN

A certification was issued covering all workers separated on or after March 29, 1988.

TA–W–20,703; Health-Tex, Inc. (Diamond Hill Plant), Cumberland, RI

A certification was issued covering all workers separated on or after May 16, 1987.

TA–W–20,662; New England Mackintosh Co., Inc., Brockston, MA

A certification was issued covering all workers separated on or after April 29, 1987 and before January 31, 1988.

TA–W–20,649; Pathfinder Mines Corp., Luck McMine & Mill, Riverton, WY

A certification was issued covering all workers separated on or after April 17, 1987.

TA–W–20,650; Pathfinder Mines Corp., Shirley Basin Mine & Mill, Shirley Basin, WY

A certification was issued covering all workers separated on or after May 1, 1987.

TA–W–20,651; Pathfinder Mines Corp., Big Eagle Mine, Jeffrey City, WY

A certification was issued covering all workers separated on or after April 17, 1987.

I hereby certify that the aforementioned determinations were issued during the period June 27, 1988–July 1, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–15600 Filed 7–11–88; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act Advisory Committee; Meeting

The Job Training Partnership Act (JTPA) Advisory Committee was established by Notice dated June 16, 1988, and published June 28, 1988, 53 FR 24379, to advise the Department of Labor on a comprehensive review of the JTPA program.

Notice is hereby given of the first meeting of the Advisory Committee on July 27 and 28.

Time and Place: Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC. The meeting will begin at 8:30 a.m. on July 27 and adjourn at 12:00 p.m. on July 28.

For further information, contact: Dolores Battle, Administrator, Office of Job Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N–4459, Washington, DC 20210. Telephone: 202–535–0236.

Signed at Washington, DC, the 30th day of June 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

[FR Doc. 88–15324 Filed 7–11–88; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Occupational Exposure to Formaldehyde; Resubmission of Hazard Communication Provisions for Clearance Under the Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35; 5 CFR Part 1320 (53 FR 16618 to 16632, May 10, 1988)), is resubmitting the recordkeeping/ reporting requirements of paragraphs (m)(1)(i) through (m)(4)(ii) of the recently published standard on occupational exposure to formaldehyde (29 CFR 1910.1048) to the Office of Management and Budget (OMB) for the Agency's reconsideration of its previous rejection of these requirements. The affected paragraphs pertain to hazard warning labels and Material Safety Data Sheets (MSDs). Because of existing requirements under OSHA's Hazard Communication Standard (29 CFR 1910.1200), OSHA estimates that there are no new recordkeeping burdens attributable to these provisions (average burden hours per response is zero).

DATE: OSHA has requested an expedited review of this resubmission under the Paperwork Reduction Act to be completed within 45 days of the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Comments and questions about the recordkeeping/reporting requirements for paragraphs (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard (29 CFR 1910.1048) should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210 (telephone (202) 523–6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 3208, Washington, DC 20503 (telephone (202) 395–6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTARY INFORMATION: On December 4, 1987, OSHA published a final rule on occupational exposure to formaldehyde (52 FR 46168 to 46312). The recordkeeping and reporting requirements of this standard (29 CFR 1910.1048) were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (53 FR 1529, January 20, 1988). On February 2, 1988, OMB approved all of the requirements except for those contained in paragraphs (m)(1)(i) through (m)(4)(ii) under OMB clearance number 1218–0145.

OSHA is submitting the following clearance package to OMB in a request for reconsideration of OMB's decision to deny information collection approval for paragraphs m(1)(i) through m(4)(ii) which pertain to labeling and preparation of Material Safety Data Sheets (MSDSs) under the Formaldehyde Standard. Because similar requirements already exist under OSHA's generic standard, Hazard Communication (29 CFR 1910.1200), OSHA estimates that there are no additional burdens attributable to these provisions and that no further recordkeeping burden would be incurred.

BILLING CODE 4510-26-M

Standard Form 83
Rev. September 1983

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

U.S. Department of Labor, Occupational Safety and Health Administration, Directorate of Health Standards Programs

2. Agency code: 1218

3. Name of person who can best answer questions regarding this request

Quentelle Barton

Telephone number: (202) 523-7075

4. Title of information collection or rulemaking

FORMALDEHYDE STANDARD: paragraphs (m)(1)(i) - (m)(4)(ii)

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*

29 USC 651, et seq. or PL 91-596

6. Affected public *(check all that apply)*

1 ☐ Individuals or households
2 ☐ State or local governments
3 ☐ Farms
4 ☒ Businesses or other for-profit
5 ☒ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☒ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

____ or, None assigned ☐

8. Type of submission *(check one in each category)*

Classification	*Stage of development*	*Type of review requested*
1 ☐ Major	1 ☐ Proposed or draft	1 ☐ Standard
2 ☐ Nonmajor	2 ☐ Final or interim final, with prior proposal	2 ☐ Pending
	3 ☐ Final or interim final, without prior proposal	3 ☐ Emergency
		4 ☐ Statutory or judicial deadline

9. CFR section affected

_____ CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No

If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

[illegible]08

Standard Form 83 (Rev. 9-83)
Prescribed by OME
5 CFR 1320 and E.O. 12291

PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less 'Occupational health standards, health hazards toxic substances, carcinogens' This regulation requires employers to train employees about the hazards of formaldehyde, affix warning labels on containers as required and also develop and maintain Material Safety Data Sheets as specified in provisions (m)(1)(i) - (m)(4)(ii) of the standard.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 ☐ Regular submission
2 ☐ Emergency submission *(certification attached)*

Information collections contained in rules

3 ☐ Existing regulation *(no change proposed)*
4 ☐ Notice of proposed rulemaking (NPRM)
5 ☒ Final, NPRM was previously published
6 Final or interim final without prior NPRM
A ☐ Regular submission
B ☐ Emergency submission *(certification attached)*

7 Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)* 12/04/87

15. Type of review requested *(check only one)*

1 ☐ New collection
2 ☐ Revision of a currently approved collection
3 ☒ Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 ☐ Reinstatement of a previously approved collection for which approval has expired
5 ☐ Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

None

17. Annual reporting or disclosure burden

1 Number of respondents	112,217
2 Number of responses per respondent	0
3 Total annual responses *(line 1 times line 2)*	0
4 Hours per response	0
5 Total hours *(line 3 times line 4)*	0

18. Annual recordkeeping burden

1 Number of recordkeepers	0
2 Annual hours per recordkeeper	0
3 Total recordkeeping hours *(line 1 times line 2)*	0
4 Recordkeeping retention period	0 years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	955,043
2 In current OMB inventory	955,043
3 Difference *(line 1 less line 2)*	0
Explanation of difference	
4 Program change	0
5 Adjustment	0

20. Current *(most recent)* OMB control number or comment number

1218-0145

21. Requested expiration date

June 1988 - February 1991

22. Purpose of information collection *(check as many as apply)*

1 ☐ Application for benefits
2 ☐ Program evaluation
3 ☐ General purpose statistics
4 ☒ Regulatory or compliance
5 ☐ Program planning or management
6 ☐ Research
7 ☐ Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 ☒ Recordkeeping

Reporting

2 ☐ On occasion
3 ☐ Weekly
4 ☐ Monthly
5 ☐ Quarterly
6 ☐ Semi-annually
7 ☐ Annually
8 ☐ Biennially
9 ☒ Other *(describe)* None

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 ☐ Voluntary
2 ☐ Required to obtain or retain a benefit
3 ☒ Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? ☐ Yes ☒ No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? ☐ Yes ☒ No

27. Regulatory authority for the information collection

29 CFR 1910.1048 , or _____ FR _____ , or, Other *(specify)*. _____

Paperwork Certification

In submitting this request for OMB approval the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with

Signature of program official — Date

Maureen Kelleher-Edick — July 5, 1988

Signature of agency head, the senior official or an authorized representative — Date

Theresa O'Malley for Paul E. Larson — July 7 1988

BILLING CODE 4510-26-C

U.S. GOVERNMENT PRINTING OFFICE: 1984 0 - 433-469

Supporting Statement for Information Collection Requirements of the Formaldehyde Standard Concerning the Hazard Communication Provisions—Justification

1. Circumstances Requiring the Collection of Information

The Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 651 et seq.) authorizes the promulgation of such health and safety standards that will reduce significant risk of material impairment of health. The statute specifically authorizes information collection by employers as "necessary or appropriate for the enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational accidents and illnesses." Moreover, in regard to areas in wihch employees are exposed to toxic substances or harmful physical agents. The OSH Act provides that the Secretary of Labor shall issue regulations requiring employers to keep records of employee exposures (29 U.S.C. 657(c)).

The Occupational Safety and Health Administration's primary responsibility is to assure employees safe and healthful places of employment. As one means of achieving this objective, the OSH Act authorizes the promulgation of mandatory safety and health standards that provide control measures for particular hazards. For toxic substances and harmful physical agents, the OSH Act contains an explicit mandate that the standard promulgated be expressed in terms of objective criteria and of the performance desired whenever practicable (29 U.S.C. 655(b)(5)). Health standards must include provisions for monitoring and measuring employee exposure, suitable protective equipment and control of technological procedures, and type and frequency of medical examinations or other tests, as appropriate. The statute also mandates the inclusion of appropriate warning labels (29 U.S.C. 655(b)(7)). According to section 6(b)(7) of the OSH Act:

> Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

The Act and its legislative history recognize that recordkeeping and reporting by employers are necessary both for enforcement of the Act and for developing information regarding the causes and prevention of occupational accidents and illnesses (29 U.S.C. 651(b)(12); 657(c)(1)). In addition, the Act specifically states that:

> The Secretary * * * shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards. (29 U.S.C. 657(c)(1)).

The Occupational Safety and Health Administration (OSHA) recently adopted a health standard governing employee exposure to formaldehyde (29 CFR 1910.1048). Pursuant to the Paperwork Reduction Act, OSHA also submitted a request for approval of information collection requirements to the Office of Management and Budget (OMB). Information collection requirements for this standard were approved by OMB under Control Number 1218–0145 on February 2, 1988, except for paragraphs (m)(1)(i) through (m)(4)(ii). These disapproved paragraphs provide objective criteria for determining when the presence of formaldehyde constitutes a health hazard. They also prescribe the information that must be included on labels to be placed on containers of formaldehyde, certain formaldehyde-treated products and products containing formaldehyde, and information to be included in the accompanying Material Safety Data Sheets (MSDSs).

In its letter of February 2, 1988, OMB disapproved any requirements for labels and MSDSs in the Formadehyde Standard (FS) that went beyond those already approved in the OSHA Hazard Communication Standard (HCS). OMB believed that their record did not contain sufficient information at that time to make a determination that the information collection requirements at issue were consistent with the Paperwork Reduction Act.

OSHA is resubmitting a request for information collection approval for these disapproved provisions with a more detailed justification. A copy of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is attached to this document as Appendix I. OSHA requests expedited consideration of this request.

The new standard requires employers to monitor formaldehyde exposure and employee health under certain conditions, to reduce formaldehyde exposure below the revised permissible exposure limits (PELs), and to train employees to recognize formaldehyde's health effects and how to deal with workplace formaldehyde hazards. The hazard communication provisions are inextricably intertwined with the other provisions of the Formaldehyde Standard to eliminate significant cancer risk. The information collection and disclosure activities for the hazard communication provision of this standard is listed below.

Under the hazard communication provision of the Formadehyde Standard (§ 1910.1048 (m)(1)(i) through (m)(4)(ii)), formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air under normal conditions of use at concentrations reaching or exceeding 0.1 ppm must be considered a health hazard. At a minimum, specific health hazards that the employer shall address are: cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

The employer must assure that hazard warning labels complying with the requirements of 29 CFR 1910.1200(f) are affixed to all containers where the presence of formaldehyde constitutes a "health hazard" as defined. At a minimum, labels must identify the hazardous chemical; list the name and address of the responsible party; contain the information "Potential Cancer Hazard"; and appropriately warn of all other hazards as defined in 29 CFR 1910.1200, Appendices A and B.

In addition, the Formaldehyde Standard states: "any employer who uses formaldehyde-containing materials that constitute a health hazard as defined in this standard shall comply with the requirements of 29 CFR 1910.1200(g) with regard to the development and updating of Material Safety Data Sheets." See 29 CFR 1910.1048(m)(4)(i).

Manufacturers, importers, and distributors of formaldehyde-containing materials that constitute a health hazard as defined in this standard must assure that Material Safety Data Sheets (MSDSs) and updated information are provided to all employers purchasing such materials at the time of initial shipment and at the time of the first shipment after a Material Safety Data Sheet is updated.

2. Use of Information and Consequence to Federal Program

The information collected pursuant to with this standard is used to ensure that information concerning the health hazards of formaldehyde is conveyed to affected employers and employees. Compliance with this aspect of the standard is required in order to maintain a safe and healthful work environment. Failure to transmit this information will significantly impair OSHA efforts to

protect the health of employees exposed to formaldehyde in the workplace.

3. Use of Improved Information Technology

OSHA did not mandate detailed procedures for satisfying the hazard communication provisions of the Formaldehyde Standard. OSHA included performance-oriented exemptions which permit employers to use a wide array of techniques to demonstrate that their employees are exposed to formaldehyde only at concentrations below those triggering the hazard communication requirements. OSHA did not mandate specific forms for the MSDSs nor specifications for the label, but required only the minimal information necessary to convey the hazard.

The information collection requirements of these provisions are intended to ensure that information concerning the health hazards of formaldehyde is transmitted to affected employers and employees. Thus this regulation minimizes burdens on industry to the extent practical and consistent with the purposes of the Act.

4. Efforts to Identify Duplication

These provisions are complementary to the Hazard Communication Standard, 29 CFR 1910.1200, which has the explicitly stated purpose to eliminate duplication of efforts through preemption of state law. No other federal agency requires the reporting or collection of information regarding formaldehyde in the workplace.

5. Use of Similar Information

The information required by this standard is specific to, and available only from manufacturers, distributors, importers, and employers. Product-specific data are not available elsewhere in the Federal Government, nor are published reports of a similar nature available in the Federal Government. Further, the public record of this rulemaking does not indicate any alternate source for this information.

6. Consideration of Small Businesses

The burden of these requirements is an equal obligation for all employers with employees exposed to formaldehyde in the workplace. Because of the manner in which the standard is written, employers can choose to respond to these information collection requirements in the way that is best suited to their work environments. The requirements are based on performance, and compliance is judged accordingly. There are no set requirements for the format or manner in which the information collected is to be documented or maintained. In addition, these provisioins minimize burdens to employers producing formaldehyde or formaldehyde containing products because the hazard determination required by the Hazard Communication Standard, 29 CFR 1910.1200(d), has been made by OSHA in the Formaldehyde Standard.

7. Consequence of Less Frequent Information Collection

The information collection frequencies specified in these provisions are the minimum amount necessary to assure that employees are adequately informed of the hazards associated with formaldehyde.

8. Special Circumstances

There are no special circumstances applicable to paragraphs (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard.

9. Consultation Outside the Agency

Consultation with persons and organizations outside of OSHA concerning the Formaldehyde Standard, including paragraphs (m)(1)(i) through (m)(4)(ii), has been extensive (as outlined below):

A. On January 11, 1985, OSHA announced that public meetings would be held in Washington, DC on February 13–15, 1985 (50 FR 1547), to generate information which would help OSHA to decide whether or not permanent rulemaking should be initiated under section 6(b) of the Act. New information on formaldehyde's health effects and quantitative risk assessments for formaldehyde was introduced at the meetings and in post-hearing comments [Docket Numbers H–225 and H–225A, Exhibits 68–1 to 68–23; 69–1A to 69–34; 70–1 to 70–58, and 76–1 to 76–8].

B. On April 15, 1985, OSHA announced that it would proceed with permanent rulemaking to reduce formaldehyde exposure, basing its decision on the determination that the existing standard did not adequately address the adverse health effects associated with occupational exposure to formaldehyde. OSHA published an Advance Notice of Proposed Rulemaking (ANPR) (50 FR 15179, April 17, 1985). Forty-three submissions, many of them containing comments relating to hazard communication, were received in response to the ANPR [Exhibits 77–1 to 77–43].

C. Based on a review of the existing record, new references identified by OSHA [Exhibits 73–1 to 73–189], and Health Hazard Evaluations provided by NIOSH [Exhibits 78–1 to 78–91], OSHA completed a Preliminary Regulatory Impact Analysis [Exhibit 81] and published a proposed rule (50 FR 50412 to 50499) on December 10, 1985. An informal hearing which provided the public with an opportunity to comment was held from May 5 to 16, 1986 in Washington, DC. The public was afforded further opportunity to comment on the proposal during the post hearing comment period and later, during a limited one-month re-opening of the record beginning on December 12, 1986 (51 FR 44796). Many of the comments received addressed labels, MSDSs and other aspects of hazard communication in relation to formaldehyde, particularly the need for a cut-off or a level below which the requirements would not apply. More than 1400 exhibits containing approximately 30,000 pages of testimony and comments were received into the record of this rulemaking.

D. On December 2, 1987 OSHA received an Application for an Administrative Stay for the hazard communication provisions of the Formaldehyde Standard from several parties, including the Formaldehyde Institute, the American Textile Manufacturers Institute and the National Particleboard Association [Exhibits 251–4, 251–8]. Subsequently, OSHA received over 90 letters apparently resulting from an organized campaign that supported the petition [Exhibits 252–1 to 252–91].

E. On February 2, 1988, OMB disapproved the collection of information requirements of the Formaldehyde Standard regarding any hazard communication requirements that go beyond those already approved in the Hazard Communication Standard and conditionally approved other collection of information requirements of the Formaldehyde Standard.

OSHA has based its final standard on occupational exposure to formaldehyde on all of the evidence accumulated until the close of the record in January 1987. The above referenced Exhibits and others are available in the public record, Docket H–225, 225A, 225B, and 225C, which is available for inspection in the OSHA Docket Office, Room N–3670, U.S. Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. For this paperwork approval submission, OSHA has also reviewed and evaluated the recent information provided by the petitioners and by OMB in its letter of February 2, 1988.

10. Assurance of Confidentiality

There are no issues regarding confidentiality for these provisions of the standard.

11. Questions of a Sensitive Nature

This question is not applicable as questions of this nature are not asked of the respondents as a requirement of this standard.

12. Estimate of Annual Costs

A. Cost to the Federal Government

Paragraphs (m)(1)(i) through (m)(4)(ii) pertain to hazard communication programs implemented by employers subject to the standard and do not require expenditures by the Federal Government. Therefore, OSHA estimates that the annual cost to the Federal Government over the period to be covered by this paperwork clearance request is $0.

B. Method Used to Estimate Cost of Burden to Respondents

The source for the data used to estimate the paperwork burden for the information collection requirements contained in paragraphs (m)(1)(i) through (m)(4)(ii) is OSHA's Regulatory Impact Analysis (RIA). OSHA estimated that 112,217 facilities will be required to comply with the requirements of the Formaldehyde Standard. Based upon an analysis of the record, OSHA has determined that there will be three classes of industries affected by the revised standard (Tables A and B).

Tier 1, which covers 35,998 establishments employing 412,168 workers, consists of the industries where some firms have workers who are currently exposed above either the 1 ppm TWA or 2 ppm STEL. This group consists of foundries, laboratories, funeral homes, and industry sectors engaged in the manufacture of the following five products: 1) hardwood plywood; 2) particleboard; 3) fiberboard; 4) furniture; and, 5) formaldehyde resins.

Tier 2, which covers 28,682 establishments employing 1,074,604 workers who are currently exposed between the 0.5 ppm action level and the 1 ppm TWA and where no firms have employees exposed above either the 1 ppm TWA or 2 ppm STEL. This group is comprised of textile finishing and industry sectors engaged in the manufacture of the following three products: 1) apparel; 2) formaldehyde; and, 3) molded plastcs.

Tier 3 consists of 24 sectors (Table A) where some firms have workers who are currently exposed above 0.1 ppm and where no firms have employees exposed above the 0.5 ppm action level. This group covers 47,537 establishments employing 796,292 workers. The summary of this data follows:

TABLE A[a]

Tier 1	Tier 2
List of Industries That Comprise Tiers 1 and 2	
Hardwood Plywood	Textile Finishing
Particleboard	Apparel
Fiberboard	Formaldehyde Production
Furniture	Molded Plastics
Resins	
Foundries	
Laboratories	
Funeral Services	
List of Industries That Comprise Tier 3	
Softwood Plywood	Adhesive Products.
Pulp Mills	Gaskets, Packaging & Sealing Devices.
Paper Mills	Mineral Wool Insulation.
Paperboard Mills	Electric Housewares & Fans.
Envelopes	Current-Carrying Wiring Devices.
Corrugated & Solid Fiber Boxes.	Noncurrent-Carrying Wiring Devices.
Cyclic Crudes, Dyes & Pigments.	Elect. Equip. for Combustion Engines.
Paints, Pigments	Mobile Homes Manufacturing.
Nitrogenous Fertilizers	Photofinishing Labs.
Agricultural Chemicals	Hemodialysis.
Adhesives & Sealants	Biology Instructors.
Chemicals & Chemical Prep.	Veterinary Anatomist.

[a] Office of Regulatory Analysis's RIA, Table I-1.

TABLE B—NUMBER OF AFFECTED ESTABLISHMENTS [a]

Industry	Above 1 ppm	Between 0.5–1 ppm	Between 0.1–0.5 ppm	Total establishments
Tier 1	3,474	6,105	26,420	35,998
Tier 2	0	7,438	21,244	28,682
Tier 3	0	0	47,537	47,537
Total	3,474	13,543	95,201	112,217

NUMBER OF AFFECTED EMPLOYEES [a]

Industry	Above 1 ppm	Between 0.5–1 ppm	Between 0.1–0.5 ppm	Total employees
Tier 1	13,271	46,058	352,839	412,168
Tier 2	0	147,268	927,336	1,074,604
Tier 3	0	0	796,292	796,292
Total	13,271	193,326	2,076,467	2,283,064

a. Adapted from Table IV-1, Office of Regulatory Analysis's RIA.

C. Summary of Estimated Annual Cost of Information Collection

a. *Introduction.* OSHA estimated that the burdens of complying with the hazard communication provisions of the Formaldehyde Standard (FS) were subsumed by the Hazard Communication Standard (HCS). OSHA therefore concluded that no paperwork burden would result from imposition of paragraphs (m)(l)(i) through (m)(4)(ii) of the Formaldehyde Standard. OSHA believes, however, that these provisions enhance the effectiveness of both the Formaldehyde Standard and the Hazard Communication Standard. For example, the preamble states:

> OSHA believes that the record evidence provides ample testimony of the difficulties in precisely determining the circumstances under which the generic standard would apply for substances that do not exactly fit the definition of an article yet also do not have very much exposure potential. Without the benefit of a complete standard, which requires employers to determine their employee's exposures. OSHA could define such trivial amounts [in the HCS] only within the context of a percent composition. For resins which decompose to release formaldehyde, this approach is meaningless. However, a workable approach can be derived within the context of this substance-specific standard and this is the approach that OSHA has taken in the final rule. In addition, as noted above, the final rule's paragraph (m) requirements are entirely consistent with the Agency's generic Hazard Communication standard.

(52 FR at 46283). OSHA has concluded that the Formaldehyde Standard improves the Hazard Communication Standard's effectiveness and efficiency, and that these findings are supported by the formaldehyde rulemaking record.

On February 2, 1988, OMB disapproved paragraphs (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard, explaining that it did not have sufficient information about the relative burdens imposed on industry by the Formaldehyde Standard and the Hazard Communication Standard, and that OSHA had not given it sufficient time to perform an adequate assessment of the paperwork burdens imposed by those sections. OSHA therefore submits this revised paperwork justification to provide that information.

OSHA continues to believe that the Formaldehyde Standard's hazard communication requirements to not impose paperwork burdens beyond those imposed by the Hazard Communication Standard. In fact, in some situations the Formaldehyde Standard's hazard communication requirements may actually decrease the existing burden. The rulemaking record for formaldehyde indicated that employers and employees would both benefit from explicit guidance regarding the application of the generic HCS requirements to this particular substance. This is especially appropriate

due to the ubiquitous nature of formaldehyde usage and the physical characteristics of the chemical.

b. *Relationship of the hazard communication provision of the Formaldehyde Standard to the Hazard Communication Standard*

Because the provisions of the Formaldehyde Standard are specifically tailored to the properties and uses of formaldehyde, they provide a level of guidance and enforcement certainty which would not be available to formaldehyde manufacturers under the Hazard Communication Standard. However, these provisions serve the same function as those of the Hazard Communication Standard and are intended to result in the same information being provided to employees. Therefore, OSHA believes that the paperwork burden imposed by the hazard communication portion of the Formaldehyde Standard is virtually identical to, and in any event no greater than, that imposed by the Hazard Communication Standard.

i. The Requirements of the Hazard Communication Standard. The Hazard Communication Standard is a generic standard broadly scoped to ensure that the toxic effects of all chemicals are evaluated, and that information concerning health and safety hazards is transmitted to affected employers and employees. The standard defines a chemical as posing a "health hazard" if it can cause an acute or chronic health effect. Health hazards include, inter alia, carcinogens, irritants, and sensitizers. The determination of whether a chemical constitutes a health hazard is based on the intrinsic characteristics of the chemical, and not upon any form of risk assessment which takes into account the level of exposure which may be expected. Formaldehyde is a health hazard under this definition because substantial evidence exists that it is a carcinogen, an irritant, and a sensitizer.

Because many chemicals that constitute health hazards are ultimately incorporated into materials or products in such a manner that individuals working with or using them will not be exposed to the chemical itself, the HCS does not apply to "articles." An article is defined in the HCS as "a manufactured item (i) which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use." [1] Because of formaldehyde's unusual characteristic of "offgassing" from solids and resins used in apparel and wood products, many formaldehyde-containing products would not be considered "articles" for purposes of the HCS.

ii. The Requirements of the Formaldehyde Standard

During the Formaldehyde Standard rulemaking, a number of comments requested that products that release small amounts of formaldehyde be granted a de minimis exemption from the labeling requirements of the standard. In fact, this issue received more comment than any other provision in the proposed standard. OSHA agreed with these commenters that a de minimis exception was appropriate, and in the final rule, OSHA included a low-level cutoff below which the labeling provisions of the FS do not apply. Labeling of containers is required only for materials capable of releasing formaldehyde into the air at concentrations reaching or exeeding 0.1 ppm under normal conditions of use, or when mixtures or solutions contain more than 0.1 percent formaldehyde.[2]

The 0.1 percent composition requirement is analogous to the treatment of other carcinogens in the HCS. However, the 0.1 ppm aspect of the de minimis exemption in the Formaldehyde Standard is a departure from the HCS, which does not base labeling requirements on exposure levels. The different approach in the FS was chosen because formaldehyde is unusual in its ability to "offgas" from finished products, its widespread presence in a broad range of materials, its background presence in air, and the difficulty of measuring concentrations below 0.1 ppm. OSHA determined that, in light of these factors, a de minimis labeling exemption based on exposure levels is appropriate, and serves some of the same functions as the articles exemption serves for the generic HCS.

iii. The relative paperwork burdens under the Formaldehyde Standard and the Hazard Communication Standard. Because of the de minimis exemption to the labeling requirements in the FS, the paperwork burden imposed by the FS is no greater, and may even be lesser, than that imposed on manufacturers of formaldehyde-containing materials by the HCS. With the exception of the de minimis exemption, the scope and application of the hazard communication provisions of the FS are identical to those of the HCS. Thus, because of the de minimis provision, the FS actually requires that labels be provided on far fewer materials than is required under the HCS. It is for this reason that OSHA has explained that no additional burden hours are imposed by the FS.

The arguments of some industry groups that the FS imposes additional paperwork burdens on manufacturers of formaldehyde-containing products are based on a plainly erroneous reading of the HCS. According to these groups, the requirement in the HCS that "appropriate" labels be provided allows the employer discretion to determine when the risk level justifies a label and additionally to choose which health hazards the label will address. To the contrary, as we have explained, the HCS requires labels whenever a hazardous chemical is present in the workplace in such a manner that employers may be exposed to it at any level under normal conditions of use or in a foreseeable emergency. The plain language of the HCS, the preamble discussion of the relevant provisions, and OSHA's enforcement instructions and other post-promulgation statements are consistent. All make clear that risk assessment whereby a manufacturer makes an assessment of the magnitude of risk or the likelihood of disease as a criterion for deciding whether to provide an MSDS or a label is not permissible under the standard. There is simply no merit whatsoever to the industry argument that the unilateral opinion of manufacturers that a 0.1 ppm concentration of formaldehyde does not pose a risk excuses them from labeling. In fact, for almost two years, OSHA has had in effect a field memorandum interpreting the HCS as requiring a cancer warning on containers of formaldehyde and formaldehyde products. (See memo to the field, Appendix II).

Similarly, OMB stated in its February 2 letter that comments to that Agency's record, primarily from manufacturers of

[1] OSHA explained that materials which release only very small quantities of a hazardous chemical may still be considered "articles" under this definition. 52 FR 31865 (1987). The definition itself is the subject of a new rulemaking proceeding in accord with a separate OMB decision under the Paperwork Reduction Act. However, pending completion of that rulemaking, OMB has approved OSHA's current application of the articles exemption.

[2] OMB stated in its Febuary 2 letter that the "F.S. also introduces uncertainty about whether for purposes of Hazard Communication, a solid object is a 'container,' a 'mixture,' neither or both." OSHA believes that the obligation to label containers, and not products, is clearly stated in the preamble. However, in light of OMB's letter, OSHA intends to publish a clarification that all statements pertaining to the placement of hazard warning labels which are made in the preamble apply to containers. It is containers, not the solid products, which must bear a warning label.

wood products, show that many wood products which OSHA has said are now covered under the HCS are not, in fact, currently being labeled in accordance with what the Formaldehyde Standard requires because employers believe that the HCS does not require such labels. There are no reasonable grounds for this belief and OMB wrongly uses that as a factor in denying paperwork clearance. In the preamble to the formaldehyde proposal as well as in the final rule, the Agency set forth a detailed clarification of the Hazard Communication Standard's labeling requirements for wood and wood products (See 50 FR at 50484; 52 FR at 46284). Those documents explained that the Hazard Communication Standard's exemption for wood and wood products does not apply when wood and wood products are treated with a chemical, such as formaldehyde, that is itself not excluded from coverage under the Hazard Communication Standard. In light of this clear coverage, any alleged noncompliance with the existing labeling provisions of the Hazard Communication Standard cannot logically be used to "prove" that the provisions of the Formaldehyde Standard and the HCS do not impose substantively similar requirements for the labeling of containers of wood products emitting formaldehyde.

Objections to the 0.1 ppm cutoff level arise in part from the contention that manufacturers will have difficulty in determining the extent to which one of their products will offgas sufficient formaldehyde in its downstream applications to trigger the labeling requirement. In this context, it is significant that the FS rulemaking record reflects overwhelming support for the concept of a de minimis exemption from the labeling requirement. OSHA decided to accede to the comments on this issue and fashion a de minimis exemption from the hazard communication provisions for formaldehyde. Regardless of the precise cutoff that is utilized, determinations as to whether to label containers of specific products that approach that point will be necessary.

Furthermore, OSHA believes that this argument greatly exaggerates the difficulty of determining whether the labeling provision applies. The vast majority of formaldehyde-containing products either offgas so little formaldehyde that the 0.1 ppm exemption clearly applies, or offgas so much that it clearly does not. In OSHA's experience under other standards, even the borderline situations are not generally that difficult to decide. For example, the Asbestos Standard, which requires labeling when potential employee exposure exceeds 0.1 f/cc, and the Ethylene Oxide Standard, which requires labeling when potential exposure exceeds 0.5 ppm, are two recent standards where manufacturers' obligations depend on downstream worker exposure. In true borderline cases, OSHA advises manufacturers to act in a manner consistent with the intent of the hazard communication provisions to encourage free exchange of information. Exactly the same advice is given under the HCS.

Finally, we note that many of the industry objections to the labeling requirement of the Formaldehyde Standard focus on the content of the required label, the fact that it must contain the information "Potential Cancer Hazard". These objections are not relevant to this proceeding, of course, since the content of a label is not a factor in the paperwork burden imposed by a labeling requirement.[3] In any event, the scientific evidence in the rulemaking record abundantly supports OSHA's conclusion that formaldehyde is a potential occupational carcinogen. Formaldehyde causes cancers in two species of laboratory animals as shown in a number of studies (Preamble, 52 FR at 46204 to 46210). Formaldehyde causes nasal cancer in humans (Preamble, 52 FR at 46183 to 46785). These conclusions were shared by many commenters in the rulemaking record, and OSHA is confident that they are correct.

In summary, OSHA believes that the hazard communication provisions of the FS impose a paperwork burden no greater than that imposed no manufacturers of formaldehyde-containing products by the HCS. The differences between the requirements of the two standards are based on the particular characteristics of formaldehyde, and the FS requires fewer labels on formaldehyde-containing products than required by the HCS. As we explain below, the remaining hazard communication requirements of the FS make determinations appropriate for a substance-specific standard, and reduce manufacturers' assessment and analysis burdens without adding to their paperwork burden. These precisions contribute to a more stable, predictable, and efficient enforcement environment for the regulated community.

c. The hazard communication provisions of the Formaldehyde Standard are consistent with longstanding OSHA policy. OSHA has required cancer warnings on labels for regulated carcinogens throughout its history. Since the promulgation of the HCS, OSHA has adopted toxic substance standards for ethylene oxide, asbestos, benzene, and formaldehyde. All of these substances cause cancer, and OSHA has required cancer warnings in each instance. Differences in approach from standard to standard are justified by individual rulemaking records. Thus, the absence of an enforceable cancer warning requirement from the Formaldehyde Standard could be viewed as a departure from a longstanding OSHA policy. As recent decisions of the Supreme Court and the courts of appeals emphasize, good reasons for such a departure are necessary.

For the Benzene Standard (29 CFR 1910.1028) OSHA provided a complete exemption from the standard for containers and pipelines carrying mixtures with less than 0.1 percent benzene. This provision was justified by extensive comment, data, and discussion (see 52 FR 34524 to 34526), and was based upon known properties of benzene. Similarly, the Formaldehyde Standard's labeling provision applies to mixtures and solutions if they contain greater than 0.1 percent formaldehyde. However, a similar content-triggered provision is not appropriate for other formaldehyde products. Unlike benzene, formaldehyde is known to offgas from solid materials. Formaldehyde is generated from resins used to manufacture wood products and permanent press cloth. Therefore, the use of an across-the-board percent exclusion for all formaldehyde products (as used in the Benzene Standard) is not appropriate for the Formaldehyde Standard (see 52 FR 46282 to 46285), and the Formaldehyde Standard uses a different approach, that is, determining when to label "materials" capable of releasing formaldehyde.

[3] OSHA agrees with OMB that the carcinogenicity of a toxic substance is not reviewable under the Paperwork Reduction Act. As OMB explained at its hearing on the paperwork burden of the Hazard Communication Standard: "This is a paperwork meeting and while the Hazard Communication Standard is indeed mostly paperwork and therefore the issues will be very broad-ranging, I would like to point out that the specific regulatory issues are really not the scope of this meeting. For an example, it would not be appropriate to discuss whether a particular chemical was or was not a carcinogen under this Hazard Communication Standard. It would, perhaps be appropriate to discuss the difficulty in ascertaining whether a chemical is a carcinogen and in some generic information collection issue arising from that." (Transcript from the OMB hearing on the Hazard Communication Standard, page 13.) In this context we note that any difficulty or burden on an employer in determining whether formaldehyde is a carcinogen under the Hazard Communication Standard or whether the cancer risks from formaldehyde exposure may be considered de minimis are eliminated by the Formaldehyde Standard.

In a like manner, the differences in the labeling provisions of the Asbestos Standard. 29 CFR 1910.1001, reflect the differences between asbestos and formaldehyde. Asbestos is a solid material that will not become airborne unless the asbestos-containing material is disturbed or otherwise processed. In contrast, formaldehyde-containing materials may spontaneously offgas formaldehyde without disturbing the material. In addition, the Asbestos Standard covered mined products where asbestos may be a trace contaminant in the product but asbestos is not intentionally added to the product. The Asbestos Standard covered products that have bonded materials containing asbestos (see 51 FR 22698 to 22699). However, both formaldehyde and asbestos share the common feature that the labeling provisions are set at levels that approach the lowest measurable level using current analytical techniques.

OSHA completed the bulk of the ethylene oxide rulemaking prior to adoption of the HCS. The hazard communication provision in that standard, which is triggered at the 0.5 ppm action level, was adopted on the basis of that rulemaking record, and reflects the difficulty of accurately measuring ethylene oxide concentrations below 0.5 ppm.

d. *Enforcement of the specific hazard communication provisions of the Formaldehyde Standard is the most effective method of achieving the goals of both the Formaldehyde and the Hazard Communication Standards.* OSHA adopted the Formaldehyde Standard to address formaldehyde's health hazards in numerous ways. Thus, the standard contains a lowered permissible exposure limit, but also features such provisions as a medical surveillance requirement and worker-awareness provisions such as the cancer warning label requirement. These provisions are designed to work together; no single provision achieves OSHA's goal of worker protection in isolation from the others. Thus, OSHA made a judgment that inclusion of a cancer warning label was a necessary part of this complete toxic substance standard which, taken as a whole, will eliminate significant risk of cancer. In adopting the standard, the Agency stated, "OSHA believes that the entire standard for formaldehyde with a 1 ppm TWA and a 2 ppm STEL, and industrial hygiene and medical provisions will likely decrease the risk of exposure to levels more representative of the lower end of the range of risks, and possibly to even lower values. Under such circumstances, OSHA believes that residual risk can be considered 'insignificant.' " [4] Preamble, 52 FR at 46224. However, OSHA has consistenly and repeatedly stressed the integrated nature of the Formaldehyde Standard and the importance of complying with all of the standard's provisions to reduce risk. The OSH Act instructs the Agency to prescribe appropriate warning labels in section 6(b) standards. The effect of the disapproval of these paragraphs under the Paperwork Reduction Act is effect keeps OSHA from complying with its mandate. Without the cancer warning label, the standards's effectiveness would be diminished, since the risks to workers will be at the high end of OSHA's quantitative risk assessment and significant residual risks will remain.

The Formaldehyde Standard hazard communication requirements are tailored to fit the particular characteristics of formaldehyde and to give guidance as to what action is necessary and when to comply with the labeling provisions. Therefore, these provisions are very useful for the employer and should be approved by OMB. While a careful reading of the HCS should lead an employer to realize that the same requirements apply, it is possible that some employers, even though acting in good faith, might not interpret the HCS requirements correctly for formaldehyde. To leave this HCS provision in place in lieu of the more clear and concise formaldehyde provision would not only do a disservice to employers who want to comply, it might also adversely affect employees who would not have the benefit of the appropriate label. Moreover, such a policy might lead to citations that would be avoidable if the clearer Formaldehyde Standard provisions were allowed to stand.

While using the labeling provisions of the HCS as a basis for those in the Formaldehyde Standard, OSHA made certain minor modifications to allow for the peculiarities of formaldehyde. As shown above, these changes clearly define a formaldehyde-releasing material may be described as nonhazardous; this may result in slightly less labeling of formaldehyde-bearing products than under the HCS since manufacturers can have greater confidence that they are complying with the standard. OSHA believes that the record contains ample evidence to support this approach and that it is not appropriate to invite extensive litigation to "establish" that these requirements are enforceable for formaldehyde under the HCS by disapproving paragraphs (m)(1)(i) through (m)(4)(ii).

OSHA believes that the Formaldehyde Standard promulgation process, using the rulemaking authority of Section 6(b) of the OSH Act with administrative rulemaking procedures including publication of proposed rules, public comment, and hearings, has addressed the relevant issues regarding formaldehyde labeling.[5] One of the purposes of a substance-specific rulemaking proceeding is to let employers know exactly what actions are necessary to comply with the final rule. In the Formaldehyde Standard, OSHA has clearly articulated what actions are necessary to provide appropriate hazard communication for formaldehyde.

OSHA's inability to enforce paragraphs (m)(1)(i) through (m)(4)(ii) of the FS will lead to extensive, complex, costly, and possibly wasteful litigation. Generally courts give great weight to the interpretation of the drafter of a regulation. On the other hand, agencies are encouraged to promulgate clear and enforceable rules that give plain notice of their requirements to the regulated parties. To invite repeated litigation under the HCS instead of enforcing the FS is counterproductive to these policies and is contrary to the spirit of the Paperwork Reduction Act.

OSHA does not believe that disagreements regarding the details of appropriate hazard communication for formaldehyde should be resolve in enforcement disputes before the Occupational Safety and Health Review

[4] Contrary to some industry assertions, however, OSHA has never taken the position that exposure to 0.1 ppm of formaldehyde poses no risk. For example, in the preamble to the Formaldehyde Standard, OSHA states "The figures . . . which were derived from the analysis of the CIIT rat data and the 5-stage multistage model conducted in the ORA Report (Ex. 43) remain elevant to OSHA's final assessment of extra risk from exposure to formaldehyde." Preamble, 52 FR at 46220. These figures unequivocally show that some cancer risk exists at 0.1 ppm. Specifically, Table 3 states that the lifetime risk of cancer per 100,000 workers exposed to 0.1 ppm is between 0.001 (maximum likelihood estimate) and 26 (upper confidence limit).

[5] Based upon the comments received by OSHA, some members of the regulated community continue to argue that, under the Hazard Communication Standard, "appropriate hazard warnings" do not include a cancer warning in the case of formaldehyde. A longstanding Agency interpretation of the HCS is that formaldehyde labels must contain a cancer warning. (See memo to the field, Sept. 1986, Appendix II). The Formaldehyde Institute raised this issue during the formaldehyde hearings. The Formaldehyde Institute does not agree with the Agency's resolution of the issue, as shown by its comments to OMB. However, as OMB and OSHA recognized, see fn. 2. supra, substantive disputes of this type are not proper subjects for Paperwork Reduction Act consideration.

Commission. First, this approach is not an efficient use of resources. Litigating multiple contested cases before an Administrative Law Judge of the Occupational Safety and Health Review Commission would require spending extensive resources by both the Agency and industry. Each case would require extensive evidentiary development and use of witnesses. Upon appeal, each case could be reviewed by the three member panel of the Review Commission (which at this point contains only one member and would be unable to overrule and ALJ decision), and further appeals would be heard by the U.S. Court of Appeals.

Second, OSHA's administrative rulemaking process has resulted in an evaluation of the toxicity of formaldehyde that is far more extensive than could be prepared by indivdual OSHA field offices, an employer who is contesting a citation, or an Administrative Law Judge. OSHA's public meeting and rulemaking hearing records contain considerable testimony of experts in the field, including presentations by scientists who performed the primary research. It would not be feasible or practical to have this type of open hearing and detailed analysis occur in various contested citation cases. As a result of this rulemaking, OSHA has decided how to address this issue in the formaldehyde rule. OSHA does not believe that the industry's disagreement with OHSA's conclusion regarding the toxicity of formaldehyde is sufficient reason to revoke the labeling provisions of the Formaldehyde Standard.

e. *Conclusion.* OSHA believes that a number of factors should be taken into consideration to mitigate its failure to comply with the precise letter of the Paperwork Reduction Act. The public had notice of the Agency's intended course of action early in the formaldehyde rulemaking process and had extensive opportunity to comment on this issue among others. In addition, the regulation underwent extensive OMB review under Executive Order 12291 before promulgation and certain changes were made pursuant to that review. Therefore it would have been possible to submit the Paperwork Clearance package until this review was complete.

Moreover, the standard was promulgated under intense time pressure, in compliance with a judicially-imposed deadline. In fact, the petitioners in the case had requested that the Agency be held in contempt of court if the date was not met. The Agency's failure to give 60 days advance notice to OMB under the Paperwork Reduction Act, when under this extreme judicial pressure to nullify the extensive opportunity the public has already had to comment on and discuss the issue. Yet this would be the result if the Agency is forced to initiate a new rulemaking proceeding on this issue so that the letter of the Paperwork Act may be followed. We believe that this unnecessarily inflexible course is inconsistent with the objectives of both the Paperwork Reduction Act and the Occupational Safety and Health Act.

13. Estimate of Annual Burden Hours

The burden hour estimates are based on the information contained in the Regulatory Impact Analysis (RIA) prepared by OSHA in November 1987. OSHA has estimated that there are no burden hours for the hazard communication provisions of the Formaldehyde Standard. The other paperwork provisions of the Formaldehyde Standard have a burden of 955,043 hours which were approved until February 29, 1991. Approval of the hazard communication provisions would not change the overall burden hours of the Standard.

	1st year, initial	2d & 3d years, recurring
Hazard communication	0	0

II. Explanation of Method of Estimating Annual Burden

Hazard Communication

There are no burden hours for this provision, since OSHA has assumed that the costs that would be incurred in affixing precautionary labels as well as developing or revising Material Safety Data Sheets are not unique to the Formaldehyde Standard but are directly attributable to the Hazard Communication Standard, 29 CF 1910.1200.

III. Explanation of Difference Between SF 83 and 1988 ICB

There is no difference between the SF 83 and the 1988 ICB for the hazard communication provisions of the Formaldehyde Standard.

14. Reasons for Changes in Burden

There are no changes in burden for the hazard communication provisions of the Formaldehyde Standard.

15. Collection of Information for Statistical Use

This question is not applicable as the information to be collected will not be published for statistical use.

15–B. Collection of Information Employing Statistical Methods

The information collection requirements of the Formaldehyde Standard do not employ statistical methods. Therefore, this section is not applicable.

Appendix I: Formaldehyde Standard's Hazard Communication Provisions (29 CFR 1910.1048 (m)(1)(i) Through (m)(4)(ii))

(m) *Hazard communication*—(1) *General.*

* * * * *

(i) For purposes of hazard communication, formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air under any normal condition of use at concentrations reaching or exceeding 0.1 ppm shall be considered a health hazard.

(ii) As a minimum, specific health hazards that the employer shall address are: cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

(2) Manufacturers and importers who produce or import formaldehyde or formaldehyde containing products shall provide downstream employers using or handling these products with an objective determination through the required labels and MSDSs if these items may constitute a health hazard within the meaning of 29 CFR 1910.1200(d) under normal conditions of use.

(3) *Labels.* (i) The employer shall assure that hazard warning labels complying with the requirements of 29 CFR 1910.1200(f) are affixed to all containers where the presence of formaldehyde constitutes a health hazard.

(ii) *Information on labels.* As a minimum, labels shall identify the hazardous chemical; list the name and address of the responsible party; contain the information "Potential Cancer Hazard"; and appropriately warn of all other hazards as defined in 29 CFR 1910.1200, Appendices A and B.

(iii) *Substitute warning labels.* The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same

information as the warning statements required by this paragraph.

(4) *Material safety data sheets.* (i) Any employer who uses formaldehyde-containing materials that constitute a health hazard as defined in this standard shall comply with the requirements of 29 CFR 1910.1200(g) with regard to the development and updating of Material Safety Data Sheets.

(ii) Manufacturers, importers, and distributors of formaldehyde containing materials that constitute a health hazard as defined in this standard shall assure that Material Safety Data Sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a Material Safety Data Sheet is updated.

Signed at Washington, DC, this 6th day of July, 1988.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

Appendix II: Memo to the Field—Labeling of Formaldehyde-Containing Products Under the Hazard Communication Standard

September 9, 1986.

MEMORANDUM FOR ALL REGIONAL ADMINISTRATORS

FROM: JOHN B. MILES, JR., Director, Directorate of Field Operations.

SUBJECT: Labeling of Formaldehyde-Containing Products Under the Hazard Comunication Standard.

Several parties have asked for guidance on the subject issue. The Hazard Communication Standard (HCS) does not establish a clear threshold for the inclusion of hazard warnings on product labels. The term "appropriate hazard warning" found under 29 CFR 1910.1200(f) is the determining factor in the standard's labeling requirements.

While it is not the Agency's intent to provide specifications that might erode the standard's inherent flexibility, it is necessary to establish guidelines to ensure uniformity in our enforcement evaluations of employer programs. Guidelines were published originally on May 16, 1986 and further refined recently on July 18 in OSHA Instruction CPL 2-2.38A and CPL 2-2.38A CH-1 (pages A-12 through A-18). The guidelines provide criteria that are summarized in Table 1 of the directive on page A-18. These guidelines establish the presence of a single valid, positive study showing human evidence of carcinogenicity as a sufficient basis for the inclusion of a carcinogen warning on product labels.

In a recent formaldehyde rulemaking proposal (50 FR 50412), the Agency considered the epidemiological evidence as suggestive based on a consideration of all available evidence. There are, however, several valid, positive studies showing human carcinogenicity. The following are examples (all exhibit numbers refer to the formaldehyde docket, number H225 and H225A):

1. Stroup, Exhibit 73-42
2. Acheson et al., Exhibit 42-1
3. Blair et al., (recent NCI report)
4. Olsen et al., Exhibit 73-36

In addition, formaldehyde has been tested and shown to cause cancer in three separate animal studies by CIIT (Exhibit 42-131), New York University (Exhibits 42-3, 42-4) and (Exhibit 73-146). Genotoxicity has also been documented through several short term assays.

Health professionals must employ a large measure of judgment when making decisions about the appropriateness of a label warning. They must keep in mind that the HCS is primarily an information standard and as such expresses an intent to disclose information rather than to withhold information. Accordingly label warnings stating the carcinogenic potential for formaldehyde will generally be required under the HCS.

The specific words or phrases used to warn of formaldehyde carcinogencity will vary. Compliance officers should expect to see warnings such as "CARCINOGEN," "POTENTIAL CARCINOGEN," and "ANIMAL CARCINOGEN." Others will incorporate modifying statements such as "INCONCLUSIVE EVIDENCE OF HUMAN CARCINOGENCITY." Wide latitude should be permitted as long as the label being evaluated warns of the potential cancer risk.

[FR Doc. 88-15535 Filed 7-11-88; 8:45 am]

BILLING CODE 4510-26-M

Voluntary Protection Programs To Supplement Enforcement and To Provide Safe and Healthful Working Conditions; Changes

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Clarifications to the voluntary protection programs (VPP) regarding injury rates and referrals.

SUMMARY: Documentation retention duration, applicability of the requirements to small businesses, Star construction and Merit injury rates, frequency on consultation safety committee inspections and areas of generic employee participation requirements are clarified, and OSHA's policy on referral for enforcement is specified. Other program requirements and OSHA responsibilities remain unchanged.

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Room N3647, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (220) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA on July 2, 1982, have established the credibility of cooperative action among government, industry and labor to address worker safety and health issues and expand worker protection. Requirements for VPP participation are based on comprehensive management systems with active employee involvement to prevent and control the potential safety and health hazards of the site. Companies which qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

From the beginning, OSHA has reserved the right to use its enforcement authority in specified instances such as the investigation of employee complaints, significant accidents, and chemical leaks or spills. On the other hand, OSHA has been careful to keep separate from enforcement any information submitted through the VPP application process, because applicants have voluntarily requested OSHA review and have voluntarily presented to OSHA safety and health program information not required by law. A 1984 study of private sector attitudes about the VPP indicated that the risk that most non-participating employers associated with VPP application was the possibility that a VPP review could lead to enforcement action. That has not ever been and is not now OSHA's intent.

The question has arisen as to what action OSHA would take in the event that, during the course of VPP interaction, it was determined that employees were endangered and the cooperative approach was not effective in resolving the situation. In the first place, OSHA believes that such a situation would be rare, if it ever were to occur. During the more than five-year history of the VPP, cooperation has always resolved any identified problems. Since it is conceivable, however, that a situation could arise where management would refuse to address a condition which poses a serious threat to the safety and health of employees, the agency wants to clarify how an unresolved situation of that nature would be handled.

The need for a variety of minor clarifications has been determined. For example, an organizational change is needed to that an assurance implied elsewhere in the document is specified in the assurance section.

VPP participants have requested clarification on the length of time program documentation must be maintained.

Questions have arisen requiring a clarification of the time requirements for prior site experience at construction sites which are applying for Star participation, necessitating a clarification. In addition, a previous change inadvertently eliminated an option for Merit construction participation, thereby warranting a reinstatement of earlier language.

A discrepancy between two sections addressing frequency of construction safety committee inspections has been noted and requires correction.

Langage intended to permit waivers of some requirements for written procedures and documentation for small businesses has not been clearly understood.

Finally, where employee participation has been implied in the generic sense, that term has been used instead of the reference to safety committees which was previously used. Where the intent was to refer specifically to safety committees, there has been no change.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C 651 et seq. (the "Act" and the "OSH Act"), was enacted "to ensure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions which establish the legislative mandate for the Voluntary Protection Programs.

"* * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safer and healthful working conditions;"

"* * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;"

"* * * (5) by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;"

"* * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment."

C. Structure of Notice

Section II deals with the rationale for the changes.

Section III incorporates the change of the name of the Try Program to the Merit Program as announced in 53FR2101 with the clarifications in the program requirements and OSHA responsibilities.

II. Rationale for Change

The first change in section III.D.2. involves a specification in the assurances section of management's commitment to optimum occupational safety and health protection and to meeting and maintaining the requirements for program participation. This has been required as a part of management commitment in III.E.5.a. Instructions for VPP application and review tools used by OSHA staff, however, have addressed this issue primarily in the assurances area. So that VPP materials will reflect the order of requirements listed in the **Federal Register**, this assurance has been added to the assurances section as Section III.S.2.a. The concept continues to be addressed in the management commitment section as well.

The second change is in section III.D.2.g. That section specifies the kind of program documentation which must be maintained for OSHA review. Implied in previous **Federal Register** language was the idea that such documentation must be kept for the duration of VPP participation. In fact, records required for VPP alone, such as documentation of self-inspection or safety committee activities must be retained for a minimum of twelve months or until OSHA has communicated its decision regarding program participation based on the results of its pre-approval review or regularly scheduled evaluation. This means that, initially, documentation of program activities for the previous twelve months is required to demonstrate whether or not the VPP requirements have been operational for the minimum amount of time. This documentation should be retained until OSHA has communicated its decision regarding VPP participation in case any questions arise about any aspects of the site program. The same type of safety and health program documentation must then be maintained throughout the period of participation to be covered by the OSHA evaluation, again until notification of OSHA's decision regarding continued approval is received, for the reason previously noted.

This time period is now specified to clear up any uncertainty for participants. Some of the items listed, such as the OSHA log and industrial hygiene records, must also be maintained for periods of time specified by other regulations.

The change is section III.E.4. clarifies the point that the length of time that rates for all employees at a construction site must have been kept together is the most recent twelve months. The previous language requiring site rates for "the last full year" Could be misconstrued as referring to the preceding complete calendar year.

Section III.E.5.a(4) has been changed to clarify the ability of OSHA to waive formal requirements such as written procedures or documentation for small business where, due to the size of the worksite and numbers of employees, such formalities are unnecessary for the effective functioning of safety and health management systems. It is intended that OSHA will make the determination on a case-by-case basis after thorough review of the effectiveness of the system in question.

Section III.E.5.e. (2)(d) has been changed to coincide with the requirement in section III.E.5.b. (3)(c) that construction safety committee inspections cover the entire worksite at least monthly. Because of the constantly changing conditions at a construction site, more frequent coverage of the entire worksite is required to ensure prompt hazards correction than is required as a minimum for a static general industry site. Most general industry Star sites provide more frequent inspection coverage than is required.

In Section III.E.5.f. (2), N.1.c. (5), and N.2.c. (6) the term "safety committee" had been used as a generic term to indicate some type of "employee participation." In order to reflect this generic connotation more accurately, the term "employee participation" is used instead. When the VPP was adopted in 1982, the preponderance of information regarding employee involvement in safety and health programs focused on joint committees. During the agency's more than five years' experience with reviewing site programs, however, many different kinds of effective employee participation have been seen. Where options are allowed, OSHA does not want to limit, by its use of language, the type of employee participation a company many choose. The second and third changes, regarding employee participation in the evaluation measures, clarify that the effectiveness of whatever type of participation the site uses will be a major determining factor in continued VPP participation.

The change in section III.3.b. (2) involves an injury rate clarification. In a previous revision to the Voluntary Protection Programs, 52 FR 7337, the language regarding injury rates for the

Try Program (now know as Merit) inadvertently omitted the fact that both the three-year average lost workday case rate and the total recordable incidence rate could be above the industry average for a general industry applicant if OSHA were convinced that the applicant's planned program improvements could be expected to bring the rates down to a level at or below the industry average in a reasonable time. The language has been changed to reflect "either or both," in accord with original program design.

In response to questions from agency personnel, Section L has been revised to indicate how OSHA would handle enforcement referrals in unlikely event that a company would refuse to resolve a safety and health issue that had been identified during the course of VPP interaction. To date, no enforcement referral has been needed to protect workers at potential or participating VPP sites.

There is always the potential for differences of opinion among reasonable people regarding the appropriate way to prevent and control hazards. The spirit of cooperation engendered by VPP facilitates open discussion of options and supports joint efforts for determining solutions to any safety and health problem that may arise. When joint efforts are successful and employees are protected, a referral is unnecessary and would not be made. Given the cooperative spirit of the program, the need for referral is unlikely. On the other hand, one can imagine a scenario where workers could be seriously endangered, and for one reason or another, management refused to make changes necessary to protect them. If that situation were to occur, it is clear that OSHA would be obligated to ensure the safety and health of those employees, and a referral to appropriate enforcement officials would be made because OSHA cannot ignore its responsibility to employee safety and health.

A referral to enforcement would never be made lightly. OSHA, in line with the cooperative spirit on which the VPP are based, would first make every effort to find a mutually satisfactory solution among government, management and labor. Since the companies that apply for VPP participation commit themselves to providing superior worker protection that goes beyond the minimum requirements of OSHA standards and since companies that are willing to work with OSHA on a cooperative basis are unlikely to take a negative approach to the resolution of any occupational safety and health concern, as indicated above, it is not anticipated that a situation of this nature will arise.

It is not OSHA's intent to jeopardize the cooperative relationship between volunteer companies and OSHA staff nor to squander enforcement resources in pursuing trivial concerns. It is, however, OSHA's intention that no safety and health problem which would seriously endanger employees, and which anyone acting in good faith would expect to see corrected, go unresolved. The careful balance between these important needs requires an approach which emphasizes the gravity of the question and the need for consistency in selecting the best way to assure that the employees in question are protected. The agency has, therefore, determined that any referral to appropriate enforcement officials shall be decided by the Assistant Secretary.

Current participants in the VPP have expressed their recognition of the need for enforcement referrals in deplorable situations that remain unresolved and have indicated their trust in OSHA to make the determination of that need appropriately.

Other program requirements and OSHA responsibilities remain unchanged.

III. The Voluntary Protection Programs

A. Purpose of the Voluntary Protection Programs

OSHA has long recognized that compliance with its standards cannot be itself accomplish all the goals established by the Act. The standards, no matter how carefully conceived and properly developed, will never cover all unsafe activities and conditions. Furthermore, limited resources will never permit regular or exhaustive inspections of all of the Nation's workplaces. In addition, employers and employees, because of their day-to-day experience in the workplace, acquire a special knowledge of the processes, materials and hazards involved with the job. This knowledge, combined with the ability to evaluate and address unique hazards quickly and to provide rewards for positive action, can be used by employers to improve workplace safety and health in ways simply not available to OSHA.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in employer-provided, site-specific occupational safety and health programs. These programs are comprised of managment systems for preventing or controlling occupational hazards. The systems not only ensure that OSHA's standards are met, but go beyond the standards to provide the best feasible protection at that site.

When employers apply for and achieve approval for participation in the VPP, they are removed from programmed inspection lists. This frees OSHA's inspection resources for visits to establishments that are less likely to meet the requirements of the OSHA standards. VPP participants enter into a new relationship with OSHA in which safety and health prob'ems can be approached cooperatively, when and if they arise.

Participation in any of the programs does not diminish existing employer and employee rights and responsibilities under the Act. In particular, OSHA does not intend to increase the liability of any party at an approved VPP site. Employees or any representatives of employees taking part in an OSHA-approved VPP safety and health program are not assuming the employer's statutory or common law responsibilities for providing safe and healthful workplaces or undertaking in any way to guarantee a safe and healthful work environment.

The programs included in the VPP are voluntary in the sense that no employer is required to participate and that any employer may volunteer for application to one of the VPP. Compliance with OSHA standards and applicable laws remains mandatory.

Approval for participation is determined by the Assistant Secretary for Occupational Safety and Health.

B. Purpose of this Notice

This notice describes the qualifications criteria for approval of participation in the Voluntary Protection Programs (VPP), and the conditions of participation, termination of or withdrawal from participation and means of reinstatement.

C. Program Description

1. General

The VPP are voluntary programs which provide recognition to qualified employers and removes those "recognized employers" from programmed inspection lists. They emphasize the importance of worksite safety and health programs in meeting the goal of the Act "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions . . ." through official recognition of excellent safety and health programs, assistance to employers in the efforts to reach a level of excellence and the use of the

cooperative approach to resolve safety and health problems.

The VPP consist of two major programs, Star and Merit, plus a Demonstration Program to permit demonstration and/or testing of experimental approaches which differ from the two established programs. In addition, within the Star and Merit Programs there are some variations between general industry and construction industry requirements.

2. Recognition

By approving an applicant for participation in the VPP, OSHA recognizes that the applicant is providing, at a minimum, the basic elements of ongoing systematic protection of workers at the site which makes routine Federal enforcement efforts unnecessary. The symbols of this recognition are certificates of approval and the right to use flags showing the program in which the site is participating. The participant may also choose to use program logos in such items as letter-head or award items for employee contests.

In addition to removing approved worksites from programmed inspection lists (but not from valid, formal employee safety and health complaint, inspections, investigations of significant chemicals spills/leaks, nor fatality/catastrophe investigations), OSHA will provide the opportunity for a company to work cooperatively with the agency both in the resolution of safety and health problems and in the promotion of effective safety and health problems through such means as presentations before meetings of safety and health organizations such the National Safety Congress. Each approved site will have a designated OSHA Contact Person to handle information and assistance requests.

D. Aspects Common to All VPP

1. The Eligible Applicant

a. *Site Management.* Management at a site which is either independent or part of a corporation can make application to the VPP for that site.

b. *Corporate Management.* The management of a corporation may apply to the VPP on behalf of one or more sites in the corporation. This staff provide one or more aspects of the site safety and health program.

c. *General Contractors and Organizations Providing Overall Management at Multi-Employer Sites.* At multi-employer sites, such as in the construction industry, the only eligible applicant is the one which can control safety and health conditions of all employees at the site, such as the general contractor or the owner.

d. *Organizations Representing Groups of Small Business in the Same Industry.* OSHA will consider, for Demonstration Programs, applications from organizations providing health and safety program services to groups of small businesses of the same industry (at the three or four digit SIC level) in a limited geographical area. All sites must meet requirements and will be subject to onsite review.

2. Assurances

Applications for all VPP must be accompanied by certain assurances describing what the applicant will do if the application is approved for participation in one of the VPP. The applicant must assure that:

a. All the requirements for the VPP will be met and maintained.

b. All employees, including newly hired employees when they reach the site, will have the VPP explained to them, specifically including employee rights under the program and under the Act.

c. All hazards discovered through self-inspections, accident investigations or employee notification will be corrected in a timely manner.

d. If employees are given health and safety duties as part of the applicant's safety and health program, the applicant will assure that those employees will be protected from discriminatory actions resulting from the duties, just as section 11(c) of the Act protects employees for the exercise of rights under the Act.

e. Employees shall have access to the results of self-inspections and accident investigations upon request (in construction, this requirement may be met through the joint labor-management committee).

f. For construction, injury records for all work done at the site will be recorded *together* and the injury rates for that site will be maintained at or below the national average for that type of construction.

g. The information listed below will be maintained and available for OSHA review. It will be retained until OSHA communicates its decision approving VPP participation. The same information will be retained during participation for evaluation purposes for the time period covered by the evaluation until OSHA communicates its decision regarding continued approval for VPP participation.

(1) Written safety and health program;

(2) Copies of the log of injuries and illnesses and the OSHA 101 or its equivalent;

(3) Monitoring and sampling records if applicable;

(4) Agreement between management and the collective bargaining agent(s) concerning the functions of the safety committee and its organization where applicable;

(5) Minutes of each committee meeting where applicable;

(6) Committee inspection records where applicable;

(7) Management inspection and accident investigation records;

(8) Records of notifications of unsafe or unhealthful conditions received from employees and action taken, taking into account appropriate privacy interests; and,

(9) Annual internal safety and health program evaluation reports (described below in E.5.f.).

h. Applicants for the Merit or Demonstration Programs must provide assurance that any data necessary to evaluate achievement of individual goals not listed above will be made available to OSHA for evaluation purposes.

i. Each year by February 15, the participating site will send notification to the designated OSHA Contact Person, described under Section III.M., of the site's injury incidence and lost work day case rates, hours worked and estimated average employment for the past full calendar year.

3. Unionized Sites

When a site covered by an application for any of the VPP has a significant portion of its employees organized by one or more collective bargaining units, the authorized agent must either sign the application or submit a signed statement indicating that the collective bargaining agent(s) do(es) not object to participation in the program. Without such concurrence, OSHA will not approve program participation.

4. Inspection/Interaction History

If the applicant has been inspected in the last three years, the inspection, abatement and/or any other history of interaction with OSHA must indicate good faith attempts to improve safety and health and include no upheld willful violations during those last three years.

E. The Star Program

1. Purpose

The Star Program is based on the characteristics of the most comperehensive safety and health programs used by American industry. It aims to recognize leaders in injury and illness prevention programs who have been successful in reducing workplace

hazards and to encourage others to work toward such success.

2. Term of Participation

The term for participation in an approved Star Program is unlimited, contingent upon continued favorable triennial evaluation. In the construction industry, participation is ended with the completion of construction work at the site.

3. Experience

All elements of the safety and health program must be in place and have been implemented for a period of not less than twelve months before Star approval at both general industry and construction sites. Adequate written guidance must be available prior to Star approval.

4. Results

The general industry applicant must have an average of both lost workday injury case rates and injury incidence rates for the most recent three-year period at or below the most recent specific industry (at the three or four digit level) national average published by BLS. For the construction application, the average injury incidence rate and lost workday injury case rate for at least the most recent twelve months at the site applied for, including all workers of all subcontractors of the site, must be at or below the national average for that type of construction according to the most precise SIC code. The SIC for the site is based on the type of construction project, not individual trades.

5. Safety and Health Program Qualifications for the Star Program

a. *Management Commitment and Planning.* Each applicant must be able to demonstrate top-level management commitment to occupational safety and health in general and to meeting the requirements of VPP. Management systems for comprehensive planning must address safety and health.

(1) *Commitment to Safety and Health Protection.* As with any other management system, authority and responsibility for employee safety and health must be integrated with the management system of the organization and must involve employees. This commitment includes:

(a) *Policy.* Clearly established policies and results-oriented objectives for worker safety and health protection which have been communicated to all employees;

(b) *Line Accountability.* Authority and responsibility for safety and health protection clearly defined and implemented; accountability through evaluation of supervisors; and a system for rewarding good and correcting deficient performance;

(i) The general industry applicant must have a documented system for holding all line managers and supervisors accountable for safety and health.

(ii) The construction applicant must demonstrate that, at a minimum, the project manager and contractor superintendents are held accountable for safety and health conditions within their areas of responsibility.

(c) *Resources.* Commitment of adequate resources to workplace safety and health, in staff, equipment, promotion, etc.;

(d) *Management Involvement.* Top management involvement in worker safety and health concerns, including clear lines of communication with employees and setting an example of safe and healthful behavior; and

(e) *Contract Worker Coverage.* All contractors and subcontractors are required, whether in general industry, construction or other specialized industry, to follow worksite safety and health rules and procedures applicable to their activities while at the site, including special precautions necessary as a result of their activities.

(i) Except where precluded by government regulations, participants should be able to demonstrate that they have considered the safety and health programs and performance of major contractors during the evaluation and selection process, especially in operations such as construction where contractors and sub-contractors are a routine aspect of business arrangements.

(ii) In general industry, when the contractor's activities are not part of the overall operation and include special skills and hazards beyond the participant's expertise, the participant's responsibility is not expected to extend beyond proper diligence and prudence in both the selection and the oversight of the contractor.

(2) *Commitment to VPP Participation.* Management must also clearly commit itself to meeting and maintaining the requirements of the VPP for which application is made.

(3) *Planning.* Planning for safety and health must be a part of the overall management planning process. In construction, this includes pre-job planning and preparation for different phases of construction as the project progresses.

(4) *Written Safety and Health Program.* All critical elements of a basic safety and health program, which includes hazard assessment, hazard correction and control, safety and health training, employee participation and safety and health program evaluation, must be part of the written program All aspects of the safety and health program must be appropriate to the size of the worksite and the type of industry. Some formal requirements such as written procedures or documentation may be waived for small businesses where the effectiveness of the systems has been evaluated and verified. Waivers will be decided on a case-by-case.

b. *Hazard Assessment.* Management of safety and health programs must begin with a thorough understanding of all potentially hazardous situations and the ability to recognize and correct all existing hazards as they arise. This requires:

(1) Analysis of all new processes, materials or equipment before use begins to determine potential hazards and plan for prevention or control.

(2) Comprehensive safety and health surveys at intervals appropriate for the nature of workplace operations, and regular reviews (by a person(s) qualified to recognize existing hazards and potentially significant risks) to ensure the employer's awareness and control of those risks.

(a) A baseline survey of health hazards accomplished through initial comprehensive industrial hygiene surveying or other comprehensive means of assessment, such as complete industrial hygiene engineering studies, before equipment or process installation in general industry or in the pre-job planning for construction; and

(b) The use of nationally recognized procedures for all sampling, testing, and analysis with written records of results.

(3) A system for conducting, as appropriate, routine self-inspections which follow written procedures or guidance and which result in written reports of findings and tracking of hazard correction.

(a) In general industry, these inspections must occur no less frequently than monthly and cover the whole worksite at least quarterly;

(b) In construction, this must include management inspections which cover the entire worksite at least weekly; and

(c) Also in construction, inspections by members of the safety and health committee which cover the entire worksite as appropriate, but no less frequently than once per month, are required.

(4) Routine examination and analysis of hazards associated with individual jobs, processes, or phases and inclusion of the results in training and hazard control programs. This includes, e.g., job safety analysis and process hazard

review. In construction, the emphasis should be on special safety and health hazards of each craft and each phase of construction.

(5) A reliable system for employees, without fear of reprisal, to notify appropriate management personnel in writing about conditions that appear hazardous and to receive timely and appropriate responses. The system must include tracking of responses and hazard corrections.

(6) An accident/incident investigation system which includes written procedures or guidance, with written reports of findings and hazard correction tracking; and review of injury/illness experience identifying causes and providing for preventive or corrective actions.

(7) A medical program which includes the availability of physician services and personnel trained in first-aid.

c. *Hazard Correction and Control.* Based on the results of hazard assessment, identified hazards and potential hazards must be addressed by the implementation of engineering controls; equipment maintenance; personal protective equipment; disciplinary action, when needed; and emergency preparedness. Safety rules and work procedures must be developed, thoroughly understood by supervisors and employees, and followed by everyone in the workplace, to prevent and control potential hazards. These include the following provisions:

(1) Reasonable site access to Certified Industrial Hygienists and Certified Safety Professionals or Certified Safety Engineers must be available, as needed, based on the potentially significant risks of the site.

(2) Means for eliminating or controlling hazards. These include the following:

(a) Engineering controls.

(b) Personal protective equipment.

(c) Safety and health rules, including safe and healthful work procedures for specific operations.

(i) Appropriate to the potential hazards of the site.

(ii) Written, implemented and updated by management as needed and used by employees.

(3) Procedures for disciplinary action or reorientation of employees and supervisors who break or disregard safety rules, safe work, materials handling or emergency procedures must be written, communicated to employees, and enforced.

(4) Procedures for response to emergencies listing requirements for personal protective equipment, first aid, medical care, or emergency egress must be written and communicated to all employees. Procedures should include provisions for emergency telephone numbers, exit routes, and training drills.

(5) Ongoing monitoring and maintenance of workplace equipment to prevent it from becoming hazardous.

(6) A system for initiating and tracking hazard correction in a timely manner.

d. *Safety and Health Training.* Training is necessary to implement management's commitment to prevent exposure to hazards. Supervisors and employees must know and understand the policies, rules and procedures established to prevent exposure. Training for safety and health must ensure that:

(1) Supervisors understand the hazards associated with a job, their potential effects on employees, and the supervisor's role, through teaching and enforcement, in ensuring that employees follow the rules, procedures and work practices for avoiding or controlling exposure to the hazards.

(2) Employees are made aware of hazards, and the safe work procedures to follow in order to protect themselves from the hazards, through training at the same time they are taught to do a job and through reinforcement.

(3) Supervisors and all employees understand what to do in emergency situations.

(4) Where personal protective equipment is required, employees understand that it is required, why it is required, its limitations, how to use it, and how to maintain it; and employees use it properly.

e. *Employee Participation.* (1) For general industry, the requirement for employee participation may be met in any one of a variety of ways, as long as employees have an active and meaningful way to participate in safety and health problem identification and resolution.

(a) This is in addition to the individual right to notify appropriate managers of hazardous conditions and practices.

(b) Examples of acceptable means of providing for employee impact on decision-making include the following:

(i) Safety committees,

(ii) Safety observers,

(iii) Ad hoc safety and health problem-solving groups,

(iv) Safety and health training of other employees,

(v) Analysis of hazards of jobs, and

(iv) Committees which plan and conduct safety and health awareness programs.

(2) Construction sites must utilize the labor-management safety committee approach to involve employees in the identification and correction of hazardous activities and conditions. This is required because of the seriousness of the hazards, the changing worksite conditions, the expanding and contracting work force and the high turnover in the construction industry. The applicant must be able to demonstrate that the site has a joint labor-management committee for safety and health which has the following characteristics.

(a) Has a minimum of one year's experience providing safety and health advice and making periodic site inspections.

(b) Has at least equal representation by bona fide worker representatives who work at the site and who are selected, elected, or approved by a duly authorized collective bargaining organization.

(c) Meets regularly, keeps minutes of the meetings, and follows quorum requirements consisting of at least half of the members of the committee, with representatives of both employees and management.

(d) Makes regular workplace inspections (with at least one worker representative) at least monthly and more frequently as needed, and has provided for at least monthly coverage of the whole worksite.

(e) In addition, the joint committee must be allowed to:

- Observe or assist in the investigation and documentation of major accidents;
- Have access to all relevant safety and health information; and,
- Have adequate training so that the committee can recognize hazards, with continued training as needed.

(3) If a construction applicant chooses to use a joint committee that differs either in the membership composition or in the functional duties specified in (b) above, the applicant must:

(a) Meet operational requirements for quorum, meeting minutes, etc.

(b) Demonstrate that the alternative practices achieve the objectives of the practices they replace. For example, bona fide employee representation in the joint committee is intended to ensure that all site employees participate fully in matters of safety and health and that they are fully informed of decisions affecting safety and health. In the absence of bona fide employee representation on the joint committee, means which are equally effective in achieving these objectives must be provided.

(c) Contractually bind all contractors and subcontractors operating at the applicant's site to maintain effective safety and health programs and to

comply with applicable safety and health rules and regulations:

(i) Such contract provisions must specify authority for the oversight, coordination and enforcement of those programs by the applicant and there must be documentary evidence of the exercise of this authority by the applicant;

(ii) Such contract provisions must provide for the prompt correction and control of hazards, however detected, by the applicant in the event that contractors or individuals fail to correct or control such hazards; and

(iii) Such contract provisions must specify penalties, including dismissal from the worksite, for willful or repeated non-compliance by contractors, subcontractors, or individuals.

f. *Safety and Health Program Evaluation.* The applicant must have a system for evaluating the operation of the safety and health program annually to determine what changes are needed to improve worker safety and health protection.

(1) The system must provide for written narrative reports with recommendations for improvements and documentation of followup action.

(2) In particular, the effectiveness of the operation of the self-inspection system, the employee hazard notification system, accident investigations, employee participation, safety and health training, the enforcement of safety and health rules, and the coverage of health aspects, including personal protective equipment and routine monitoring and sampling, should be determined and the findings should be used to improve the implementation of the company's written safety and health program.

(3) The evaluation may be conducted by corporate or site officials or by a private sector third-party.

(4) In construction, the evaluation should be conducted annually and immediately prior to completion of construction to determine what has been learned about safety and health activities that can be used to improve the contractor's safety and health program at other sites.

F. The Merit Program

1. Purpose

The Merit Program is aimed at employers in any industry who do not yet meet the qualifications for the Star Program but who wish to work toward Star Program participation. If OSHA determines that the employer has demonstrated the commitment and the potential to achieve the Star requirements, Merit is used to set goals that, when achieved, will qualify the site for Star participation.

2. Term of Participation

Merit Programs will be approved for a period of time agreed upon in advance of approval. The term will be dependent upon how long it is expected to take the applicant to accomplish the goals for Star participation. Participation is canceled at the end of the term.

3. Qualifications for Merit

a. *Safety and Health Program Requirements.* An eligible applicant to the Merit Program must have a written safety and health program which covers the essential elements of a safety and health program as described in Section III.E.5 for Star.

(1) The basic elements (management commitment and planning; hazard assessment; hazard correction and control; safety and health training; employee participation and safety and health program evaluation) should all be operational or, at a minimum, in place and ready for implementation by the date of approval. For the construction industry, the joint labor-management committee must have had a minimum of three months experience in providing safety and health inspections before approval.

(2) The elements are not expected to be at Star quality of completeness. The Merit applicant is not expected to meet each of the specific Star requirements in each element. Participation in Merit is an opportunity for employers to work with OSHA to improve the quality of their safety and health programs and reduce their injury rates to meet the requirements for Star.

b. *Injury Rates.* (1) For the Merit Program in construction, if the injury rates for the site applied for are not at or below the industry averages for the preceding twelve months as required for Star, the applicant company must be able to demonstrate that the company's three-year average injury rates are at or below the most recently published BLS national average for the industry (at the three digit level). The injury incidence rate and the lost workday case rate must each be averaged over the last three complete calendar years. The rate must include *all* of the applicant's employees who are actually employed at construction sites in that SIC. The applicant may use nationwide employment or may designate an appropriate geographical area which include the site for which application is made.

(2) For general industry, if either the three-year average rate for all recordable injuries, or for injury lost workday cases, or both for the last three calendar years is above the national average for the specific industry average (at the three or four digit level) as most recently published by BLS, the applicant must indicate goals for the reduction of either or both of those rates and demonstrate that the methods planned to reduce them are feasible.

c. *Goals.* Any system required for Star participation that is not in place or is not yet of Star quality at the time of approval must be set as a goal along with any rate reduction goals.

G. The Voluntary Protection Demonstration Program

1. Purpose

This program provides the opportunity for companies to demonstrate the effectiveness of alternative methods which, if proven successful (usually at more than one site), could be substituted as alternative qualifications for the Star Program for certain situations; to explore the use of VPP in industries other than construction and those classified as general industries, such as maritime or agriculture; and to test methods of overcoming problems which have kept certain employers, such as small business employers and many contractors in the construction industry, from taking part in the VPP.

2. Qualifications

a. Like all VPP participants, those in the demonstration program must have a site safety and health program that addresses a minimum of the basic elements (management commitment and planning, hazard assessment, hazard correction and control, safety and health training, employee participation, and safety and health program evaluation) described for Star in Section III.E. above. How the applicant implements those elements may be the subject of demonstration so long as Star quality protection is afforded all employees. The applicant is not expected to meet each of the specifics in each element.

b. Applicants for this program must demonstrate to the Assistant Secretary's satisfaction that the alternative approach shows reasonable promise of being successful enough to serve as an alternative basis for inclusion in the Star Program. This includes having average injury incidence and lost workday case rates for the previous three years at or below the specific industry average. Injury rates for mobile worksites such as in the construction industry must be at or below the specific industry average for the life of the worksite.

3. Term of Participation

Demonstration programs will be approved, subject to annual evaluation, for the period of time agreed upon in advance of approval but not to exceed five years.

4. Approval to Star

a. Approval to Star is contingent upon:

(1) Successful demonstration of the alternative aspects; and,

(2) A decision by the Assistant Secretary that changing the requirements of the Star Program to allow inclusion of these alternative aspects is desirable.

b. Once a decision has been made by the Assistant Secretary to change Star, those changes must be published in the **Federal Register** to provide public notice of the change.

c. When the published change has become effective, the demonstration site may be approved to Star without submitting a new application or undergoing further onsite review provided that the approval occurs no later than one year following the last evaluation under the Demonstration Program.

H. Application Requirements for All VPP

1. The Application Instructions

OSHA will prepare, keep current and make available to all interested parties, application guidelines which explain the type of information to be submitted for OSHA review.

2. Application Content

Eligible applicants will be required to provide all relevant information described in the most current version of the *Application Instructions* which apply to the program for which application is made.

Amendments to submitted applications will be requested when the application information is insufficient to determine eligibility for onsite review.

Materials needed to document the safety and health program which the applicant feels may involve invasion of privacy or a trade secret should not be included in the application. Instead, such materials should be described in the application and provided for viewing only at the site, if an onsite Pre-Approval Review is conducted as part of the application review.

3. Application Submission

Applications may be submitted to OSHA Regional Offices or, in the case of multi-regional applications, to OSHA's Directorate of Federal-State Operations in Washington, DC.

4. Application Withdrawal

Any applicant may withdraw a submitted application at any time after formal submission and before approval or denial. When the applicant notifies OSHA of its withdrawal, the original application will be returned to the applicant.

OSHA may keep the assigned Program Officer's marked working copy of the application for a year before discarding it, in case the applicant should raise questions concerning the handling of the application. Once an application has been withdrawn, a new submission of a formal application is required to begin application review again.

5. Public Access

The following documents will be maintained in OSHA's National and applicable Regional Offices for public access beginning on the day the applicant is approved and for so long as VPP participation is active:

a. VPP application and amendments;

b. Pre-Approval report and subsequent evaluation reports;

c. Transmittal memoranda to Assistant Secretary;

d. Assistant Secretary's approval letter; and,

e. Notification memoranda to Regional Administrator.

I. Qualification Verification

1. Initial Review

The initial review of the application is made to ascertain whether those qualifications which can be documented by paper submission have been met. The applicant will be given the opportunity to amend the application with additional or substitute materials for the purpose of improving the application. Where resources allow, OSHA staff will assist with application preparation, particularly for the Demonstration Program.

2. Pre-Approval Onsite Reviews

a. *Purpose.* The Pre-Approval Review, which is conducted by a team of non-enforcement OSHA staff, on the site for which participation has been requested is a management review of the site safety and health program. It is conducted to:

(1) Verify the information supplied in the application concerning qualification for the VPP for which application made;

(2) Identify the strengths and weaknesses of the site safety and health program;

(3) Determine the adequacy of the safety and health program to address the potential hazards of the site; and

(4) Obtain information to assist the Assistant Secretary in making the approval decision.

b. *Preparation.* The review will be arranged at the mutual convenience of OHSA and the applicant. The review team will consist of a team leader with a back-up along with health and safety specialists as required by the size of the site and the complexity of the safety and health program.

c. *Duration of the Review.* The time required for the Pre-Approval Review will depend upon the size of the site and the program applied for. Reviews will usually average one-and-a-half to two days onsite, unless the site has more than 1,000 workers or has other complicating factors.

d. *Content.* All Pre-Approval Reviews will include a review of injury records, recalculation of the rates submitted with the application, verification that the safety and health program described in the application has been implemented and a general assessment of safety and health conditions to determine if the safety and health program is adequate for the hazards of the site.

The review will also include interviews with relevant individuals (such as members of joint safety committees, management personnel and randomly selected non-supervisory personnel).

Onsite document review will include the following records (or samples of them) if they exist and are relevant to the application or the safety and health program:

(1) Management statement of commitment to safety and health;

(2) The OSHA 200 log;

(3) Safety and health manual(s);

(4) Employee notifications of safety and health problems;

(5) Safety rules, emergency procedures and examples of safe work procedures;

(6) The system for enforcing safety rules;

(7) Self-inspection procedures, reports and correction tracking;

(8) Accident investigations;

(9) Safety committee minutes;

(10) Employee orientation and safety training programs and attendance records;

(11) Industrial hygiene monitoring records; and,

(12) Other records which provide documentation of the qualifications for these programs.

J. Application Approval

1. Deferred Approval

If, at the conclusion of the Pre-Approval Review, the applicant needs to take actions to meet the qualifications for approval, reasonable time—up to 90 days—will be allowed for those actions to be taken before a recommendation is made to the Assistant Secretary. Where necessary, an onsite visit will be made to verify the actions taken after the Pre-Approval Review visit.

2. Application Withdrawal

If the applicant cannot meet the requirements for participation in one of the VPP or for any reason does not wish to continue the approval process, reasonable time shall be allowed for application withdrawal as provided for in III.H.4., before recommendation is made to the Assistant Secretary.

3. Application Approval

If, in the opinion of the Pre-Approval Review team, the applicant has met the qualifications requirements of the VPP applied for or an alternative VPP acceptable to the applicant, the team's recommendation will be made to the Regional Administrator, who, on concurrence, will recommend approval to the Director of Federal-State Operations. The Director of Federal-State Operations shall review the report for consistent application of the qualification requirements and, on concurrence, will forward the recommendation to the Assistant Secretary to approve participation. Approval will occur on the day that the Assistant Secretary signs a letter informing the applicant of approval.

K. Application Denial

1. Should the Assistant Secretary, for any reason, reject the FSO and/or Regional recommendation to approve, a letter from the Assistant Secretary denying approval will be sent to the applicant. The denial will occur as of the date of the letter.

2. Should an applicant appeal to the Assistant Secretary a finding by the team that qualifications are not met, the Director of Federal-State Operations will forward the appeal to the Assistant Secretary, along with the team's recommendation of denial.

If the Assistant Secretary accepts the recommendation to deny approval, the denial will occur as of the date the Assistant Secretary signs a letter informing the applicant of the decision.

L. Inspection Requirements

1. Programmed Inspections

Participating work sites will be removed from OSHA's programmed inspection lists.

2. Workplace Complaints

Employee complaints to OSHA will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

3. Chemical Leaks/Spills

Any significant chemical leaks spills will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

4. Fatalities and Catastrophes

All fatalities and catastrophes will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

5. Referrals

Although the history of the VPP indicates that safety and health problems discovered during contact with worksites for VPP purposes are resolved cooperatively, OSHA must reserve the right, where the safety and health of employees is seriously endangered and site management refuses to correct the situation, to refer the situation to the Assistant Secretary for review and enforcement action if warranted.

a. The employer will be informed in advance that a referral will be made to the Assistant Secretary and that enforcement action may result.

b. Because companies with excellent safety and health programs that are interested in participating in the VPP are not likely to refuse to address a serious problem in a cooperative spirit, a situation of this type is unlikely to occur. It is important, however, for interested employers and employees to be aware of and understand OSHA's obligation in the event that such a situation should occur.

c. Where a cooperative spirit does not exist between OSHA and a company, VPP participation is not appropriate. Therefore, if a company in this situation does not choose to withdraw from VPP consideration, VPP participation shall be denied or terminated.

M. Post-Approval Assistance

1. OSHA Contact Person

An OSHA official will be assigned to each VPP participating worksite as Contact Person. This person will be available to assist the participant, as needed, to assure smooth interface with OSHA and to provide expertise as required.

2. Problem Solving

If a problem comes to the attention of the OSHA Contact Person, either through evaluation efforts, review of injury rates, records of OSHA complaint inspections, chemical leaks/spills or accident investigations, or by request of the VPP participant, the Contract Person will attempt to assist the participant in resolving the problem, including, if necessary, arranging with the participant for an onsite visit to assess the problem and its possible causes.

3. Scheduled Onsite Assistance

In some cases, such as in the Demonstration Program, in the construction program or when needed for the Merit Program, a schedule of onsite assistance visits shall be agreed upon before approval.

4. Significant Organizational or Ownership Changes

Whenever significant changes are made in ownership or organizational structure at a VPP site, the Contact Person should make an onsite assistance visit to determine the impact of the changes on VPP participation.

N. Evaluation

1. The Star Program

a. *Purpose.* (1) To determine continued qualification for the Star Program.

(2) To document results of program participation in terms of the evaluation criteria and other striking aspects of the site program or its results.

(3) To identify any problems which have the potential of adversely affecting continued Star Program qualifications and to determine if those problems require additional evaluations.

b. *Frequency.* Star Programs shall be evaluated every three years (except when serious problems have been identified which require an earlier evaluation) with an annual review of injury incidence and lost workday injury case rates which shall include a recalculation of the latest three-year averages.

c. *Measures of Effectiveness.* The following factors will be used in the evaluation of Star Program participants:

(1) Continued compliance with the program requirements;

(2) Satisfaction of the participants;

(3) Nature and validity of any complaints received by OSHA;

(4) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and

(5) The effectiveness of employee participation programs.

d. *Description of Evaluation.* OSHA's evaluation of Star Program participants will consist mainly of an onsite visit of similar duration and scope of the Pre-Approval Program Review described in III.I.2. Documentation of program implementation from pre-approval review or the previous evaluation will be reviewed.

2. The Merit Program

a. *Purpose.* (1) To determine continued qualification for the Merit Program, or to determine whether the applicant may be approved for the Star Program.

(2) To determine whether adequate progress has been made toward the agreed-upon goals.

(3) To identify any problems in the safety and health program or its implementation which need resolution in order to continue qualification or meet agreed-upon goals.

(4) To document program improvements and/or improved results.

(5) To provide advice and suggestions for improvements that might be made.

b. *Frequency.* All merit programs will be evaluated annually for the duration of the period of approval, except where the participant requests an evaluation before the annual evaluation for the purpose of determining whether the Star qualifications have been met.

c. *Measure of Effectiveness.* The following factors will be used in the evaluation of Merit Programs:

(1) Continued adequacy of the safety and health program to address the potential hazards of the workplace;

(2) Comparison of rates to the industry average;

(3) Satisfaction of the participants;

(4) Nature and validity of any complaints received by OSHA;

(5) Nature resolution of problems that have come to OSHA's attention;

(6) Effectiveness of the employee participation program; and,

(7) Progress made toward goals specified in the pre-approval or previous evaluation report.

d. *Description of Evaluation.* OSHA's evaluation will consist mainly of an onsite visit of duration and content similar to the Pre-Approval Review described in III.I.2.

O. Termination or Post-Approval Withdrawal

1. Reason for Termination

a. Completion of covered construction work at the site will terminate a construction industry approval.

b. Sale of the approved site to another company or any management change that eradicates or significantly weakens the safety and health program may terminate the approval.

c. The participating site management, or the duly authorized collective bargaining agent where applicable, may terminate participation for any reason.

d. OSHA may terminate participation for cause.

2. Cause for OSHA Termination

a. *Star Program.* Termination by OSHA will occur when a significant failure to maintain the safety and health program in accordance with the program requirements has been identified.

b. *Merit Program.* Termination by OSHA will occur when:

(1) A significant failure to maintain the safety and health program in accordance with the program requirements has been identified; or,

(2) No significant progress has been made toward the goals; or

(3) The term of approval has expired.

c. *The Voluntary Protection Demonstration Program.* Termination by OSHA will occur when:

(1) OSHA determines that continuation of the experiment will:

(a) Endanger workers at the covered site(s); and/or,

(b) Be unlikely to result in inclusion into the Star Program; or,

(2) The period of approval has expired.

3. Notification

OSHA will provide the participant and other relevant parties 30 days notice of intent to terminate participation unless:

(a) Other terms for termination were agreed-upon before approval; or

(b) A set period for approval is expiring or construction has been completed.

4. Post-approval Withdrawal

Upon receipt of notice of intent to terminate, or for any other reason, a participant may withdraw from the VPP by submitting written notification to the assigned Contract Person.

P. Reinstatement

Reinstatement requires reapplication.

Signed at Washington, DC, this 29th day of June.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88-15513 Filed 7-11-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL LABOR RELATIONS BOARD

Experimental Modification of Procedures Governing the Rescheduling of Unfair Labor Practice Hearings

AGENCY: National Labor Relations Board.

ACTION: Notice of experimental modification of procedures governing the rescheduling of unfair labor practice hearings.

SUMMARY: Notice is hereby given that the National Labor Relations Board will commence a one-year experiment on August 1, 1988, transferring, under certain circumstances, the authority to reschedule unfair labor practice hearings from the Regional Directors to the administrative law judges. This experiment modifies the procedure set forth in § 102.16 of the Board's Rules and Regulations.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Ave., NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Section 102.16 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, currently permits the Agency's Regional Directors to extend the date of a scheduled unfair labor practice hearing either upon his/her own motion or upon proper cause shown by any other party. It appears that there is a public perception that this procedure is unfair insofar as the Regional Directors are also the persons responsible for prosecuting the unfair labor practice cases. Recognizing the detrimental effect such adverse public perceptions may have on the Agency's continued credibility and stature, the National Labor Relations Board will implement a one-year experiment in all of its Regional Offices whereby the authority currently granted the Regional Directors under Section 102.16 will be transferred, under certain circumstances, to the administrative law judges.

With respect to all unfair labor practice complaints issued between August 1, 1988 and July 31, 1989, the authority to extend the date of a scheduled hearing shall reside with the administrative law judges, except that the Regional Directors shall retain the authority to extend the date of a scheduled hearing in the following limited circumstances:

(1) Where all parties agree to extension of the date of hearing;

(2) Where a new charge or charges have been filed which if meritorious might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or

(5) Where more than 21 days remain before the scheduled date of hearing.

Except in thse limited circumstances, all motions to extend the date of the hearing during the one-year experimental period should be filed with the Division of Judges in accordance with the procedures set forth in § 102.24 of the Rules and Regulations. Where a motion to extend the date of a scheduled hearing has been granted by an administrative law judge, the authority to set a new date for the hearing shall be retained by the Regional Director.

This Notice will be forwarded to appropriate parties along with each unfair labor practice complaint that issues during the experimental period. Parties are invited to submit comments on or before the thirtieth day following the conclusion of the experiment (i.e. on or before August 30, 1989). Comments should be sent to: Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, July 7, 1988.

By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 88–15576 Filed 7–11–88; 8:45 am]

BILLING CODE 7545-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 "M" Street NW., Washington, DC 20527; Telephone (202) 457–7151.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7340.

Summary of Form Under Review

Type of Request: Extension.

Title: Application for Political Risk Insurance for Hydrocarbon Projects.

Form Number: OPIC—77.

Frequency of Use: Other—once per investor per project.

Type of Respondent: Business or other institutions (except farms).

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies investing overseas.

Number of Responses: 15.

Reporting Hours: 12.

Federal Cost: $3,750.00.

Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The hydrocarbon application is used to collect from eligible international petroleum companies data on proposed oil and gas projects, which is used in drafting political risk insurance contracts.

Date: June 28, 1988.

Mildred A. Callear,

Office of the General Counsel.

[FR Doc. 88–15543 Filed 7–11–88; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–25884; File No. SR–MCC–88–2]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Midwest Clearing Corp.

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 May 5, 1988, the Midwest Clearing Corporation 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

Article III, Rule 3 of the Rules of the Midwest Clearing Corporation is hereby amended as follows:

[Deletions Bracketed]

Rule 3. Participants (whether or not they have a position under CNS) may request withdrawal of Securities from the Corporation under the following procedures:

(a) A Participant requesting withdrawal of Securities from the offices of the Corporation in Chicago, Illinois, will specify, on the Security Withdrawal Request form (or on such other form as the Corporation may from time to prescribe), whether the Participant is requesting delivery of the Security in street [during the morning ("Demand Street Request"), whether the Participant is requesting delivery in street form during the afternoon] ("Street Request"), whether the Participant is requesting that the Corporation instruct MSTC to submit the Security to a transfer agent for registration in the name of a customer ("Customer Transfer Request") or in the name of the Participant ("Firm Name Transfer Request") or whether the request is pursuant to the Securities Today Program . . .

(b) No change in text.

(c) The Participant will specify on each [Demand Street Request and] Street Request whether the Participant will accept withdrawal of a partial amount. Requests will not be filled in partial amounts unless the Participant so specifies on the request form. Without the consent of the Corporation, Customer Transfer Requests and Firm Name Requests will not be filled in

partial amounts, [and Demand Street Requests] and Street Requests will not be filled in a partial amount that is not a multiple of 100.

(d) Subject to subparagraph (b), a Regular Request of a Participant having a Clearing Free Position in the Security requested and a Loan Request of a Participant having a Loan Free Position in the Security requested shall be filled that Business Day; provided, with respect to Street Requests [and Demand Street Requests,] that if certificates in the denominations requested are not then available to the Corporation for delivery at the place where delivery is requested, the amount of the request for which certificates are available shall be filled, if the request has been designated, in accordance with subparagraph (c), as a request which may be partially filled, and the remainder of the request shall be filled as promptly as practicable after such certificates become so available . . .

(e) In the event that there are Security Withdrawal Requests that cannot be filled pursuant to subparagraph (d), Securities will be deemed to be available to the Corporation for the purpose of filling Security Withdrawal Requests where Securities have been delivered by the prescribed cut-off time on that day to the Corporation against their Participants' Short Value Position in such security, or to the extent such Securities are available in Loan Free Positions; provided, however, that certificates shall be deemed to be available for the purpose of filling Street Requests [and Demand Street Requests] only if certificates in the denominations requested are available to the Corporation for delivery at the place where delivery is requested. . .

Within each such priority category, Security Withdrawal Requests shall have priority by type of request in the following order: Depository Delivery Instructions first, [demand Street Requests seconds,] Street Requests *second* [third], Customer Transfer Requests *third* [fourth], Firm Name Transfer Requests *fourth* [fifth], and Securities Today Program ("STP") Requests *fifth* [sixth]. Within each type of request, priority shall be given by position date, with the oldest position date having the highest priority in the case of Long Value and Loan Value Positions and the newest position date having the highest priority in the case of Short Value Positions . . .

(f) [Demand Street Requests will be processed at least once in the morning of each Business Day, and other forms of] Security Withdrawal Request will be processed on each Business Day at such times as the Corporation may from time to time prescribe. Security Withdrawal Requests may be filled out of Securities available as a result of deliveries against Short Value Positions before they are filled out of Securities available in Loan Free Positions.

(g) Not applicable.

(h) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to terminate MCC's services for Demand Street Withdrawal Requests. Demand Street Withdrawal Requests are currently processed ahead of Street Withdrawal Requests (but at a higher cost to a Participant). Demand Street Withdrawal Requests are being terminated because of planned improvements in MCC's operating systems and a lower volume of such Requests in 1987.

Participants may use Street Withdrawal Requests to have securities removed from MCC's System for physical delivery or pick-up. Upon implementation of the proposed rule change, Street Withdrawal Requests will be processed on a first come, first served basis only. Accordingly, Participants who submit early Street Withdrawal Requests will be able to receive their securities on a priority basis.

The proposed rule change is consistent with section 17A of the Securities and Exchange Act of 1934 in that it is designed to assure the safeguarding of securities which are in the custody or control of MCC and for which it is responsible by providing uniform and cost effective security withdrawal procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule change Received from Members, Participants or Others

Some Participants requested clarification on the proposed rule change and expressed a desire to be able to request early withdrawal of securities, if necessary. Participants were advised that early security withdrawal Requests will be processed in the order received by MCC. Accordingly, those submitting early withdrawal requests will have such requests processed on a timely basis.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 2, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

July 5, 1988.

[FR Doc. 88-15558 Filed 7-11-88; 8:45 am]

BILLING CODE 8010-01-m

[Rel. No. 34-25882; File No. SR-OCC-88-07]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

The Options Clearing Corporation ("OCC") on June 16, 1988, filed a proposed rule change with the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal provides for the adjustment of option contracts in event of certain distributions by issuers of the stocks underlying the options. The Commission is publishing this notice to solicit public comment on the proposal.

The proposal would add Intrepretation and Policy .07 ("Interpretation .07") to Article VI, Section 11 (Adjustments) of OCC's By-Laws.[1] Interpretation .07 would provide that where a change in the corporation structure of an issuer of common stock underlying an option includes the conversion of such common stock, in whole or in part, into a debt security or preferred stock and where interest or dividends on such security are payable in the form of additional units thereof (*i.e.*, interest or dividends in like-kind), the outstanding options, which shall have been adjusted in respect to the conversion of the common stock into debt security or preferred stock, shall be adjusted again with respect to the like-kind interest or dividends thereon.[2] The adjustment would be effective as of the ex-date for the like-kind distribution.

OCC states in its filing that, as a general matter, when an issuer of common stock, which underlies a listed option, is re-structured as, for example, by merger, consolidation, or recapitalization, such re-restructuring may necessitate an adjustment to the terms of the outstanding option as provided by Article VI, section 11 of OCC's By-Laws. OCC states that more recently, however, such re-structurings have included new issues of debentures and/or preferred stock that thereafter make periodic interest or dividend payments in kind rather than in cash.[3]

OCC further indicates that its existing rules and interpretations governing adjustments do not contemplate this situation, meaning that in such instances the OCC's Securities Committee must determine, on a case-by-case basis, whether an adjustment is appropriate. Accordingly, OCC states that in order to foster consistency and efficiency in its option adjustment policies, it is adopting an interpretation that will cover adjustments for such like-kind distributions.

OCC states that the proposal is consistent with the purposes and requirements of the Act, particularly the purposes and requirements of Section 17A of the Act, in that it would further the public interest by ensuring consistency in the overall application of OCC's By-Laws that govern adjustments.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons are invited to submit written comments. Persons desiring to make submit written comments should file six copies should be comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All submissions should refer to File No. SR-OCC-88-07. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of the OCC. All submissions should refer to File No. SR-OCC-88-07 and should be submitted by August 2, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-15559 Filed 7-11-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Section 11 is the principal provision governing option adjustments. *See* Securities Exchange Act Release No. 24024 (January 23, 1987), 52 FR 3184.

[2] OCC states in its filing that Interpretation .07 would be apt to apply in connection with a merger or consolidation where: (1) payments are made to holders of the underlying stock, and (2) such payments include preferred stock or debentures that thereafter will pay like-kind interest or dividends. Interpretation .07 would apply to the subsequent interest or dividend payments, and, on their ex-dates, would require option price adjustments.

[3] OCC has cited as examples: (1) a June 1987 acquisition of Viacom International by its parent and successor company, Viacom Inc., which included the conversion of Viacom International stock into the right to receive, among other things, shares of a new 15.5% Viacom Inc. Cumulative Convertible Exchangeable Preferred Stock whose dividends through September 1988, are payable in additional 15.5% preferred shares in lieu of cash; and (2) a December 1987 acquisition of Southland Corporation which included the conversion of its publically-held common stock into the right to receive, among other things, shares of a new 15% Southland Corp. Exchangeable Junior Preferred whose dividends through December 1992 are payable in additional preferred shares in lieu of cash; *See* Standard & Poor's Corp., *Standard Corporation Reports*, Vol. T-Z, 2242 (December 1987); Vol. P-S, 7551 (March 1988).

[Rel. No. IC-16469; 811-5005]

National Securities New York Tax Exempt Bond Fund; Notice of Application

July 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: National Securities New York Tax Exempt Bond Fund ("Applicant").

Relevant 1940 Act Sections: Order requesting deregistration under Section 8(f) and Rule 8f-1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N-8f was filed November 9, 1987, and an amendment thereto filed on May 31, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof or service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 605 Third Avenue, New York, New York 10158.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney (202)

272–3024 or Karen L. Skidmore, Special Counsel (202) 272–3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant was organized as a Massachusetts Business Trust and registered as an open-end, diversified, management investment company under the 1940 Act.

2. As of October 27, 1987, Applicant had one class of 35,676.596 shares of beneficial interest outstanding with a net asset value of $10.57 per share and total assets of 377,101.6197.

3. On October 27, 1987 Applicant's Board of Trustees adopted a resolution by unanimous consent authorizing the liquidation and dissolution of the Applicant. National Securities and Research Corporation ("National"), as the Investment Adviser, contacted each shareholder directly by telephone. Each shareholder agreed to redeem his shares and received the full amount which he had invested in the Fund, including applicable sales charges. This amount was more than the then current value of their shares, the difference being made up by National.

4. On May 3, 1988 Applicant submitted for filing an Instrument of Termination with the Secretary of State of the Commonwealth of Massachusetts. Applicant is currently waiting for confirmation of filing from the Commonwealth of Massachusetts.

5. Applicant has not transferred any of its assets to a separate trust within the last eighteen months.

6. Applicant is not now engaged and does not intend to engage in any business activities other than those necessary for the winding up of its affairs.

7. The Applicant is current on all filings required by the Commission. In addition, National will pay all expenses in connection with any and all future filings.

8. There were no expenses incurred by the Applicant in connection with the liquidation; all expenses incurred were paid by National. Applicant has no other outstanding liabilities and is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–15561 Filed 7–11–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16470/812–7046]

Pilgrim Adjustable Rate Fund et al.; Notice of Application

July 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Pilgrim Adjustable Rate Fund, Pilgrim Corporate Cash Fund, Pilgrim Discovery Funds, Inc., Pilgrim GNMA Fund, Pilgrim Government Securities Fund, Pilgrim High Income Fund, Pilgrim High Yield Trust, Pilgrim International Bond Fund, Pilgrim Investment Trust, Pilgrim MagnaCap Fund, Inc., Pilgrim Money Market Fund, Pilgrim Preferred Fund, and Pilgrim Variable Investment Fund, on behalf of themselves and any series, class or portfolio thereof, (all of the above being hereinafter referred to collectively, in whole or in part, as the "Funds"), on behalf of each open-end management invstment company and any series, class or portfolio thereof that are advised or managed in the future by Pilgrim Management Corporation or by its affiliates, and are not required by law to hold annual meetings of shareholders (all of the foregoing being referred to hereinafter as the "Applicants").

Relevant 1940 Act Sections: Exemptions requested under Section 6(c) from Section 32(a)(1).

Summary of Application: Applicants seek an order for an exemption to the extent necessary to permit each of the Applicants to file financial statements signed or certified by an independent public accountant selected at a Board of Directors/Trustees meeting held within 90 days before or after the beginning of such Applicant's fiscal year.

Filing Date: The application was filed on June 6, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be receivd by the SEC by 5:30 p.m., on July 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC 450 Fifth Street NW., Washington, DC 20549. Applicants, Robert A. Grunburg, Pilgrim Management Corporation, 10100 Santa Monica Boulevard, Los Angeles, California 90067.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

FOR FURTHER INFORMATION CONTACT: Staff Attorney, Fran Pollack-Matz (202) 272–3024, or Karen L. Skidmore, Special Counsel (202) 272–3023 (Division of Investment Management).

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the 1940 Act. Each of the Funds is organized as a corporation under the laws of the State of Maryland or California or as business trust under the laws of the Commonwealth of Massachusetts except Pilgrim High Yield Trust which is a New York common law trust. Each existing Fund has entered into an investment advisory or management agreement with Pilgrim Management Corporation.

2. Recently, both Maryland law and California law have been changed to no longer require annual meetings if the charter or by-laws of the corporation provide that such corporation need not hold annual meetings except when required in certain specified circumstances. On February 3, 1988, the boards of Directors/Trustees of the Funds incorporated in Maryland and California took such action as was necessary so that such Funds need no longer hold annual meetings. The Massachusetts business trusts are not required to hold annual shareholder meetings.

3. The fiscal year-ends of the Funds range from June 30 to December 31. Therefore, under the provisions of Section 32(a)(1) of the 1940 Act, the Boards of the Funds would have to meet almost monthly from June to December.

4. Typically, the Boards of all of the Funds meet on the same day which results in substantial savings to the

Funds in meeting costs. In order to select independent public accountants, the Funds' three disinterested Directors/Trustees, acting as each Fund's Audit Committee, and the Chairman of the Board meet with the independent public accountants at least twice a year. First, the Board members meet to discuss the scope of the audits, the significant audit procedures and the estimated costs. Second, following the completion of audits on all of the Funds for a year, the Board members meet to review the results of the annual audits. Based on the accountant's work, the respective Boards of the Funds make a determination regarding the selection of the independent public accountants for the next fiscal year.

Applicants' Legal Conclusions

1. By permitting the scheduling of the selection of the independent public accounts twice a year on a complex-wide basis through expanding the interval of section 32(a)(1) from 30 to 90 days, the Directors/Trustees will be able to select an accountant on a systematic basis. The review procedures will (a) provide for a detailed review of the services furnished by the independent public accountant to each Fund and (b) result in the Directors'/Trustees' consideration of all relevant information regarding the independent public accountants on a complex-wide basis.

2. The accountant's audit programs are designed so that test work is often done for all Funds at the same time. Expanding the interval will permit a regular and structural consideration of the independent public accountant for complexes at a meaningful interval of time.

3. The process will more accurately reflect the reality of doing business in complexes having a substantial number of funds which is different from the time the 1940 Act was passed when funds were operated on an individual basis or in small fund groups.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-15562 Filed 7-11-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16466; 812-6617]

Van Kampen Merritt U.S. Government Fund, et al.; Notice of Application

July 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Van Kampen Merritt U.S. Government Fund, a Government Fund, a subtrust of the Van Kampen Merritt U.S. Government Trust, Van Kampen Merritt Insured Tax Free Income Fund, Van Kampen Merritt Tax Free High Income Fund and Van Kampen Merritt California Insured Tax Free Fund, subtrusts of Van Kampen Merritt Tax Free Fund, Van Kampen Merritt High Yield Fund, a subtrust of Van Kampen Merritt Trust, Van Kampen Merritt Growth and Income Fund, and Van Kampen Merritt Pennsylvania Tax Free Income Fund (the "Load Funds"), Van Kampen Merritt Money Market Fund, a series of Van Kampen Merritt Money Market Trust, and Van Kampen Merritt Tax Free Money Fund (the "No Load Funds"), Van Kampen Merritt Inc. ("Underwriter" or "VKM") and any additional open-end funds in the same family of investment companies for which VKM or one of its wholly-owned subsidiaries or a subsidiary under common control as defined in section 2(a)(9) of the 1940 Act may serve as principal underwriter or investment adviser in the future ("Additional Funds") (the Load Funds, No Load Funds and collectively referred to as the "Funds," and the Funds and VKM collectively referred to as "Applicants").

Relevant 1940 Act Sections: Approval requested pursuant to section 6(c) and section 11(a), permitting certain offers of exchange.

Summary of Application: Applicants seek an order approving certain offers of exchange to be made between the Funds.

Filing Date: The application was filed on February 5, 1987, and was amended on August 14 and October 20, 1987, and January 7, March 23, May 3, May 31, and June 27, 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 requests must be received by the SEC by 5:30 p.m., on July 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, 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, SEC, 450 Fifth Street NW., Washington, DC, 20549; Applicants, c/o Richard T. Prins, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Regina N. Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

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).

Applicants' Representations

1. The Funds are all open-end management investment companies registered under the 1940 Act, and belong to the same family of investment companies: *i.e.*, they are all registered open-end investment companies for which VKM or one of its wholly-owned subsidiaries or a subsidiary under common control as defined in section 2(a)(9) of the 1940 Act serves as principal underwriter or investment adviser, and hold themselves out to investors as related companies for purposes of investment and investor services. Except for Van Kampen Merritt Growth and Income Fund, they all are advised and managed by Van Kampen Merritt Investment Advisory Corporation (the "Adviser"), a subsidiary of VKM, the principal underwriter and sponsor of the Funds and, in turn, a subsidiary of Xerox Financial Services. Van Kampen Merritt Growth and Income Fund is advised by the Adviser and subadvised by First Quadrant Corp., a subsidiary of Crum and Forster, Inc., which is also a subsidiary of Xerox Financial Services, Inc.

2. Applicants have requested that any order issued by the Commission pursuant to this application also extend to any Additional Funds which may issue shares offered by the Underwriter and subject to substantially similar exchange and sales charge provisions.

3. Shares of the Funds have been registered for sale under the Securities Act of 1933 and the 1940 Act for sale to the public in continuous offerings. No redemption charges, contingent deferred sales charges or other back-end charges are imposed on their shares. VKM proposes to maintain a continuous public offering of shares of the Load Funds at their respective net asset values per share plus a sales charge,

which is currently a maximum of 4.90% of the offering price. The maximum sales charge is subject to reductions based on the amount being invested, and to certain special programs described in the application.

4. VKM intends to maintain a continuous public offering of shares of the No Load Funds at net asset value per share without a sales charge. VKM may, however, modify its sales load schedules from time to time in accordance with Rule 22d–1 under the Act. The shares of the Additional Funds may be issued either with or without a sales charge.

5. Shareholders will not be charged any administrative or other transaction fees for exchanging shares, nor will sales charges be assessed against reinvested dividends and distributions. In any exchange, dividends on the exchanged shares will cease accruing on the date of the exchange and will begin accruing on the new shares at the time of the exchange, which in the ordinary course of business is the next business day.

6. All Funds have identical distribution plans approved pursuant to Rule 12b–1 under the 1940 Act (12b–1 "Plans") which they believe comply with the requirements of Rule 12b–1 and applicable precedent. Under all the 12b–1 Plans, up to .30% of the average daily net assets of each Fund may be expended for activity connected with the distribution of shares. With respect to the Load Funds, whose 12b–1 Plans went into effect July 1, 1987, all shares purchased after July 1, 1987, are "New Shares" used to calculate 12b–1 charges, and all assets added after such date are used to calculate 12b–1 Plan charges. With respect to the No Load Funds, all shares are used to calculate 12b–1 Plan charges because these funds had implemented 12b–1 Plans prior to such date. Any exchange between Funds will result in the purchase of New Shares, and be used to calculate 12b–1 Plan charges. In effect, the Load Funds will start at a zero amount of assets used to caluclate these charges and may eventually reach the maximum permissible charge (.30%) under the 12b–1 Plan if and when all shares have been purchased after July 1, 1987.

For example, if only 50% of the shares outstanding are New Shares at a given time, the maximum 12b–1 fee expense to the Fund could be 50% of .30%, or .15%. Each Applicant represents that no disparate treatment of shareholders or a "senior security" as defined in Section 18 of the 1940 Act exists by virtue of the existence or implementation of the 12b–1 Plans. Applicants do not seek relief under section 12(b) or Rule 12b–1 and have not requested approval of their 12b–1 Plans by the SEC or its staff.

7. Shares of any Fund held in a shareholder's name for at least 15 days may be exchanged for shares in any other of the Funds distributed by the Underwriter. Exchanges for shares with a value in excess of $1 million will require prior Fund approval. An investor must invest a minimum of $1500 to open a new account. Under the proposed exchange offer, a minimum of $1000 must be exchanged unless prior approval is obtained from the Fund into which the exchange is being made. In addition, if the total investment in a Fund falls below $750 (other than because of market fluctuation) the Fund may, after notice, redeem the shares. If a shareholder has an account with another Fund the shareholder will be given an opportunity to aggregate the assets. Shares will be exchanged on the basis of net asset value per share, plus an applicable sales charge differential if the exchange is from a No Load Fund to a Load Fund and no previous sales charges has been paid. However, if these shares are subsequently exchanged for No Load shares and then again exchanged for Load shares, no further charge will be assessed except insofar as the new purchase of load shares exceeds the applicable amount of sales charges already paid for existing purchases. In exchanges between Load Funds, any applicable load differential will be assessed. If fewer than all of a shareholder's shares are exchanged, whether to or from a Load or No Load Fund, those for which no additional sales charge would be assessed will be considered to be exchanged first: *i.e.*, in all cases accumulated sales charges will be applied before new sales charges are imposed, and only purchases in excess of the amount as to which sales charges have already been paid will be subject to sales charges.

8. Applicants reserve the right to modify or teminate the exchange privilege upon 60 days' written notice to shareholders, subject to Conditions 2 and 3 below. Applicants have communicated and will communicate the availability of the exchange privilege to their shareholders in each Fund's current prospectus, annual or semi-annual report to shareholders, and in various other infomational materials.

9. Under the exchange program, the commissions received by sales representatives will be the same as those received when shareholders invest directly in the Funds. Applicants acknowledge, however, that the payment of a sales charge to brokers or dealers in connection with exchanges may provide sufficient incentive for brokers or dealers to initiate such exchanges for their own benefit. Therefore, upon issuance of the requested exemptive order, Applicants will mail to each broker or dealer firm a letter announcing the exchange program, stating the concerns of the Applicants, and reminding each participant and its representatives of their responsibilities under their contract with the Underwriter, under federal securities laws, and under the National Association of Securities Dealers' Rules of Fair Practice. In conjunction with the transfer agent of the Load and No Load Funds, Applicants are also currently developing a method of identifying exchanges in which a commission was paid to a registered representative. Applicants shall monitor the information resulting from such identification to determine if exchange activity by any particular representative appears excessive, and if such a determination is made, Applicants will notify the representative's compliance officers.

Applicants' Legal Conclusions

1. The purpose of the exchange offers is to permit a shareholder of any one of the Funds to transfer such investment to another Fund in the event that the shareholder's investment objectives change, without his losing the benefit of any sales charge previously paid. The proposed exchange offers are fair and equitable to the Funds' shareholders, while at the same time giving them necessary flexibility in their financial planning. The program provides an equitable basis for an exchange of shares, does not discriminate unjustly against any class of shareholders and prevents disruption of the distribution system.

2. Sufficient internal monitoring controls and measures to prevent churning have been established to provide protection to shareholders from abuses in the use of the exchange privilege and to insure compliance with securities laws and NASD rules.

3. The order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Proposed Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 12b–1 (and any amendments thereto). Applicants will also comply with proposed Rule 11a–3 (as adopted or amended by the Commission) under the Act except that

the Funds may share a wholly-owned subsidiary of VKM, or a subsidiary under common control with VKM, instead of VKM, as principal underwriter or investment adviser.

2. Applicants shall provide shareholders at least 60 days' written notice prior to any termination or modification of the exchange privilege, but will not restrict the exchange privilege without first obtaining an order from the Commission permitting such modification of the exchange privilege.

3. The right to modify or terminate the exchange privilege offered by any Fund will be disclosed in the applicable prospectus as well as in any sales literature or advertising materials referring to the exchange privilege.

4. Any offers of exchange in the future by or on behalf of the Funds will be made in compliance with the terms and conditions of the order as modified from time to time by the SEC upon further application.

5. Any variations in, or elimination of, the sales load charged upon purchases of shares of the Funds will be made in compliance with Rule 22d-1 under the Act as such rule may be amended or modified from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-15560 Filed 7-11-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

SBA Form 1086, Secondary Participation Guaranty and Certification Agreement

AGENCY: Small Business Administration.

ACTION: Final Revision of SBA Form 1086.

SUMMARY: On March 9, 1988 (53 FR 7618), the public was asked to comment on a proposed revision of Small Business Administration (SBA) Form 1086, Secondary Participation Guaranty and Certification Agreement. Over 130 comments were received. These have been analyzed and SBA has made certain changes based thereon. SBA is hereby publishing the final revision of Form 1086.

EFFECTIVE DATE: The revised Form 1086 must be used on any Guaranteed Interest received by the Fiscal and Transfer Agent on and after September 1, 1988.

FOR ADDITIONAL INFORMATION CONTACT: James W. Hammersley (202-653-5954) or Allan S. Mandel (202-653-6696), Room 800, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The Small Business Administration has prepared a final revision of the document (SBA Form 1086) used to execute a sale of the Guaranteed Interest portion of a 7(a) loan into the secondary market. The revision reflects changes based on the experience SBA has gathered in administering the secondary market since the President signed into law the Small Business Secondary Market Improvements Act in 1984 (Pub. L. 98-352; 98 Stat. 329). It incorporates several changes that have been suggested by lenders, investors and broker/dealers.

On March 9, 1988 (53 FR 7618), the public was asked to provide comments on the proposed revision. Over 130 comments were received. These have been analyzed and SBA has made certain changes to the revision that had been proposed.

The major resulting changes to Form 1086 are these:

1. A servicing fee of no less than 1.0 percent per annum will be required on any Guaranteed Interest sold at a price greater than par (paragraph 6(e)). SBA had originally proposed a servicing fee of no less than 2.0%. This recommendation was based upon the observation that while Federal Reserve Board data show the average operating expense of banks to be about two percent of "Commercial and Other" loan volume, almost 30 percent of the loans entering the secondary market in FY 1987 carried a servicing fee of 0.5 percent or less.

The comments focussed on the proposal. While most commenters supported a required minimum servicing fee, they unanimously argued that the cost of servicing an SBA loan was less than 2.0%. Some commenters submitted data on their own servicing costs as a percent of loan volume. Some pointed out that the Federal Reserve Board data covered all operating expenses, not only servicing costs.

SBA has reduced the minimum servicing fee from 2.0% to 1.0% per annum. This action is based upon the cost data submitted, other information put forward in the comments, and SBA's need to find an alternative Lender to service the loan if the original Lender fails. This provision will apply to loans sold at a price greater than par.

SBA has also clarified that the minimum servicing fee of 1.0% shall be transferable only to an entity to which servicing is transferred under the provisions of SBA Form 750 (Loan Guaranty Agreement), SBA Regulations and SBA's Standard Operating Procedures. This limitation comports with the statutory mandate for SBA to develop procedures as necessary to facilitate, administer and promote secondary market operations. [See Title 15, United States Code, Section 634(f)]. To permit the servicing fee to be sold by the servicing Lender would negate its purpose: to provide the Lender with both the continuing income and the incentive to service loans properly and keep them on their books.

2. The secondary market is a closely connected system that functions best if the interests of each of the major participants—the small business Borrower, the Lender, the Broker/Dealer and the Investor—are properly balanced. In order to provide a better balance, a new authority for emergency repurchase by the Lender is being implemented (paragraph 20). SBA is confronted with the need to establish a policy for the situation in which a Borrower's business will probably fail unless a modification, such as a rate reduction, is granted. Every year a few such cases arise in which the Lender is willing to grant a rate reduction or other modification but cannot do so because either the Investor is not willing or the loan is in a pool, in which case it is infeasible to request Investor approval because of multiple Investors. SBA proposes to permit a Lender to repurchase if the SBA field office, after careful analysis, concludes that an emergency exists in which the Borrower's business will probably fail if the change is not approved and will probably survive if the change is approved. SBA intends that this authority be used only in carefully selected cases. This is not to be construed as general or wholesale authority for unilateral repurchase by Lenders. Such an interpretation would be extremely damaging to the secondary market.

No changes have been made from the earlier proposal in paragraph 20. Seven commenters addressed this proposal; six supported it and one was opposed.

3. Timely action is essential to an efficient secondary market. SBA is providing a more precise definition of the time parameters of secondary market operations, particularly with regard to such time-sensitive activities as remittance by Lender of Borrower payment, the furnishing by Lender of transcripts on loans that are in default and must be purchased, and the required advance notice from Lender to the the fiscal and transfer agent (FTA) of Borrower's intent to prepay (paragraphs 6, 10, 11, 12, 13, 15, 16, and

19). Remittance information (SBA Form 1502) and remittance(s) shall be due at the FTA on the third of every month (paragraph 6(c)). SBA shall levy a late payment penalty of 5% of the amount remitted on $100, whichever is greater (subject to a maximum of $5,000 on lender's total monthly remittance), on any remittance or remittance information not received by the fiscal and transfer agent by the fifth of the month. Lender's FTA's failure to comply with a request for transcript within ten business days shall result in a $100 penalty payable to the SBA (paragraph 10(a)). Lender's failure to provide to FTA the required ten days advance notice of Borrower's intent to prepay will result in a $100 penalty (paragraph 15).

If any fees or penalties are not remitted on a timely basis by lender, the SBA and the FTA reserve the right to withhold them from the settlement of any future guaranteed interest sale or payment on any defaulted guranteed loan in the Lender's portfolio. This is analogous to the offset practice of private sector Lenders.

Three commenters supported this proposal.

Other, while not opposing the penalties in principle, questioned certain specifics. One commenter believed that the fine for FTA's non-receipt of remittance was restrictive and placed an unfair administrative burden on participating lenders. Another requested that the three and five calendar days be changed to three and five business days. SBA believes that the deadline and penalty are necessary because a small but significant percentage of Lenders have consistently failed to remit in accordance with the former requirement that remittances be sent on the last business day of the month. In response, SBA has re-defined the deadline as date of receipt by FTA and has imposed a penalty for noncompliance. SBA does not believe the deadline to be unreasonable. Most Borrower payments are due early in the month. In a typical case the Lender will be able to earn interest income for almost a full month on each Borrower payment.

Another commenter pointed out that in many cases Lenders do not themselves receive ten days advance notice of a prepayment and that it is therefore unfair for SBA to require lenders to furnish such notice to the FTA. The SBA requirement is based upon the need to provide the FTA with sufficient warning that it can recover the certificate from the Investor prior to the payoff. The FTA cannot transmit the payoff to the Investor without first retrieving the certificate. Time is of the essence. Without sufficient notice, Investors would lose interest days whenever a payoff occurs. Lenders can protect themselves by requiring, as part of the loan agreement, that Borrowers provide sufficient advance notice of a prepayment.

A commenter suggested that penalties be imposed on the FTA as well as on Lenders. Both the draft and this final revision impose penalties on the FTA for lack of timely performance of duties [see paragraph 7(d) and 11].

SBA has made one technical change in paragraph 6(a) to clarify its intend that the dates for FTA receipt of remittance information and remittance(s) apply to all the Guaranteed Interests in the Lender's portfolio that are registered with the FTA.

4. In the March draft revision, if the Borrower failed to make the first three payments in full due after the loan is sold into the secondary market, the Lender would be required to repurchase it from the Registered Holder at a price equal to the sum of the outstanding balance, accured interest and premium, if any, received by the Lender (paragraph 3). The Lender has always been required to certify that it has no knowledge of any likely default or prepayment by Borrower. However, some cases have occurred in which the loan defaults or prepays immediately upon sale. SBA proposed this change at the request of broker-dealers in order to provide increased investor protection in such cases.

Ten writers commented on this proposal: seven in opposition and three in support. Opponents had the following comments:

- The market will take care of the problem, because if a Lender's loans default in the first three months, demand for that Lender's product will decline.
- Let the parties handle it as arms-length transactions.

SBA does not publish default rates or defaults during the first three months by individual lenders. Therefore the method proposed by these writers is not available. SBA anticipates that there would be considerable lender opposition to publishing such information.

It is SBA's understanding that some broker-dealers are protecting themselves against early prepayment by making their purchase of a Guaranteed Interest from a Lender contingent upon non-default by Borrower for the first three or four months. This provides protection to the party buying from the Lender, but if the Certificate is resold or if interest is stripped, subsequent purchasers have no such protection.

Supporters of the proposal had the following recommendations:

- Monies should be distributed equitably to all holders of interest, including holders of individual loans, pool portions and originator fees.
- SBA should specify that the premium refund applies if the Lender exercises its right to a deferment within the first three months.
- The FTA should monitor to detect whether a situation of nonpayment meets the parameters of the proposed revision, to demand from Lender the appropriate sum and to notify SBA of its action. SBA should then enforce compliance through its field offices.

SBA has revised the language of the original proposal. In the final revision published herein, paragraph 3 provides that if the Borrower fails to make the first three payments in full due after the Warranty Date and if the Guaranteed Interest is repurcahsed pursuant to paragraph 10, the Lender shall purchase the Guaranteed Interest from the Registered Holder at a price equal to the outstanding balance plus accrued interest plus the premium, if any, received by the Lender. If, in the alternative, SBA purchases the Guaranteed Interest pursuant to paragraph 11, the SBA shall pay a price equal to the outstanding balance plus accrued interest and the Lender shall refund the premium. Liability of the Lender for refund of the premium shall not be affected by any deferment that may be granted under paragraph 2. SBA shall bear no liability for refund of the premium if the Lender fails to repay it. Lender's failure to reimburse the Registered Holder for the premium may, as determined by SBA, constitute a significant violation of the Rules and Regulations of the Secondary Market. If the Lender has repurchased the Guaranteed Interest and if the Borrower subsequently makes installment payments in full for a period of twelve consecutive months, the Lender may re-sell the Guaranteed Interest in the Secondary Market. The holding period has been changed from six months in the previous draft to make it consistent with that of paragraph 20.

The FTA will notify the Lender and request a refund of premium whenever a purchase falls into this category. The Lender will remit the premium refund to the FTA, which will distribute it equitably to the Registered Holder(s) of Guaranteed Interest Certificates or Pool Certificates and to the owners, if any, of Originator Fees.

All distributions to Certificate Holders will be made on a pro rata basis.

Any case in which the lender has not remitted the refund within 30 days of a

request from the FTA will be referred to the SBA for further action.

An Originator Fee is an increment of interest stripped from the interest flow on a Guaranteed Portion, primarily to facilitate pooling. Pooling rules permit a 2.0% variation (i.e. 200 basis points) in the net interest rates (Borrower rate—Lender servicing fee—FTA fee) on loans in a given pool. The pool interest rate must equal the lowest net interest rate on any loan in the pool. For example, a pool might contain loans with net interest rates of prime and prime +1.5%. The pool rate on such a pool must equal prime. In this case originator fees of 1.5% would be stripped from the prime +1.5% loans.

On a loan with Originator Fees SBA will prescribe a formula that divides the refund of premium according to the proportion of the premium purchased by each of the two parties of interest: the Registered Holder(s) of the Guaranteed Interest certificate or Pool certificate(s) and the owner of the Originator Fee. The Registered Holder(s) will receive a proportion equal to the premium paid by the Registered Holder(s) after the loan is stripped divided by the original premium received by the lender. The owner of the Originator Fee will receive the remainder of the premium refund.

The premium received by the Lender is recorded on the records of the FTA. The premium paid by the Registered Holder after the Originator Fee is created may not be know, so a "shadow price" will have to be estimated.

Consider the following example. Assume a Guaranteed Interest certificate with an 11% net coupon, an FTA fee of ⅛%, a 75 day payment delay, a 6% constant prepayment rate (CPR), and a maturity of 120 months. Assume that the lender receives a price of 105.8 as a percent of par. The purchaser strips 2.0% as an originator fee. What figure should be used as the price paid by the Registered Holder after the loan is stripped? If the Guaranteed Interest were sold by the lender, stripped, and resold simultaneously, there would be a market price to refer to. In reality, most loans will probably not be resold immediately but will be held in inventory to be pooled after some passage of time. Over time, supply and demand conditions change. In addition, the creation of a pool itself produces an increment of value due to the timely payment guaranty, the ameliorating effect of a pool on prepayment and loss of premium, and ease of recordkeeping. Indeed, if the Originator Fee is small, ⅛% for example, the price paid for the pool certificate may exceed the price paid to the lender. The use of such a price in the preceding formula would result in the entire refund going to the Registered Holder and none to the Originator Fee owner. But that cannot be correct, as the Originator Fee owner paid a portion of the premium and is obviously entitled to something.

There is information available to provide a determination and more accurate result, however. The yield on the original transaction can be computed and, employing the assumption of constant yield, used to calculate a shadow price or premium that can be incorporated into the formula. In the previous example, the mortgage yield on the security at the point it is purchased from the Lender is 9.08%. An originator fee of 2.0% is then stripped from this Guaranteed Interest with its 11.0% coupon, for a net coupon of 9.0%. We then calculate the price at which a 9% loan with a ⅛% FTA fee, a 75 day delay, a 6% CPR and a 120 month maturity would have to sell in order to yield 9.08%. The answer is 98.6. The loan would have to sell at a discount. The entire premium would have been purchased by the owner of the originator fee, who is entitled to all of the refund.

If a 1.0% originator fee is stripped, the resulting 10% net coupon loan would have to sell at 102.2 in order to yield 9.08%. Dividing 2.2 by 5.8 (the premium received by the Lender) gives 0.38. Thus 38% of the refund would be distributed to the Registered Holder(s) and 62%, to the owner of the Originator Fee.

This plan will be followed in implementing the new provision in paragraph 3.

5. SBA is modifying its procedures in order to encourage more timely action by SBA and Lender when a borrower encounters problems that threaten the repayment of the loan (paragraphs 10 and 11). The goal is to encourage proper servicing action as soon as possible. The FTA will provide to each SBA field office a monthly list of its loans that are past due according to the records of the FTA. The field office will contact the Lender to determine the status of the loan. The Lender will verify whether (1) the interest-paid-to date is more than sixty days in arrears or (2) default by borrower has continued uncured for more than 60 days in making payment, when due, of any installment of principal or interest due on the note. If the loan is in either category, SBA, after consultation with the Lender, will within ten days determine whether SBA or the Lender is to purchase the Guaranteed Interest or decide upon appropriate remedial servicing action pursuant to paragraph 2.

Four commenters addressed this proposal, three in support and one in opposition. Two commenters voiced concern over the additional workload the new procedures would place on District Offices. SBA will carefully monitor field office performance in implementing the new system.

Technical corrections were made from the earlier proposals in paragraphs 10 and 11.

In addition, miscellaneous technical corrections have been made in various other portions of the previous draft.

James Abdnor,

Administrator.

SBA Loan Number _____

Secondary Participation Guaranty and Certification Agreement

Important Information

This form is to be used for the initial transfer only. All subsequent transfers must use the detached assignment form 1088. Loans sold using SBA Form 1084 must be certificated prior to resale: Use SBA Form 1085.

A. *Lender Certifications.* By signing this document, *Lender certifies,* among other items, that (see paragraph 3 of the Terms and Conditions herein):

(1) Lender, including its officers, directors, and employees, has no knowledge of a default by the Borrower and has no knowledge or information that would indicate the likelihood of default. (2) Lender acknowledges that it has no authority to unilaterally repurchase the Guaranteed Interest from Registered Holder without written permission from the SBA.

B. *Borrower payments. Lender shall send to the FTA the FTA share of all Borrower payments received after settlement of the loan sale. Do not send any payments directly to the investor or the broker/dealer.* Retain a copy of this form. The wire transfer receipt from settlement through the FTA will be Lender's notification that the sale is complete. Lender will not receive a return copy of this form.

C. *Lender payment and late payment penalty.* Lender payment and remittance information (SBA Form 1502) shall be due at the FTA on the third of every month or the next business day thereafter if the third is not a business day. SBA shall levy a late payment penalty of 5% of the amount remitted or $100, whichever is greater, (subject to a maximum of $5,000) on any payment and lender remittance statement (Form 1502) not received in the offices of the FTA by the fifth of the month or next business day thereafter if the fifth is not a business day. This penalty will be paid through the FTA along with the late penalty identified in paragraph 6(c) due

to the FTA (see paragraph 6 of the Terms and Conditions for specific details.)

D. *Payment modifications.* Lender may approve one deferral of payment for up to three monthly payments without obtaining prior permission from the Registered Holder. Lender shall immediately notify the FTA and SBA. Any other payment modification must receive prior approval by the Registered Holder. Requests for payment modification must be forwarded to the FTA who will forward the proposed modification to the Registered Holder or provide the name of such Registered Holder (at Registered Holder's discretion) to the Lender for direct negotiation (see paragraph 2 of the Terms and Conditions):

E. *Borrower prepayments.* For loans approved by or on behalf of SBA after February 14, 1985, Lender must give 10 days advance notice to the FTA in order to give the FTA time to request that the Registered Holder return the certificate. On the date of prepayment, Lender will wire funds consisting of principal and accrued interest to the date immediately preceding the date funds are wired plus any penalty or fees to the FTA (see paragrpah 15 of the Terms and Conditions).

SBA Form 1068 (6–88) Previous editions are obsolete.

The Small Business Administration, an Agency of the United States Government ("SBA") and the Lender named below ("Lender") entered into a guaranty agreement on SBA Form 750 ("750 Agreement") applicable to a loan ("Loan") made by Lender in participation with SBA to the Borrower ("Borrower") named below evidenced by Borrower's Note and any modifications thereto ("Note") a copy of which is attached hereto and incorporated by reference. Lender is the beneficiary under the 750 Agreement of SBA's guarantee of the specified percentage of the outstanding balance of the Loan ("Guaranteed Interest").

Lender _____
Address _____
Zip _____
Borrower _____
Address _____
Zip _____
Contact Person _____
Telephone Number _____

Lender certifies the following as of the date of Lender's signature:

Date of 750 Agreement _____
Percent of SBA's Guarantee _____
Date of Note _____
Original Face Amount of Note $ _____
SBA Loan Authorization Date _____ (date of SBA form 529B)
Outstanding principal amount of Loan $_____
Outstanding principal amount of Guaranteed Interest $_____
Guaranteed portion has a ☐ fixed rate or ☐ variable rate (check one)
Unguaranteed portion has a ☐ fixed rate or ☐ variable rate (check one)
Interest is paid to but not including: _____ (Date)
Interst is calculated on:
(Check one): ___ 30/360 ___ Actual Days/365 (Other methods prohibited.)

This interest accural method shall be maintained for the life of the loan.

Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall be: ____% per annum, and shall remain at this rate for the life of the Loan. Such servicing fee shall be no less than 1.0% per annum on any Guaranteed Interest sold at a price greater than par. See examples of principal, interest and service fee calculations attached to this document.

Price paid for the Guaranteed Interest (Net of accrued interest. Otherwise include all money and other items of value exchanged.)

Part A. Use this part only for split wire settlement—when the FTA is directed to split the funds received from the purchaser between the selling institution and a broker/dealer.

Price paid by purchaser: $ _____ % of Par _____
Price received by seller: $ _____ % of Par _____
Price received by broker: $ _____ % of Par _____

Part B. Use this part for all other settlements.

Price paid by purchaser: $ _____ % of Par_____

Cash flow yield based upon constant prepayment rate. (Enter both mortgage and bond equivalent yield. For a variable rate loan, the yield should be based upon the current coupon rate and should be entered as a spread against prime. Example: Prime +1.0% based upon 10% Prime.)

Constant Annual Prepayment Rate assumption _____ % per year. (Printed each month in the Pool Factor Table produced by the FTA.)

Certificate interest rate (Borrower's note rate—Lender's servicing fee—FTA fee (⅛% per year)) _____ % per year.

Mortgage yield:
[Fixed rate loans] _____ %
[Var. rate loans] Prime (+/−:____) ____ % based upon ____ % prime

Bond equivalent yield:
[Fixed rate loans] ____ %
[Var. rate loans] Prime (+/−:____) ____ % based upon ____ % prime

Lender hereby assigns the guaranteed interest to Purchaser/Registered Holder as follows:

Name _____
Address _____
Zip _____
Contact Person _____
Telephone Number ( )_____

Under the penalties of perjury, Purchaser/Registered Holder certifies that its Taxpayer Identification Number is _____.

If a Taxpayer Identification Number is not provided, interest earned will be subject to withholdings.

Registered Holder requests SBA to issue through the Fiscal and Transfer Agent (FTA) a Guaranteed Interest Certificate ("Certificate") evidencing ownership of the Guaranteed Interest in the name of Registered Holder (such person or entity, or any subsequent transferee, during its respective period of ownership of the Certificate, to be called "Registered Holder"). SBA, Lender and Registered Holder (for itself and each subsequent Registered Holder) agree to the appointment by SBA of FTA to serve as the agent to transfer Certificates and to receive from Lender loan repayments made by Borrower and to transmit such payments to Registered Holder.

A written notification to or demand upon SBA pursuant to this Agreement shall be made through the FTA to:

SBA Servicing Office _____
Address _____
Zip_____

SBA Servicing Office Code (Please see attached list of Office Codes at end of document) _____

Terms and Conditions

1. *Lender's Sale of Guaranteed Interest.* Lender has sold the Guaranteed Interest and acknowledges that it has received value for the Guaranteed Interest. Lender was given notice and acknowledgment of the transfer of the Guaranteed Interest by completing the following legend on the Note:

The guaranteed portion of this Note has been transferred to a Registered Holder for value.

Dated: _____

_____
(Lender)

Lender has delivered or hereby delivers to the FTA, a photocopy of the Note and any modifications thereto with the legend, and such photocopy shall be incorporated into this Agreement. This legend shall also serve as notification

for any future transfer of the Guaranteed Interest.

2. *Loan Servicing.* Lender shall remain obligated under the terms and conditions of the 750 Agreement, and shall continue to service the Loan in the manner set forth in the 750 Agreement. Modifications in the 750 Agreement or to the Note not affecting repayment terms of the Note may be effected by Lender or SBA without the consent of Registered Holder (for itself and each subsequent Registered Holder). To aid the orderly repayment of Borrower's indebtedness, Lender, at the request of the Borrower, may grant one deferment of Borrower's scheduled payments for a continuous period not to exceed three (3) months of past or future installments. Lender shall immediately notify FTA and the relevant SBA field office in writing of any deferment approval, including the GP number, the borrower's name, the term of such deferment, the date Borrower is to resume repayment of its obligation, and reconfirmation of the basis of the interest calculation (e.g. 30/360, etc.) Interest is not waived, but deferred. Subsequent to the deferment period, payments received from Borrower will first be applied to accrued interest until such time as interest is paid to a current status and then to principal and interest. Registered Holder may not demand repurchase of the Guaranteed Interest during the deferment period, or before Borrower's failure to pay the first scheduled installment following the deferment period. Lender shall not authorize any additional deferment or an extension of Loan maturity without the prior written consent of the Registered Holder. No change in the terms and conditions of repayment of the Note other than the deferment authorized in this paragraph shall be made by Lender or SBA without the prior written consent of Registered Holder. A request for such payment modification must be forwarded to the FTA, which will forward the proposed modification to the Registered Holder or provide the name of such Registered Holder (at Registered Holder's discretion) to the Lender for direct negotiation.

3. *Representations and Acknowledgment of Lender.* Lender hereby certifies that the Loan has been made and fully disbursed and that the full amount of the guaranty fee has been paid to SBA. The outstanding principal amount of the Guaranteed Interest and date to which interest is paid as certified by Lender are accepted by SBA and have been warranted by SBA to the Registered Holder as of the SBA Warranty Date (date this Agreement is executed and settled by the FTA); provided, however, that Lender shall be liable to SBA for any damage to SBA resulting from any error in the certified principal amount, percentage of the Guaranteed Interest, or date to which interest is paid. Lender represents that as of the Warranty Date neither it nor any of its directors, officers, employees, or agents has or should have, through the exercise of reasonable diligence, any actual or constructive knowledge of any default by Borrower or has any information indicating the likehood of a default by Borrower or the likelihood of prepayment of the Loan (by refinancing or otherwise).

If the Borrower fails to make the first three payments in full due after the Warranty Date and if the Guaranteed Interest is repurchased pursuant to paragraph 10, the Lender shall purchase the Guaranteed Interest from the Registered Holder at a price equal to the outstanding balance plus accrued interest plus the premium, if any, received by the Lender. If, in the alternative, SBA purchases such Guaranteed Interest pursuant to paragraph 11, the SBA shall pay to the Registered Holder and amount equal to to the outstanding balance plus accrued interest and the Lender shall pay to the Registered Holder an amount equal to the premium, if any, received by the Lender. Liability of Lender for refund of premium shall not be affected by any deferment that may be granted under paragraph 2. SBA shall bear no liability for refund of premium if Lender fails to refund premium. Lender's failure to refund such premium to Registered Holder may, as determined by SBA, constitute a significant violation of the Rules and Regulations of the Secondary Market. If Lender has repurchased pursuant to this paragraph and if Borrower subsequently makes installment payments in full for a period of twelve consecutive months, Lender may re-sell the Guaranteed Interest it had so re-purchased.

Lender hereby acknowledges that it has no authority pursuant to this Agreement unilaterally repurchase the Guaranteed Interest from Registered Holder without written permission from the SBA.

4. *Obligations and Representations of Registered Holder.* Pursuant to this Agreement, SBA shall purchase the Guaranteed Interest from Registered Holder regardless of whether SBA has any knowledge of possible negligence, fraud or misrepresentation by the Lender or Borrower, provided neither Registered Holder nor any person or entity having the beneficial interest in the Guaranteed Interest participated in, or at the time it purchased the Guaranteed Interest had knowledge of, such negligence, fraud or misrepresentation. Subject to the provisions of 18 U.S.C. § 1001 (relating, among other things, to false claims), Registered Holder and any person or entity having the beneficial interest therein hereby warrants that it was not the Borrower, Lender, or an "Associate" of the Lender (as defined in Title 13, Code of Federal Regulations, Part 120), and anyone standing in the same relationship to the Borrower, and had neither participated in nor been aware of any negligence, fraud or misrepresentation by Lender or Borrower with respect to the underlying Note or related Loan documentation. Neither execution hereof by SBA, or purchase by SBA from Registered Holder shall constitute any waiver by SBA of any right of recovery against Lender, Registered Holder, or any other person or entity. Register Holder (for itself and each subsequent Registered Holder) hereby acknowledges that the Loan may be terminated on a date other than its maturity date, in which case the Certificate will be called for redemption at par and will cease to accrue interest as of the date of such termination.

5. *Issuance of Guaranteed Interest Certificates.* SBA, Lender, and Registered Holder (for itself and each subsequent Registered Holder) agree that ownership of the Guaranteed Interest shall be evidenced by a Certificate to be issued by SBA. SBA shall issue such Certificate, either through its own facilities or by designating and authorizing such issuance by FTA.

FTA shall be the custodian of the executed original of this Agreement. The Agreement shall be delivered to FTA immediately after execution by the Lender and the Registered Holder. Each Registered Holder shall receive the Certificate described herein. Upon request therefor and payment of a reproduction fee, a Registered Holder may obtain from FTA a copy of the executed SBA Form 1086 pertaining to the Guaranteed Interest represented by the Certificate.

Upon completion of execution of this Agreement, SBA, through FTA, shall issue to Registered Holder (or, if FTA is timely so notified in writing by Registered Holder, to Registered Holder's assignee) a Certificate evidencing the ownership of the Guaranteed Interest of the Loan. If Registered Holder is not the person or entity having the beneficial interest in the Certificate, Registered Holder

hereby represents that it has obtained from the person or entity having the beneficial interest in the Certificate, authorization appointing Registered Holder as the agent of such person or entity with respect to all transactions arising out of the performance of their respective obligations under SBA Form 1086. The Certificate shall identify the Loan and shall state, among other things: (i) the name of the Registered Holder, (ii) the Principal Amount of Guaranteed Interest as of the SBA Warranty Date, (iii) the Certificate Interest Rate, and (iv) the Borrower's Payment Date. Transfer of the Guaranteed Interest by Registered Holder may be effected by the transferee (i) obtaining from the transferor the execution of the detached Assignment and Disclosure Form (SBA Form 1088), (ii) presenting the Certificate and executed Assignment and Disclosure Form to FTA for registration of transfer and issuance of a new Certificate to the transferee, (iii) paying to FTA a Certificate issue fee to be set from time to time by SBA, and (iv) presenting the following information: Certificate number; original principal amount of the Certificate; exact spelling of the name in which the new Certificate is to be issued; complete address and tax identification number of the new Registered Holder; name and telephone number of the person handling the transfer; and complete instructions for the delivery of the new Certificate.

6. *Obligations of Lender.*

(a) FTA must receive from Lender by the third day of every month or the next business day thereafter if the third is not a business day, the FTA's share of all sums which Lender received from Borrower as regularly scheduled payments during the preceding month on each loan which is registered with the FTA. By the same date, Lender shall provide the following information on SBA Form 1502 (or an exact facsimile format) with respect to each Loan which the Lender has sold and which is registered with the FTA regardless of whether the Borrower made a payment in the preceding month:

See Payment Calculation Example Attached to This Document

1. The SBA loan number
2. The alpha abbreviation for the originating SBA field office
3. The Note interest rate or rates if the interest rate on a variable rate loan changed during the payment period
4. The interest amount due the FTA
5. The principal amount due the FTA
6. The total amount due the FTA for the particular loan
7. The time period covered by the interest rate(s) listed in item 3
8. The number of days in the interest period
9. The calendar basis (30/360 or actual days/365 only)
10. The closing principal balance for the loan
11. A grand total figure for items 4, 5, and 6
12. A late payment penalty (if applicable)

(b) With the exception of borrower prepayments or payoffs (see paragraph 15), payments received other than as regularly scheduled in the previous month, must be remitted to the FTA within two business days of receipt of collected funds and shall include the information described in items 1–12 above.

(c) Lender remittance is due at the office of the FTA by the third of the month following a regularly scheduled payment. If Lender remittance, including complete payment information, is not received by the fifth of the month or the next business day thereafter if the fifth is not a business day, Lender shall pay (i) to SBA a late penalty of the greater of $100.00 or 5% of the payment amount remitted (subject to a $5,000 maximum on Lender's total monthly remittance) plus (ii) a penalty to the FTA equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee), plus (iii) a late penalty charge calculated at a rate of 12% per annum on the unremitted amount. See example of late payment calculation attached to this document. The total amount, including any penalties, will be paid to the FTA when the late payment is remitted. If these penalties are not included in the remittance, FTA and SBA reserve the right to withhold these penalties from the settlement of any future guaranteed interest sale or payment on any defaulted guarantee loan in the Lender's portfolio. The FTA will forward any penalties due SBA at the end of each month.

(d) Lender agrees to work with the SBA and/or the FTA to reconcile immediately any loan in which the paid to date on the Lender's books differs from the books of the FTA. Lender agrees to provide a transcript within 10 business days of receipt of a request from the SBA or the FTA. Failure to provide a transcript after a request from the FTA shall cause the Lender to be fined $100 by the SBA.

(e) Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall be no less than 1.0 per cent per annum on any Guaranteed Interest sold at a price greater than par. Such servicing fee shall be transferable only to an entity to which servicing of the loan is assigned under the provisions of SBA Form 750, SBA Regulations and Standard Operating Procedures.

7. *Obligations of FTA.*

(a) FTA shall have the obligation, with respect to payments received from Lender pursuant to Paragraph 6 above, to remit to Registered Holder any such payment (less applicable fees, and any late payment charges due FTA or SBA if such charge has been collected from Lender) as follows:

(i) Any payment (other than a prepayment of principal) received by FTA before the thirteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder on the fifteenth day of such following month. Any additional interest and late payment charge paid by Lender pursuant to paragraph 6(c) (ii) and (iii) hereof shall be retained by and shall become the property of FTA.

(ii) Any payment (other than a prepayment of principal) received by FTA on or after the thirteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder within two (2) business days of receipt of immediately available funds by FTA. In such case, any late charge received by FTA pursuant to paragraph 6(c)(ii) and 6(c)(iii) hereof and allocated to the period after the fifteenth day of such following month shall be remitted to Registered Holder. The balance of any such late penalty charge identified in paragraph 6(c)(ii) and 6(c)(iii) received by FTA shall be retained by and shall become the property of FTA.

(iii) Other amounts received by FTA from Lender which are not prepayments subject to Paragraph 15, may be held by FTA and applied as required herein.

(b) Upon presentation by Registered Holder of the Certificate, amounts received by FTA from Lender or SBA which would constitute a full redemption of the Certificate, or a prepayment subject to Paragraph 15, shall be remitted by FTA to Registered Holder by wire transfer within two (2) business days of receipt of immediately available funds by the FTA in accordance with Registered Holder's instructions. FTA shall retain a final transfer fee equal to a regular transfer fee.

(c) Each remittance by FTA to Registered Holder shall be accompanied by a statement of the amount allocable to interest, the amount allocable to

principal, and the remaining principal balance as of the date on which such allocations were calculated.

(d) If FTA fails to make timely remittance to Registered Holder in accordance with the above provisions, FTA shall pay to Registered Holder (i) interest on the unremitted amount at the rate provided in the Note less the rate of Lender's servicing fee and any other applicable fees, plus (ii) a late payment penalty calculated at a rate of 12% per annum on the amount of such payment.

(e) FTA agrees to identify monthly to lenders any loan in which the paid-to-date on its books differs by three days or more from the paid-to-date on the books of the Lender, provided that this data is submitted to the FTA via SBA form 1502. Such identified differences will be reconciled on a timely basis.

(f) FTA agrees to issue certificates within two business days of settlement or acceptable written notification of transfer.

(g) FTA agrees to acknowledge any Registered Holder request for late payment claims within ten days of receipt.

(h) FTA agrees to forward to Registered Holder within five business days of receipt any servicing request requiring concurrence of the investor. Furthermore, FTA agrees to forward to Lender within five business days of receipt any investor response.

8. *Transferability of Guaranteed Interest.* Each Registered Holder maintains under this Agreement the right to assign the Guaranteed Interest. Each Registered Holder of the Guaranteed Interest shall be deemed to have represented that, to the best of its knowledge, it has, and so long as it is a Registered Holder it will have no interest in the Borrower, in the Note, or in the collateral hypothecated to the Loan, other than the Guaranteed Interest held under this Agreement, and that it will not service or attempt to service the Loan or secure or attempt to secure additional collateral from Borrower. Registered Holder, without the prior consent of SBA, Lender or FTA, may transfer the ownership of the Guaranteed Interest to a subsequent transferee, (other than Borrower, or Lender, or an "Associate" of the Lender as defined in Title 13, Code of Federal Regulations, Part 120 or anyone standing in the same relationship to the Borrower). The effective date of any such transfer of the Guaranteed Interest shall be the date on which such transfer is registered on the books of FTA. If Lender, FTA or SBA shall have made any payment to, or taken any action with respect to, the transferor Registered Holder prior to the effective date of the transfer of the Guaranteed Interest, such payment or action shall be final and fully effective. Neither SBA, FTA nor Lender shall have any further obligation to the transferee Registered Holder with respect to such payment or action; and any adjustment between the transferor and the transferee resulting from any such payment or action by Lender, SBA or FTA shall be the responsibility and obligation solely of the transferor and the transferee. On payment date, FTA will remit payments to the person or entity which, on the books of FTA, is the Registered Holder as of the close of business on the record date, which is the last day of the prior month. Any other adjustment by and between the transferor and transferee shall be solely their responsibility and obligation. At any given time there shall be only one Registered Holder entitled to the benefits of ownership of the Guaranteed Interest, and each transferor, upon the transfer of the Guaranteed Interest, shall cease to have any right in the Guaranteed Interest or any obligation or commitment under this Agreement, except as to any appropriate adjustment of funds between the transferor and the transferee. FTA shall serve as the central registry of Certificate ownership.

9. *Certificates Lost, Destroyed, Stolen, Mutilated or Defaced.* Procedures for claim on account of loss, theft, destruction, mutilation or defacement of a Certificate are found in Title 13, Code of Federal Regulations, Part 120. The FTA, upon written request, shall provide such procedures.

10. *Repurchase by Lender.*

(a) As directed by the SBA, the FTA will provide to each SBA field office a monthly list of its loans that are past due according to the records of the FTA. The field office will contact the Lender to determine the status of the loan. If the Lender's records indicate that the interest-paid-to date is more than sixty days in arrears or default by borrower has continued uncured for more than 60 days in making payment, when due, of any installment of principal or interest due on the note, SBA, after consultation with the Lender, will within ten business days determine which entity—SBA or the Lender—is to purchase the Guaranteed Interest or decide upon an appropriate remedial servicing action pursuant to paragraph 2. SBA field offices will transmit the decision in writing to the FTA within five days of the decision. Lender agrees to provide a transcript of account to the SBA or the FTA within 10 business days of the request for the transcript. Lender's failure to comply with a request for transcript shall result in a $100 penalty payable to the SBA. If Lender is to purchase, the FTA and the Lender will reconcile the transcripts. If Lender and FTA cannot agree on the balance and paid-to-date within twenty-five business days from SBA's notification to FTA, the FTA will send the Lender's and the FTA's transcripts to the appropriate SBA field office for reconciliation by SBA. Lender shall immediately (within 5 business days from the date the transcripts are reconciled) provide 10 days advance written notice of the date of purchase to the FTA. Upon such notification, FTA shall within two business days notify the Registered Holder of the pending repurchase and request that the Registered Holder forward the certificate to the FTA. On the purchase date, Lender will (without additional notification from FTA) forward by wire transfer a payment to the FTA which includes the principal balance outstanding plus interest through and including the date of the wire transfer of funds.

(b) Written demand by FTA upon SBA for the purchase of the Guaranteed Interest shall be made not later than one hundred fifty (150) calendar days after the first date of an uncured default by Borrower on any Guaranteed Interest which for any reason was not purchased under Sections 10(a) or 11. If FTA does not make such demand by such 150th day, FTA shall be responsible for accrued interest from the 151st day of accrued interest through the period ending 30 days after the appropriate SBA field office receives the purchase documentation. For the purposes of this subparagraph, the written demand shall include a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA.

(c) Upon receipt of the purchase amount from Lender or SBA, FTA shall remit in accordance with paragraph 7 to Registered Holder such amount less applicable fees owed by the Registered Holder to the FTA or SBA, and any additional interest or late payment charges due FTA pursuant to Paragraphs 6 or 7 hereof. FTA may also deduct from such amount a final transfer charge for the final transfer and redemption of the Certificate, the amount of such final transfer charge not to exceed the normal transfer charge. Upon repurchase of the Guaranteed Interest by Lender, the rights and obligations of Lender, FTA and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement (as applicable).

11. *Purchase by SBA.* If SBA is to purchase the Guaranteed Interest under the procedure described in paragraph

10(a) hereof, the Lender and the FTA will transmit to SBA a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA within five business days of the request, and SBA will reconcile the transcripts. Lender's or FTA's failure to comply with a request for transcript within ten business days shall result in a $100 penalty payable to the SBA by the party failing to comply. SBA shall within five business days of reconciliation provide at least ten days written notice to the FTA of the date of purchase. Upon such notification, FTA shall within two business days notify the Registered Holder of the pending repurchase and request that the Registered Holder forward the certificate to the FTA. The SBA field office will arrange to have funds wired to the FTA. The FTA shall forward such funds to the Registered Holder within two business days of receipt. The payment of accrued interest to the date of purchase on a fixed rate note shall be at the rate provided in the Note less the Lender's servicing fee. On those loans with a fluctuating interest rate, SBA's payment of accrued interest shall be at that rate in effect on the date of the earliest uncured Borrower default if the loan is in default or at that rate in effect at the time of purchase if the loan is not in default, less the Lender's servicing fee. If Lender fails to furnish a current transcript statement as required by paragraph 13(i)–(iii) within ten business days after SBA's request therefore, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible. Under no circumstances shall SBA be liable for any amount attributable to any late payment charges which may be due FTA or Registered Holder. Upon written demand by SBA, Lender shall immediately repay to SBA the amount, if any, by which the amount paid by SBA exceeds the amount of SBA's obligation to Lender under the 750 Agreement, and the amount paid by SBA for any payments by Borrower which were not remitted by Lender to FTA (including accrued interest thereon), plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest from the date of said purchase by SBA to the date of repayment by Lender. Upon purchase of the Guaranteed Interest by SBA, the rights and obligations of Lender and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement, and SBA shall be deemed a transferee of the Guaranteed Interest and the final Registered Holder thereof with all the rights and privileges of such Registered Holder under this Agreement.

12. *Default by Lender.* In the event Lender fails for any reason to remit to FTA the pro rata share with respect to the Guaranteed Interest of any payment made by Borrower, pursuant to Paragraph 6 hereof, for a period of seventy-five (75) calendar days or more from the date such payment was due at the FTA, SBA, within thirty (30) business days or as soon thereafter as possible after receipt by SBA of written notice from FTA of Lender's failure to forward payments as provided in Paragraph 6 and verification by SBA of uncured Lender default, shall purchase (through FTA) the Guaranteed Interest from Registered Holder pursuant to Paragraph 11 hereof, provided however, that under no circumstances shall SBA be liable for any amount attributable to any late payment charge. If SBA purchases from Registered Holder pursuant to this Paragraph, and if Borrower has not been in uncured default on any payment due under the Note for more than sixty (60) calendar days, SBA shall have the option (i) to require Lender to purchase the Guaranteed Interest form SBA for an amount equal to the amount paid by SBA to Registered Holder plus accrued interest (at the interest rate provided in the Note) from the date of the SBA purchase to the date of Lender's repurchase plus a penalty equal to 20% of the amount paid by SBA; or (ii) to require Lender to pay to SBA a penalty equal to 20% of the amount paid by SBA to Registered Holder. If, on the date SBA purchases the Guaranteed Interest from Registered Holder pursuant to this Paragraph, Borrower shall be in uncured default on any payment due on the Note for more than sixty (60) calendar days, then the provisions of Paragraph 11 hereof shall become applicable, including the obligation of Lender to repay to SBA (i) the amounts paid by SBA to Registered Holder in excess of the amount of SBA's obligation to Lender under the 750 Agreement, and (ii) any payments by Borrower which were not remitted by Lender to FTA, plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest plus the 20% penalty described above. If Lender fails to furnish a current transcript statement as required by Paragraph 13(i)-(iii) within ten business days after SBA's request therefore, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment and settlement will be made as expeditiously as possible.

13. *Other Obligations of Lender.* Lender hereby consents to the purchase of the Guaranteed Interest by SBA in accordance with Paragraphs 11 and 12 hereof, and shall, within ten business days of a request therefor and without charge, furnish to SBA and to FTA; (i) A transcript of account, (ii) a current certified statement of the unpaid principal and interest then owed by Borrower on the Note, and (iii) a statement covering any payments by Borrower not remitted by Lender to FTA. Upon request by FTA at any time, Lender shall issue at no charge a certified statement of the outstanding principal amount of the Guaranteed Interest and the effective interest rate on the Note as of the date of such certified statement. Failure to provide such information shall result in a $100 penalty payable to SBA. Lender agrees that purchase of the Guaranteed Interest by SBA does not release or otherwise modify any of Lender's obligations to SBA arising from the Loan or the 750 Agreement, and that such purchase does not waive any of SBA's rights against Lender. Lender also agrees that SBA, as the final owner of the Guaranteed Interest under this Agreement, in addition to all its rights under the 750 Agreement with Lender, shall also have the right to set-off against Lender all rights inuring to SBA under this Agreement against SBA's obligation to Lender under the 750 Agreement. After any purchase of the Guaranteed Interest by SBA, Lender shall assign, transfer and deliver the Note and related loan documents to SBA upon the written request of SBA.

14. *Default by Fiscal and Transfer Agent.* In the event FTA receives any payment from Lender or SBA which FTA fails to remit to Registered Holder pursuant to this Agreement, Registered Holder shall have the right to make written demand upon FTA for any payment unremitted by FTA. If FTA fails to remit any such payment within ten (10) business days of such demand, Registered Holder shall have the right to make written demand upon SBA therefor. SBA shall make such payment to Registered Holder within thirty (30) business days or as soon thereafter as possible of receipt of such written demand, provided SBA can verify the non-payment by FTA. SBA shall make such payment directly to Registered

Holder in the amount of the unremitted payment plus interest at the Certificate rate to the date of payment by SBA. FTA shall repay SBA for such payment by SBA to Registered Holder within ten (10) business days after receipt of written demand by SBA in an amount equal to the payment by SBA to Registered Holder plus interest (at the interest rate provided in the Certificate) computed on the unpaid balance of the Guaranteed Interest, from the date of SBA's payment to Registered Holder to the date of FTA's repayment to SBA. Such payment will not affect FTA's liability for a late payment charge under paragraph 7(d).

15. *Prepayment or Refinancing by Borrower.* For loans approved by or on behalf of SBA after February 14, 1985, Lender shall transmit written notice to FTA of Borrower's intent to make (by refinancing or otherwise and pursuant to the terms of the Note) a partial prepayment of principal subject to this paragraph, or a total prepayment of principal. Such written notice shall be received by FTA at least ten (10) business days prior to prepayment date. The "prepayment date" is the date prior to maturity that Lender has established with the FTA on which immediately available funds shall be delivered to the FTA. Lender's notice to FTA shall contain the following: (a) the prepayment date, (b) the principal amount being prepaid, (c) the accrued interest due the FTA as of prepayment date (interest shall accrue through and including the calendar day immediately prior to the date funds are wired to the FTA), and (d) a certification by Lender that to the best of its knowledge and belief the prepayment funds are either Borrower's own funds, or funds borrowed by Borrower (whether or not guaranteed by SBA) pursuant to a separate transaction, and the prepayment is in accordance with the terms of this paragraph and the Note, and applicable law. This certification is intended to guard against Lender's unilateral repurchase of the Guaranteed Interest from the Registered Holder without prior written permission from SBA. Lender's failure to provide such timely certification shall result in a $100 penalty against Lender payable to the SBA through the FTA. Lender is obligated to wire payment on the 10th day without notification from the FTA. If the FTA is not paid by the 10th day, interest continues to accrue to the day immediately prior to the date payment is received by the FTA.

A partial prepayment of principal subject to this Paragraph is any payment which is greater than 20% of the principal balance outstanding at the time of prepayment. FTA is not required to accept any prepayment except as described herein. FTA shall upon receipt of notice pursuant to this Paragraph advise Lender of the outstanding principal amount and the accrued interest due FTA as of prepayment date, plus any additional interest and late payment charges pursuant to paragraph 6 or 7 hereof. On prepayment date, Lender shall remit to FTA the total amount to be paid to FTA by wire transfer. For loans approved prior to February 15, 1985, Lender shall forward any prepayment to the FTA by wire transfer wihtin three business days of receipt of the prepayment from the Borrower.

16. *Option to Purchase by SBA.* Pursuant to the 750 Agreement, SBA shall at any time have the option to purchase the outstanding balance of the Guaranteed Interest plus interest at the Note rate less the Lender's servicing fee. Failure by Registered Holder to submit the Certificate to FTA for redemption by the date specified by SBA or FTA will not entitle Registered Holder to accrued interest beyond such date.

17. *Separate or Side Agreements.* Separate or side agreements between Lender and Registered Holder, between a Registered Holder and a subsequent transferee, between FTA and Lender, or between FTA and any Registered Holder, shall not in any way obligate SBA to make any payment except as provided herein, nor shall it modify the nature or extent of SBA's rights or obligations under the terms of this Agreement or of the 750 Agreement. Furthermore, any such side agreement which has the effect of distorting the information supplied to SBA is prohibited.

18. *Indemnity and Force Majeure.* Each party to this Agreement (including FTA), for itself and its successors and assigns, agrees to indemnify and hold harmless any other party (including FTA) against any liability or expense arising under this Agreement which is due to its negligence and/or breach of contractual obligation, except that no party hereto (including FTA) shall be liable to any other party or to Registered Holder for any action it takes, suffers or omits that is (i) authorized by this Agreement or (ii) pursuant to a communication received by such party (including FTA) from any other party or from Registered Holder which is not contrary to this Agreement and which a prudent person in like circumstances would reasonably believe to be genuine, lawful and duly authorized by the sender. If any party hereto (including FTA) is in doubt as to the applicability of this Agreement to a communication it has received, it may refer the matter to SBA for an opinion as to whether it may take, suffer or omit any action pursuant to such communication. Under no circumstances, however, shall any party hereto (including FTA) be held liable to an person or entity for special or consequential damages or for attorneys' fees or expenses in connection with its performance under this Agreement. If any party hereto (including FTA) shall be delayed in its performance hereunder or prevented entirely or in part from completing such performance due to causes or events beyond its control (including and without limitation, Act of God; postal malfunction or delay; interruption of power or other utility, transportation or communication services; act of civil or military authority; sabotage; national emergency; war; explosion, flood, accident, earthquake or other catastrophe; fire; strike or other labor problem; legal action; present or future law, governmental order, rule or regulation; or shortage of suitable parts, materials, labor or transportation) such delay or non-performance shall be excused and the reasonable time for performance in connection with this Agreement shall be extended to include the period of such delay or non-performance.

19. *Fees and Penalties.* Lender and Registered Holder shall be responsible for payment of fees and penalties required of them by this Agreement which are in effect on the date of this transaction and as published from time to time in the **Federal Register**. If any fees or penalties called for in this document, including but not limited to those described in sections 6, 10, 11, 12, 13, or 15, are not remitted on a timely basis by Lender, FTA and SBA reserve the right to withhold same from the settlement of any future guaranteed interest sale or payment on any defaulted guarantee loan in the Lender's portfolio. The FTA will forward any penalties due SBA at the end of each month.

20. *Emergency Repurchase Authority by Lender.* In a critical situation in which the Borrower's ability to remain in business is directly dependent upon a change in the provisions relating to Borrower's installment payments, SBA may permit Lender to repurchase the Guaranteed Interest from the Registered Holder if all the following conditions exist: (i) Lender has submitted a written request to the relevant SBA field office servicing the loan, which includes the current financial statements from the Borrower, and either a written decline to

a specific request for a change in the terms and conditions from the Registered Holder either directly or through the FTA, or a written statement from the FTA that the Registered Holder did not respond to a servicing request or that the loan is part of a pool; (ii) the proposed change in the terms and conditions is solely for the benefit of the Borrower; (iii) the Lender has certified that it will make the requested change in the terms and conditions if repurchase is approved by SBA; and (iv) the SBA field office has reviewed the financial statements of the Borrower and whatever additional information is necessary, and has concluded that an emergency exists in which the Borrower's business will probably fail if the change is not approved and that the business will probably survive if the change is approved.

If all conditions are met, the field office may approve the purchase by the Lender of the Guaranteed Interest. Guaranteed Interests purchased using this procedure may not be resold until the Borrower has made all payments as scheduled on the Note for a period of twelve consecutive months.

21. *Inconsistent Provisions and Caption Headings.* Any inconsistency between this Agreement and the 750 Agreement shall be resolved in favor of this Agreement. Any inconsistency between this Agreement and Title 13, Code of Federal Regulations, shall be resolved in favor of title 13. The provisions of the Secondary Market Regulations (Title 13, Code of Federal Regulations, Part 120) in effect on the date of this transaction and as may be amended from time to time in the Federal Register, apply to this agreement unless explicitly stated to be inapplicable. The caption headings for the various paragraphs herein are for ease of reference only and are not to be deemed part of these Terms and Conditions.

In consideration of the mutual promises herein contained, the parties agree to all the provisions of this Agreement. IN WITNESS WHEREOF, the parties have executed this multi-page Agreement this ____ day of _____, 19____, (SBA Warranty Date, supplied by SBA) in New York State.

(Registered Holder)
By: _____
Title: _____
Date: _____

(Lender)
By: _____
Title: _____
Date: _____

Small Business Administration
By: Administrator, Small Business Administration

Examined and accepted by Fiscal and Transfer Agent by: _____

Colson Services Corp., P.O. Box 54, Bowling Green Station, New York, New York 10274

Note.—The guarantee of SBA relates to the unpaid principal balance of the guaranteed portion and the interest due thereon. Any premium paid by the registered holder for the guaranteed interest is not covered by SBA's guarantee and is subject to loss in the event of prepayment or default.

This form is required to obtain a benefit.

Attachment 1—Form 1086—Sample Calculation of Lender's & Investor's Shares of a Borrower's Payment

Total borrower: payment received by lender	$3,450.05
Total interest payment:	
Borrower's balance	$288,857.10
Multiplied by borrower's interest rate (percent)	11.250
Multiplied by number of paid interest days	31
Divided by interest calendar basis	365
Total interest payment	$2,759.97
Investor's share of interest payment:	
Borrower's balance	$288,857.10
Multiplied by percent of loan sold to investor	90.000
Multiplied by interest rate sold (percent)	9.250
Multiplied by number of paid interest days [1]	31
Divided by interest calendar basis [2]	365
Investor's share of interest payment to be remitted to the FTA	$2,042.38
Lender's share of interest payment:	
Borrower's balance multiplied by	$288,857.10
Percent of loan retained by lender	10.000
Multiplied by borrower's interest rate (percent)	11.250
Multiplied by number of paid interest days	31
Divided by interest calendar basis	365
Lender's share of interest payment to be retained by lender	$276.00
Lender's service fee:	
Total interest	$2,759.97
Minus investor's interest	$2,042.38
Minus lender's interest	$276.00
Lender's service fee to be retained by lender	$441.59
Total borrower: Payment received by lender	$3,450.05

Attachment 1—Form 1086—Sample Calculation of Lender's & Investor's Shares of a Borrower's Payment—Continued

Total principal payment:	
Borrower's total payment	$3,450.05
Minus total interest	$2,759.97
Total principal payment	$690.08
Investor's share of principal payment:	
Total principal payment	$690.08
Multilplied by percent of loan sold to investor	90.000
Investor's share of principal payment to be remitted to the FTA	$621.07
Lender's share of principal payment:	
Total principal payment	$690.08
Minus investor's principal payment	$621.07
Lender's share of principal payment to be retained by lender	$69.01
Total to be remitted to the FTA:	
Investor's share of interest payment	$2,042.38
Plus investor's share of principal payment	$621.07
Total to be remitted to the FTA	$2,663.45
Total to be retained by the lender:	
Lender's share of interest payment	$276.00
Plus lender's share of principal payment	$69.01
Plus lender's service fee	$441.59
Total to be retained by the lender	$786.60
Payment distribution proof:	
Borrower's total payment	$3,450.05
Minus total to be remitted to the FTA	$2,663.45
Minus total to be retained by the lender	$786.60
Payment distribution proof	($0.00)

Note.—Figures shown are for illustrative purposes only.

[1] This example utilizes an actual number of days in each month with a 365 days per year basis.

[2] This same procedure may also be utilized for a constant 30 days in each month with a 360 days per year basis.

Attachment 2—Form 1086 SBA Field Office Codes

Office Code and City

Region 1

0172 Augusta, ME
0101 Boston, MA
0189 Concord, NH

0156 Hartford, CT
0150 Montpelier, VT
0165 Providence, RI
0130 Springfield, MA

Region 2

0296 Buffalo, NY
0206 Elmira, NY
0252 Hato, Rey, PR
0235 Melville, NY
0299 Newark, NJ
0202 New York, NY
0248 Syracuse, NY

Region 3

0373 Baltimore, MD
0325 Charleston, WV
0390 Clarksburg, WV
0316 Harrisburg, PA
0303 Philadelphia, PA
0358 Pittsburgh, PA
0304 Richmond, VA
0353 Washington, DC
0318 Wilkes-Barre, PA
0341 Wilmington, DE

Region 4

0405 Atlanta, GA
0459 Birmingham, AL
0460 Charlotte, NC
0464 Columbia, SC
0438 Gulfport, MS
0470 Jackson, MS
0491 Jacksonville, FL
0457 Louisville, KY
0455 Miami, FL
0474 Nashville, TN

Region 5

0507 Chicago, IL
0549 Cleveland, OH
0545 Cincinnati, OH
0593 Columbus, OH
0515 Detroit, MI
0562 Indianapolis, IN
0563 Madison, WI
0547 Marquette, MI
0543 Milwaukee, WI
0508 Minneapolis, MN
0517 Springfield, IL

Region 6

0682 Albuquerque, NM
0637 Corpus Christi, TX
0610 Dallas, TX
0677 El Paso, TX
0623 Fort Worth, TX
0639 Harlingen, TX
0671 Houston, TX
0669 Little Rock, AR
0678 Lubbock, TX
0679 New Orleans, LA
0680 Oklahoma City, OK
0681 San Antonio, TX

Region 7

0736 Cedar Rapids, IA
0761 Des Moines, IA
0709 Kansas City, MO
0766 Omaha, NE
0721 Springfield, MO
0768 St. Louis, MO
0767 Wichita, KS

Region 8

0897 Casper, WY
0811 Denver, CO
0875 Fargo, ND
0885 Helena, MT
0883 Salt Lake City, UT
0876 Sioux Falls, SD

Region 9

0995 Agana, GU
0942 Fresno, CA
0951 Honolulu, HI
0944 Las Vegas, NV
0914 Los Angeles, CA
0988 Phoenix, AZ
0931 Sacramento, CA
0954 San Diego, CA
0912 San Francisco, CA
0920 Santa Ana, CA

Region 10

1084 Anchorage, AK
1087 Boise, ID
1086 Portland, OR
1013 Seattle, WA
1094 Spokane, WA

Attachment 3—Form 1086

Example of Penalty Calculation for Late Lender Remittance of Borrower Payment

(Paragraph 6(c))

Example 1. Assume (a) that a $1,000 payment received by Lender as a regularly scheduled Borrower payment is received by the FTA on the tenth (a business day) of the month following receipt by Lender; (b) that the interest rate on the note less the Lender's servicing fee is 9.25%; and (c) that interest is calculated on a 30/360 basis.

(a) The late penalty is the greater of $100 or 5% of the payment amount, subject to a $5,000 maximum on Lender's total monthly remittance. $1,000×5%=$50. The penalty is $100	$100
(b) A penalty equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee).	
Unremitted amount	$1,000
Multiplied by note rate minus Lender's servicing fee (percent)	9.25
Multiplied by number of late days	5
Divided by interest calendar basis	360
	$1.28
(c) A late penalty charge calculated at a rate of 12% per annum on the unremitted amount.	
Unremitted amount	$1,000
Multiplied by 12%	12
Multiplied by number of late days	5
Divided by interest calendar basis	360
	$1.67
Total penalty	$102.95

Attachment 3—Form 1086

Example of Penalty Calculation for Late Lender Remittance of Borrower Payment

(Paragraph 6(c))

Example 2. Assume (a) that a $5,145.96 payment received by Lender as a regularly scheduled Borrower payment is received by the FTA on the fifteenth of the month (a business day) following receipt by Lender; (b) that the interest rate on the note less the Lender's servicing fee is 8.75%; and (c) that interest is calculated on an actual/365 basis.

(a) The late penalty is the greater of $100 or 5% of the payment amount, subject to a $5,000 maximum on Lender's total monthly remittance. $5,145.96×5%=$257.30. The penalty is $257.30	$257.30
(b) A penalty equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee).	
Unremitted amount	$5,145.96
Multiplied by note rate minus Lender's servicing fee (percent)	8.75
Multiplied by number of late days	10
Divided by interest calendar basis	365
	$12.34
(c) A late penalty charge calculated at a rate of 12% per annum on the unremitted amount.	
Unremitted amount	$5,145.96
Multiplied by 12% (percent)	12
Multiplied by number of late days	10
Divided by interest calendar basis	365
	$16.92
Total penalty	$286.56

Attachment 4—Form 1086

Please Note: Public reporting burden for this collection of information is

estimated to average 3 hours and 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Administrative Information Branch, Room 200, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 88-15587 Filed 7-11-88; 8:45 am]
BILLING CODE 8025-01-M

[License No. 01/01-5343]

The Argonauts MESBIC Corp.; Issuance of a Small Business Investment Company License

On March 18, 1988, a notice was published in the **Federal Register** (53 FR 9018) stating that an application had been filed by The Argonauts MESBIC Corporation, 155 North Beacon Street, Brighton, Massachusetts 02135, 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 to operate as a small business investment company.

Interested parties were given until the close of business on April 17, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-5343 on June 17, 1988, to The Argonauts MESBIC Corporation, 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: July 5, 1988.

[FR Doc. 88-15585 Filed 7-11-88; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular on Detonation Testing in Reciprocating Aircraft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of advisory circular (AC).

SUMMARY: This notice is to notify the aviation public of the issuance of AC No. 33.47-1, Detonation Testing in Reciprocating Aircraft Engines, which provides guidance material for acceptable means of demonstrating compliance with § 33.47 of Part 33 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: George Mulcahy, Engine and Propeller Standards Staff, ANE-110, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7077.

SUPPLEMENTARY INFORMATION: Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. The notice to announce the availability of and request comments to the draft AC was published in the **Federal Register** on November 5, 1986. All comments were considered and appropriate comments were incorporated in the AC.

AC No. 33.47-1 was issued by the Engine and Propeller Certification Directorate in Burlington, Massachusetts, on June 22, 1988.

A copy of AC No. 33.47-1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Section, M-494.3, 400 Seventh Street SW., Washington, DC 20590.

Issued in Burlington, Massachusetts, on June 27, 1988.

Timothy P. Forté,

Acting Director, New England Region.

[FR Doc. 88-15433 Filed 7-11-88; 8:45 am]
BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held July 20, 1988, in Room 600, 301 4th Street SW., Washington, DC, from 11:00 a.m. to 12:30 p.m.

The Commission will meet with USIA Comptroller Stanley Silverman for a briefing on TV Marti and Mr. Peter Galbraith, Professional Staff Member, Committee on Foreign Relations, for a discussion of USIA reorganization.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: July 6, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 88-15552 Filed 7-11-88; 8:45 am]
BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 133
Tuesday, July 12, 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

TIME AND DATE: 10:00 a.m., Wednesday, July 13, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Preliminary 1990 Budget

The staff will brief the Commission on issues related to the budget for fiscal year 1990.

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.

July 8, 1988.

[FR Doc. 88–15692 Filed 7–8–88; 3:52 pm]

BILLING CODE 6355–01–M

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Wednesday, July 20, 1988, 10:00 a.m.

PLACE: 1111 20th Street, NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken July 7, 1988.

MATTERS TO BE CONSIDERED: Adjudication of the 1986 jukebox royalty fund distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, 202–653–5175.

Dated: July 8, 1988.

Edward W. Ray,

Acting Chairman.

[FR Doc. 88–15691 Filed 7–8–88; 3:52 pm]

BILLING CODE 1410–09–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 24398, Tuesday, June 28, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Wednesday, July 6, 1988.

CHANGE IN THE MEETING: The Closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: July 7, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued July 7, 1988.

[FR Doc. 88–15647 Filed 7–8–88; 3:14 pm]

BILLING CODE 6750–06–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, July 19, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat on (202) 634–6748.

Date: July 7, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice issued July 7, 1988.

[FR Doc. 88–15648 Filed 7–8–88; 3:14 pm]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 18, 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. Policy proposals regarding a drug testing program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–15695 Filed 7–8–88; 3:56 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 11, 18, 25, and August 1, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 11

Tuesday, July 12

10:00 a.m.
Annual Briefing by INPO (Public Meeting).
2:00 p.m.
Briefing on Policy Paper for Plant Life Extension (Public Meeting).

Wednesday, July 13

1:00 p.m.

Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting).

Thursday, July 14

10:00 a.m.
Briefing on Final Rule on 10 CFR Part 50.46—ECCS Acceptance Criteria (Appendix K) (Public Meeting).
2:00 p.m.
Periodic Briefing by the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Final Rule for Revision to 10 CFR Part 72 Entitled, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste" and Conforming Amendments (Tentative).
b. Shoreham—Intervenors' Motion for Reconsideration of Commission Decision (Tentative).
c. Licensing Board Decision on Operator License Examination (In the Matter of Alfred J. Morabito) (Tentative).

Friday, July 15

10:00 a.m.
Briefing on Matters of Common Interest Between NRC and EPA in the Regulation of Radiological Hazards (Public Meeting).

Week of July 18—Tentative

Thursday, July 21

10:00 a.m.
Briefing on Current Status of Nuclear Materials Transportation (Public Meeting).
2:00 p.m.
Briefing on Individual Plant Examinations Generic Letter (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Friday, July 22

10:00 a.m.
Briefing on Interim Report on BWR Mark I Containment Issues (Public Meeting).

Week of July 25—Tentative

No Commission meetings scheduled for Week of July 25.

Week of August 1—Tentative

Tuesday, August 2

2:00 p.m.
Briefing on Status, Results, and Implementation of B&W Reassessment (Public Meeting).

Wednesday, August 3

2:00 p.m.
Annual Briefing by NUMARC (Public Meeting).

Thursday, August 4

2:00 p.m.
Briefing on the Status of Sequoyah I (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) If needed).

Friday, August 5

10:00 a.m.
Briefing on Status of Efforts to Enhance Safety of Users of By-Product Materials (Public Meeting).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,
Office of the Secretary.
July 7, 1988.

[FR Doc. 88–15664 Filed 7–8–88; 3:52 pm]
BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 133
Tuesday, July 12, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A25; DA-88-101]

Milk in the Chicago Regional Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Correction

In proposed rule document 88-14500 beginning on page 24298 in the issue of Tuesday, June 28, 1988, make the following corrections:

§ 1030.7 [Corrected]

1. On page 24313, in the first column, in § 1030.7(b)(2)(iv), in the fourth line, "quality" should read "quantity", and in the seventh line, "many" should read "any".

2. On the same page, in the same column, in § 1030.7(b)(2), paragraph (v), should read:

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

3. On the same page, in the second column, in § 1030.7(b)(4), in the fifth line, "quality" should read "quantity".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Arenaria cumberlandensis

Correction

In rule document 88-14247 beginning on page 23745 in the issue of Thursday, June 23, 1988, make the following correction:

On page 23745, in the second column, the "**EFFECTIVE DATE**" should read "July 25, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Hymenoxys acaulis var. glabra (Lakeside daisy)

Correction

In rule document 88-14246 beginning on page 23742 in the issue of Thursday, June 23, 1988, make the following correction:

On page 23742, in the second column, the "**EFFECTIVE DATE**" should read "July 25, 1988".

BILLING CODE 1505-01-D

Federal Register

Tuesday
July 12, 1988

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Grants and Cooperative Agreements; Private Nonprofit Missing Children's Agencies Service Activities; Notice of Applications

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Grants and Cooperative Agreements; Private Nonprofit Missing Children's Agencies Service Activities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of a solicitation of applications for a grant program to provide support for private nonprofit missing children's agencies service activities.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) invites applications by private nonprofit voluntary organizations (PVOs) currently serving missing and exploited children to establish or expand specific missing and exploited children service components.

Eligible private nonprofit voluntary organizations are invited to request the Program Application Kit which contains detailed forms and instructions.

DATES: All applications will be reviewed and acceptable applications processed in the order that they are received, to the extent that funds remain available, or until August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Sutton, Program Specialist, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Rm. 700, Washington, DC 20531. (202) 724–7573.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Pursuant to Section 406(a) (1–4) of the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, funds to provide support to private nonprofit missing children's service agencies in the amount of $325,000 have been reserved for award to qualified PVOs in grants ranging from a minimum of $5,000 to a maximum of $25,000 during Fiscal Year 1988. Grants will be awarded for service programs designed to accomplish one or more of the following: (1) Educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children; (2) provide information to assist in the location and return of missing children who have been abducted; (3) aid communities in the collection of materials that would be useful to parents in assisting others in the identification of such missing children; and (4) provide treatment for parents and for children that deals with the psychological consequences of the abduction of a child or the sexual exploitation of a missing child. No other program purposes will be considered for funding.

II. Program Goals and Objectives

The goal of the program is to enhance the capacity of private non-profit missing children's agencies, that utilize volunteers, to provide direct support and services to individuals, families and communities impacted by the missing children problem and thus to assist them to become more effective direct service provider organizations.

The objective of the program is to assist PVOs to establish or expand critical missing and exploited children services by providing supplemental funding to support putting into place the administrative, operation and program costs associated with the provision of such services.

III. Eligibility Criteria

Eligible applicants are tax exempt private nonprofit voluntary service organizations whose primary organizational mission is directly related to the problem of missing and exploited children. Applicants (PVOs) who received a grant under OJJDP's two previous **Federal Register** announcements are ineligible to apply and will not be considered for funding under this announcement. In order to receive assistance, applicants will be required to give an assurance that they will expend, to the greatest extent practicable, the same amount of funds in the current year that they had expended in the preceding year from State, local and private sources. *This means that the Federal grant funds must supplement or be in addition to the applicant's operating budget level of the previous year.*

IV. Dollar Amount and Duration

Up to $325,000 is available in Fiscal Year 1988 for awards to qualified projects. Awards will range in amount from a minimum of $5,000 to a maximum of $25,000. No consideration will be given to an application that exceeds the maximum amount.

Completed applications will be reviewed in the order that applications are received. Once the completed application is determined to be: (1) Eligible; and (2) qualified for funding through the submission of an acceptable proposal, OJJDP will enter into negotiations with the applicant to address issues that may be present in program or budget and, if these can be satisfactorily resolved, will process the application for final review, approval and award by the OJJDP Administrator. *Applications will be funded for a single budget period, not to exceed one year. No additional supplement or continuation funding will be granted.*

V. Application Requirements

Eligible PVOs are required to submit:

1. A completed application (Short Form SF 424) from the Program Application Kit.

2. The PVO must be incorporated as a nonprofit organization, be in good standing in the State of incorporation, and be recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization. A copy of the IRS letter of tax-exempt status must be provided.

3. Brief description of proposed tasks or activities to be funded that address an identified problem or need *and* provide services in the area of missing and exploited children. The proposal should be designed to accomplish one or more of the following service objectives:

(a) To educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(b) To provide information to assist in the location and return of missing children who have been abducted;

(c) To aid communities in the collection of materials that would be useful to parents in assisting others in the identification of missing children; and/or

(d) To provide treatment for parents and for children that deals with the pyschological consequences of the abduction of a child or the sexual exploitation of a missing child. *Funds will not be awarded to provide shelter, food and other basic living expenses for runaway children.*

4. A brief history of the organization, including the date of incorporation, the organizational goals and objectives, and examples of accomplishments that demonstrate competence in carrying out missing children activities, with emphasis upon those described under 3 above, and a brief description of how the activities proposed to be funded will contribute to the achievement of the goals and objectives.

5. A letter of endorsement from the District Attorney or a sitting judge of the jurisdiction to be served who exercises jurisdiction over juvenile or family court matters.

6. A statement supporting the need for and the feasibility of carrying out the proposed activity in the community served.

7. The extent to which the applicant has obtained a commitment for the

contribution of money or services from other sources to assist in carrying out the proposed activities will be viewed as additional evidence supporting the need for the project activity.

8. A roster of the applicant organization's Board of Directors, listing their occupations, telephone numbers, mailing addresses, and affiliations, as appropriate.

9. A statement of the principal objectives of the project and a plan of action to accomplish those objectives, including the following:

(a) A brief description of the qualifications of the individuals who will be primarily responsible for carrying out project activities;

(b) A schedule of proposed activities and an estimated timetable to complete each activity of the project; and

(c) A budget by specific elements and a brief narrative justifying the proposed expenditures.

10. A brief proposed plan for obtaining financial support to continue funded activities following the period of Federal support under this grant.

11. A description of the extent to which volunteer assistance will be utilized in carrying out funded activities.

12. The most recent financial statement or, if available, audit.

13. A description of how the success of funded activities will be determined and reported.

VI. Funding Criteria

Applications will be screened and rated by a panel of reviewers. Individuals who screen the applications will give consideration to the factors listed below:

1. Appropriateness of project tasks or activities in furthering the eligible services specified under V. 3. above, which are taken from Section 406(a) (1–4) of the Missing Children's Assistance Act. Clarity of the proposal and establishment of need are important considerations.

2. Feasibility of the proposal and clear objectives.

3. Qualifications of proposed project staff.

4. Extent to which the applicant organization has demonstrated a track record of success, or has designed a project that demonstrates a clear likelihood of success in locating and reuniting missing children with their legal guardian, or providing other eligible program services to missing children or their families.

5. The extent to which the applicant has and will substantially utilize volunteer services in carrying out project activities.

6. Cost effectiveness of the budget and adequacy of the plan for obtaining financial support to continue the funded activity following the period of Federal support.

7. Procedures established to determine and report project success.

VII. Submission of Applications

Applicants who are interested in responding to this solicitation are requested to apply to: Sylvia Sutton, Program Specialist, OJJDP/NIJJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Room 700, Washington, DC 20531, (202) 724–7573, for a Program Application Kit. The Kit contains all required forms and instructions to complete an application.

VIII. Definitions

Tax Exempt Organization—A PVO that has only incorporated as a nonprofit in a state will not qualify as a tax exempt organization. Eligible PVOs must be recognized by the Internal Revenue Service as a 501(c)(3) organization at the time of application for a grant. PVOs that have not received this formal exemption may wish to consider applying for a grant jointly with an eligible 501(c)(3) PVO organization.

Dated: July 5, 1988.

Approved.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–15607 Filed 7–11–88; 8:45 am]

BILLING CODE 4410–18–M

federal register

Tuesday
July 12, 1988

Part III

Securities and Exchange Commission

17 CFR Part 240
Voting Rights Listing Standards; Disenfranchisement; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25891; File Nos. S7-22-87, 4-308, SR-NYSE-86-17, and SR-PSE-84-23]

Voting Rights Listing Standards; Disenfranchisement Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of Rule 19c-4 under the Securities Exchange Act of 1934, which has the effect of amending the rules of national securities exchanges ("exchanges") and national securities associations ("associations") (collectively "self-regulatory organizations" or "SROs") regarding listing and authorization requirements concerning shareholders voting rights. Rule 19c-4 amends exchange and association rules to prohibit the common stock or other equity securities of a company from being or remaining listed on an exchange or from being or remaining authorized for quotation and/or transaction reporting through an automated inter-dealer quotation system operated by an association (such as the National Association of Securities Dealers Automated Quotation ["NASDAQ"] System), if such company issues securities or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of existing common stock shareholders of the company.

EFFECTIVE DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen Luparello, Attorney, or Sharon Itkin, Attorney, Branch of Exchange Regulation, Division of Market Regulation, Stop 5-1, 450 Fifth St. NW., Washington, DC. 20549, at 202/272-2451.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Securities and Exchange Commission ("Commission" or "SEC") announces the adoption of Rule 19c-4 under the Securities Exchange Act of 1934 ("Act"), which adds to the rules of national securities exchanges that make transaction reports available pursuant to Rule 11Aa3-1 under the Act [1] a prohibition on an exchange listing or continuing to list the common stock or other equity securities of a domestic issuer if the issuer issues securities, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of any common stock of such issuer registered under Section 12 of the Act.[2] Rule 19c-4 also contains a similar addition to the rules of a national securities association [3] to prohibit an association from authorizing, or continuing to authorize, for quotation and/or transaction reporting on an automated inter-dealer quotation system,[4] the common stock or other equity securities of a domestic issuer if the issuer issues securities, or takes over corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of any common stock of such issuer registered under Section 12 of the Act.

On June 22, 1987, the Commission issued a release announcing the commencement of a proceeding pursuant to section 19(c) of the Act to consider whether to adopt a rule pertaining to the disenfranchisement of shareholder voting rights.[5] In connection with this proceeding, the Commission solicited public comment on proposed Rule 19c-4 and held public hearings on July 22, 1987 ("July hearings").[6]

The decision by the Commission to propose Rule 19c-4 followed attempts by the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), and the National Association of Securities Dealers ("NASD") to resolve the issue of voting rights listing standards. In September 1986, the NYSE filed with the Commission a proposed rule change [7] pursuant to section 19(b) of the Act [8] and Rule 19b-4 thereunder [9] to modify its long-standing rule mandating a one share, one vote standard for all common stocks listed on the NYSE.[10] The NYSE filing represented the culmination of a two year deliberative process, begun in 1984 when General Motors Corporation ("GM") announced its intention to issue a second class of stock with one-half vote per share to finance its acquisition of Electronic Data Systems. As a result of the GM issuance and the subsequent proposal by a number of other NYSE companies to issue disparate voting rights stock, the NYSE declared a moratorium on compliance with its one share, one vote rule, and appointed a Subcommittee on Shareholder Participation and Qualitative Listing Standards ("Subcommittee").[11] As of June 1, 1988, the NYSE had 55 listed companies that had either issued disparate voting rights stock or amended their charters to limit the voting power of large shareholders (capped voting rights plans) or holders of recently purchased shares (tenured or time phased voting plans). These various departures from the one share, one vote rule are collectively called "disparate voting rights plans."[12]

---

[1] 17 CFR 240.11Aa3-1 (1988). By limiting the scope of Rule 19c-4 to those exchanges that make transaction reports available pursuant to Rule 11Aa3-1 under the Act, the Commission excludes the Intermountain ("ISE") and Spokane ("SSE") Stock Exchanges from coverage under the Rule. The Commission believes this is appropriate because the ISE is dormant, and the securities listed on the SSE do not have a widespread national investor interest. In addition, the Commission notes that, while Rule 19c-4 would not apply to the Chicago Board Options Exchange ("CBOE") because it currently does not trade stocks, if, and when, the CBOE's proposed rule change (SR-CBOE-85-50) to trade stocks is approved, Rule 19c-4 would apply to issues traded on the CBOE.

[2] 15 U.S.C. 78l.

[3] Currently, the National Association of Securities Dealers is the only national securities association registered under Section 15A of the Act. 15 U.S.C. 78o-3(a).

[4] Currently, NASDAQ is the only such inter-dealer quotation system. The so-called "pink sheets" and other local inter-dealer quotation sheets do not constitute at present an automated inter-dealer quotation system under the Act.

[5] *See* Securities Exchange Act Release No. 24623 (June 22, 1987), 52 FR 23665 (June 24, 1987) ("Proposing Release").

[6] Seventeen commentators testified at this public hearing, and the Commission received over 1100 written comments. *See* text accompanying notes 23 to 68 *infra* (summarizing the significant comments received). The Commission staff also has prepared a separate document, summarizing all comments in more detail, which is available in the Commission's Public Reference Section, 450 Fifth St. NW., Washington, DC. 20549, under File No. S7-22-87.

[7] SR-NYSE-86-17. The filing was published for comment in Securities Exchange Act Release No. 23724 (October 17, 1986), 51 FR 37529.

[8] 15 U.S.C. 78s(b).

[9] 17 CFR 240. 19b-4.

[10] *See* NYSE *Listed Company Manual*, Section 313.00. Generally, the Listed Company Manual provides standards that an issuer must meet to be listed on the NYSE. Currently, the NYSE standards prohibit the listing of an issuer that has a class of stock having unusual voting provisions that tend to nullify or restrict the voting rights of the class, or that has voting rights not in proportion to the equity interests of the class.

[11] Shortly after the NYSE initiated its study of its one share, one vote rule, the Pacific Stock Exchange ("PSE") filed a proposed rule change to permit its listed companies to issue dual classes of stock. *See* File No. SR-PSE-84-23. The proposal was published for comment in Securities Exchange Act Release No. 23970 (January 6, 1987), 52 FR 1686. With the consent of the PSE, action on its proposal was deferred so that it could be considered in conjunction with any NYSE action.

[12] An additional 5 NYSE listed companies have adopted, but not yet implemented, disparate voting rights plans. As of June 1, 1988 the Amex had 117 and NASDAQ had 182 companies with disparate voting rights plans. In December 1986, the Amex

Continued

Following the recommendation of the Subcommittee that the NYSE should permit the listing of classes of stock having disparate voting rights, subject to certain conditions, the NYSE proposed an amendment to Section 313 of its Listed Company Manual.[13] The NYSE cited a number of factors that it believed necessitated modification of its rule, including the growing competition for listings with the Amex and NASD, the desire of NYSE-listed companies to adopt disparate voting rights plans as takeover defenses, the belief that corporate issuers should have flexibility in raising capital and adopting corporate structures, and the belief that regulatory changes, such as improvements in corporate disclosure, had made the shareholder protection provided by the one share, one vote rule less important.[14]

The proposed amendment to section 313 would permit the listing of a class or classes of common stock with disparate voting rights if a majority of the issuer's independent directors and "public" shareholders approved the creation of the class or classes of stock.[15] Under the proposal, listed companies that created disparate voting rights stock during the NYSE moratorium would have two years from approval of the NYSE proposal to comply with the rule. Companies with disparate voting classes applying for NYSE listing would have to comply with the rule prior to listing. Finally, no approval would be necessary if the disparate voting class was outstanding when the company first went public, or was distributed pro rata among the distributor's common shareholders in a spin-off transaction in which the distributor was not the issuer.[16]

In recognition of the significant concerns raised by the NYSE proposal, the Commission issued a release soliciting comment,[17] and held hearings on the issue on December 16 and 17, 1986 ("December hearings"). Over 40 commentators testified at the December hearings and 185 written comments were submitted to the Commission.[18]

In December 1986, following the public hearings, the Amex filed a rule proposal to eliminate entirely its partial restrictions on the issuance of disparate voting rights stock.[19] On March 13, 1987, the NASD submitted a letter to the Commission, supporting the concept of a minimum voting rights rule with certain exceptions.[20] A series of meetings were held between the NASD, Amex, and NYSE, attended by Commission staff, to explore the possibility of a minimum rule. Despite these efforts, the three self-regulatory organizations ("SROs") were unable to reach a consensus on a minimum rule.[21] As a result of the failure of the SROs to reach an accord, the Commission proposed Rule 19c–4, the Shareholder Disenfranchisement Rule, pursuant to its section 19(c) authority.[22]

II. Summary of Comments

As noted, the Commission received over 1,100 comment letters and heard testimony from 17 people in response to its request for comments on proposed Rule 19c–4.

A. Comments in Support of Rule 19c–4

Approximately 1,000 commentators indicated support for adoption of the Rule.[23] The primary reasons cited in support of the Rule are that: (1) The adoption of a minimum voting rights standard is necessary to ensure management accountability; [24] (2) the Rule will protect shareholder interests in connection with contests for corporate control; [25] (3) the Rule will protect shareholders from being disenfranchised, while permitting companies to utilize disparate voting rights plans for capital raising purposes; [26] and (4) the Rule would

---

filed a proposed rule change, subsequently withdrawn, to eliminate its restrictions on the issuance of disparate voting rights stock. *See* Securities Exchange Act Release No. 23951 (January 2, 1987), 52 FR 1574.

[13] *See* Proposing Release, *supra* note 5, at 23665–66. As discussed in the Proposing Release, the NYSE proposal submitted to the Commission differed significantly from the original Subcommittee recommendations. *Id.* at n. 16. The NYSE proposal has not been withdrawn. *See* note 62 *infra*.

[14] *See* SR–NYSE–86–17.

[15] *Id.*

[16] In addition to the NYSE actions, there have been a number of legislative proposals concerning shareholder voting rights. In 1985, H.R. 2763, the Shareholder Democracy Protection Act, was introduced by Representative Dingell. H.R. 2783 would have established a uniform one share, one vote rule. Identical legislation, S. 1314, was introduced by Senators Cranston, Metzenbaum, and D'Amato. Neither proposal was reported out of committee. In 1987, two bills were introduced that would have established a uniform one share, one vote rule. *See* H.R. 2172, the Tender Offer Reform Act of 1987, introduced by Representative Dingell, and H.R. 2668, the Securities Trading Reform Act, introduced by Representatives Lent and Rinaldo. Both bills have been referred to the House Committee on Energy and Commerce, but have not been reported out of Committee. Finally, the Tender Offer Disclosure and Fairness Act of 1987, S. 1323, would direct the Commission to review rules of the SROs concerning shareholder voting rights and report the results of this review to Congress by October 1, 1988. S. 1323 was reported out of the Senate Banking Committee on December 17, 1987. On June 17, 20, and 21, 1988 the Senate debated S. 1323, but no action has been taken on the bill.

[17] Securities Exchange Act Release No. 23803 (November 13, 1986), 51 FR 41715. The release solicited comment on the potential effect of the NYSE proposal, and whether a minimum policy concerning voting rights listing standards should be developed.

[18] The Commission staff prepared a separate document containing a detailed summary of all written comments and testimony. This document, along with the comment letters and transcripts of the December hearings, is available in File Nos. SR–NYSE–86–17 and 4–308 in the Commission's Public Reference Section. Many of these comments focused generally on the voting rights issue and the development of a minimum standard. The Commission has incorporated the comments in response to the NYSE proposal in its record on Rule 19c–4. *See* Proposing Release, *supra* note 5, at 52 FR 23667.

[19] *See* Securities Exchange Act Release No. 23851, *supra* note 12. The Amex withdrew the filing in April 1987. Currently, Section 122 of the Amex Listed Company Guide prohibits the listing of non-voting common stock, but permits the listing of limited voting common stock under certain conditions. *See* Proposing Release, *supra* note 5, at note 21.

[20] *See* letter from Gordon S. Macklin, President, NASD, to John S.R. Shad, Chairman, SEC, dated March 13, 1987.

[21] The staffs of the NASD and NYSE agreed on general terms of a rule that would have prohibited issuers from issuing securities or taking other corporate action that would nullify, restrict, or disparately reduce the voting rights of existing shareholders. The NASD submitted to its members for comment a shareholder voting rights proposal for NASDAQ companies containing this standard. *See* NASD Notice to Members 87–32, dated May 28, 1987. Further, the NYSE Board of Directors endorsed, in principal, a similar approach at its June 4, 1987 Board meeting. *See* Proposing Release, *supra* note 5, at note 24 and accompanying text.

[22] *See* 15 U.S.C. 78s(c). Section 19(c) of the Act states, in pertinent part, "[t]he Commission, by rule, may abrogate, add to, and delete from * * * the rules of a self-regulatory organization * * * as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title[.]" *See also* text accompanying notes 145 to 180 *infra* (discussing Commission authority to promulgate Rule 19c–4).

[23] Approximately 800 of the comments in support of the Rule were submitted by individual members of the United Shareholders Association, who advocated a one share, one vote standard with no exceptions.

[24] *See, e.g.*, letter from Donald K. Smith, Senior Vice President, Geico Corp., to Jonathan G. Katz, Secretary, SEC, dated July 17, 1987 ("Geico comment"); letter from Glenn R. Simmons, Chairman, Keystone Consolidated Industries, to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987 ("Keystone comment"); letter from David B. Weinberger, Co-Managing Partner, O'Connor and Associates, to Jonathan G. Katz, dated August 5, 1987 ("O'Connor comment"); letter from Harold Simmons, Chairman, Valhi Inc. to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987 ("Valhi comment"); letter from Manning G. Warren, Professor of Law, University of Alabama, to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987.

[25] *See, e.g.*, letter from Ronald J. Gilson, Professor of Law, Stanford University, to Jonathan G. Katz, Secretary, SEC, dated July 16, 1987 ("Gilson comment"); Gilson, *Evaluating Dual Class Common Stock: The Relevance of Substitutes*, 73 Va. L. Rev. 807 (1987).

[26] *See, e.g.*, letter from Thomas D. Maher, Senior Legal Counsel, Fidelity Investments, to Jonathan G. Katz, Secretary, SEC, dated July 31, 1987 ("Fidelity

Continued

prevent a "race to the bottom" for listing standards among SROs.[27] Many of the comments in support of the rule mirrored arguments raised by commentators against adoption of the original NYSE proposal.[28]

A majority of commentators that supported the adoption of Rule 19c–4 stressed the importance of maintaining management accountability to shareholders. According to these commentators, corporate managements have used disparate voting rights plans to insulate themselves from shareholders and the market for corporate control. They testified that such insulation leads to entrenched, inefficient corporate managements acting in their own best interest instead of the best interest of the company and its shareholders.[29] Some commentators noted that such management behavior seriously would undermine investor confidence in the nation's equity markets, which would lead eventually to investors removing their capital from those markets.[30]

Other commentators stated that Rule 19c–4 would protect the interests of shareholders in connection with contests for corporate control.[31] They indicated that the Rule would prevent the disenfranchisement of common stockholders, thereby preserving their opportunity to share in any control premium.[32] In this connection, Professor Gilson stated that empirical evidence indicates there are significant differences in the wealth effects for public shareholders in a leveraged buyout versus an adoption of a disparate voting rights plan, with shareholders benefiting substantially from buyouts but not from a shift in voting rights through the implementation of disparate voting rights plans. Gilson further noted that the Rule is appropriate because it does not prevent management or an existing large shareholder from acquiring control of a company, but instead simply requires that shareholders be paid adequately for transfer of control.[33] Other commentators argued that the Rule would prevent management from using its proxy agenda-setting power to disenfranchise shareholders.[34]

A number of commentators supporting the Rule testified that a shareholder approval standard for adoption of disparate voting rights plans would be insufficient to prevent abusive disparate voting rights plans.[35] These commentators cited the coercive influence management can exert on shareholder voting by setting the proxy agenda and placing corporate pension plan managers under substantial pressure to vote in favor of the recapitalization.[36] Further, one commentator noted that in an exchange offer of super voting stock with low dividends for lower voting stock with high dividends, shareholders feel compelled to exchange their shares for lower voting stock to avoid holding higher voting stock that has become ineffective.[37]

A number of commentators supported the Rule because it struck an appropriate balance between investor protection and the need for flexibility when raising capital or restructuring for legitimate business purposes.[38] Some commentators cited the provision in the Rule permitting initial public offerings and subsequent offerings of lower voting stock, noting that such offerings are useful financial tools that do not disenfranchise existing shareholders.[39] One commentator noted that the proposed Rule properly focused on "the process by which disparate voting rights stock is created, rather than on the issuer's capital structure *per se* * * *."[40]

The Commission notes that all commentators that could be characterized as institutional investors supported adoption of a minimum voting rights standard whether a one share, one vote standard or some lesser standard.[41] In general, these commentators cited the same factors as other groups in support of the Rule. Some expressed the opinion that disparate voting rights plans lead to entrenched, inefficient corporate managements, which result in a loss of investor confidence in the marketplace and a decrease in equity values.[42] CREF suggested that corporate management becomes less efficient and less responsive to competitive pressure without the discipline of meaningful shareholder control. The FAF testified that the shareholders' right to vote is necessary to ensure that corporate management focuses its resources on the corporation's development for the benefit of the shareholders rather than for its own particular interests. Several institutional investor commentators stressed that the right to vote is one of

---

comment"); letter from Alan T. Rains, President, National Association of OTC Companies, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987 ("NAOTC comment").

[27] *See, e.g.*, oral testimony of Richard Chase, Vice President, Philadelphia Stock Exchange, July hearings ("Phlx comment").

[28] *See* Proposing Release, *supra* note 5, at notes 37 to 59 and accompanying text (discussing comments advocating disapproval of the original NYSE proposal).

[29] *See, e.g.*, letter from James S. Martin, Executive Vice President, College Retirement Equities Fund, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987 ("CREF comment"); Valhi comment, *supra* note 24, at 1. CREF argued that equal voting rights are essential to help ensure that management is responsive to shareholder concerns, because the vote allows shareholders not only to elect a board of directors, but also to protect their investment by influencing corporate policy. When shareholders' ability to influence corporate policy is reduced, management is more free to act in its own best interests at the expense of the efficient operation of the company.

[30] *See* CREF comment, *supra* note 29, at 2–3; Valhi comment, *supra* note 24, at 1.

[31] *See, e.g.*, Gilson comment, *supra* note 25, at 1–2; letter from Jeffrey N. Gordon, Associate Professor of Law, New York University, to Jonathan G. Katz, Secretary, SEC, dated July 31, 1987 ("Gordon comment"); Gordon, *Ties That Bond: Dual Class Common Stock and The Problem of Shareholder Choice*, 75 Calif. L. Rev. —— (forthcoming).

[32] *See* Gilson comment, *supra* note 25, at 1. In his comment, Professor Gilson noted that the empirical evidence demonstrates that when voting control of a corporation is purchased, shareholders are likely to earn substantial abnormal returns. In contrast, when voting control is shifted away from shareholders by means of a disparate voting rights plan, shareholders at best earn no abnormal returns at all. *Id.*

[33] *Id.* at 2.

[34] *See, e.g.*, written statement of Richard S. Ruback, Professor, Massachusetts Institute of Technology, July hearings ("Ruback comment").

[35] *See e.g.*, Ruback comment, *supra* note 34, at 1–2; written testimony of Elliot J. Weiss, Professor of Law, Yeshiva University, December hearings ("Weiss comment").

[36] *See* Weiss comment, *supra* note 35, at 6–7.

[37] For example, if management holds 15% of the voting rights before an exchange offer and 60% afterwards, the higher voting stock of the remaining independent shareholders would have little actual value. *See* Ruback comment, *supra* note 34.

[38] *See, e.g.*, Fidelity comment, *supra* note 26, at 2; letter from W. Cordon Binns, Financial Executives Institute, to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987; written statement by Robert A.G. Monks, Institutional Shareholder Services, July hearings ("ISS comment"); NAOTC comment, *supra* note 26, at 3; written statement of Joseph R. Hardiman, Chairman, NASD, July hearings ("NASD comment").

[39] *See, e.g.*, letter from Mildred M. Hermann, Policy Coordinator, Financial Analysts Federation, to Jonathan G. Katz, Secretary, SEC, dated July 27, 1987 ("FAF comment"); NAOTC comment, *supra* note 26, at 1. *See also*, Fidelity comment, *supra* note 26, at 2. Fidelity stressed that subsequent issuances were appropriate only if they contain no conditions that affect the rights of existing shareholders. *But see* Gordon comment, *supra* note 31, at 3 (arguing that subsequent issuances of limited voting stock eventually dilute the voting rights of existing holders).

[40] Fidelity comment, *supra* note 26, at 2.

[41] *See, e.g.*, letter from Peter M. DeAuer, Chairman, Canadian Council of Financial Analysts, to Jonathan G. Katz, Secretary, SEC, dated July 30, 1987; CREF comment, *supra* note 29, at 1; FAF comment, *supra* note 39, at 1; ISS comment, *supra* note 38, at 1; oral testimony of Harrison J. Goldin, Comptroller, City of New York, (representing the Council of Institutional Investors) July hearings ("Goldin comment").

[42] *See, e.g.*, CREF comment, *supra* note 29, at 2–5; FAF comment, *supra* note 39, at 2; O'Connor comment, *supra* note 24, at 1–2. *See also* notes 29 to 33, *supra*.

the primary means by which shareholders protect their interests.[43]

Many supporters of the Rule criticized it for not going far enough. As noted, many commentators objected to any rule other than a one share, one vote standard that would apply to all markets without exception. Most of these commentators argued that the exceptions to the Rule eventually would undermine its intent and effectivenss.[44] Some commentators urged elimination or restriction of the grandfathering provision [45] or the adoption of a requirement mandating minority shareholder approval of existing disparate voting rights plans.[46] Some commentators suggested that NYSE-listed companies that instituted disparate voting rights plans during the NYSE moratorium should not be grandfathered under the Rule because these companies took such action in clear violation of existing NYSE rules.[47] Specifically, ISS argued that the grandfather provision should apply only to those companies whose disparate voting rights plans were permissible under the listing standards of their SRO. Other commentators opined that the exceptions for initial public offerings and bona fide business purposes were vague, and would allow for capitalizations that should be prohibited by the Rule.[48] Finally, a number of commentators objected to the limitation of the scope of the Rule to domestic issuers.[49]

B. Comments Opposed to Rule 19c–4

Ninety-one commentators either expressed opposition to the adoption of Rule 19c–4, or concern about the scope of the Rule's grandfather clause. An overwhelming majority of the 91 commentators in this group were public companies, associations or groups of public companies, or law firms representing public companies. Five major themes were represented in the negative comments: (1) Lack of Commission authority to promulgate Rule 19c–4; (2) potential conflict between the Rule and state laws concerning corporate governance; (3) inadequacy of the grandfathering provision, either generally or relating to the commentator's specific factual situation; (4) concerns regarding the breadth and workability of the Rule; and (5) assertions that disparate voting rights plans approved by shareholders should be permitted.

Thirty-two commentators questioned the Commission's authority to adopt a rule in the area of qualitative listing or authorization standards.[50] The ABA, reiterating an argument made during the initial NYSE proceeding, testified that "the language and legislative history of the Act, especially that of the Securities Acts Amendments of 1975, clearly establish that the Commission does not have authority to impose substantive corporate law standards on listed companies through its oversight authority over the rules of the exchanges and the NASD under sections 19 (b), (c) and (h) of the Act." [51] The Business Roundtable agreed with the ABA, noting that Commission authority to promulgate Rule 19c–4 "cannot be found either in the language of Section 19(c) or in the legislative history of that provision." [52]

The ABA also argued that the Commission cannot find authority to promulgate a uniform voting rights listing standard in sections 6, 11A, or 14 of the Act.[53] The ABA stated that section 14 authorizes the Commission to ensure fair corporate suffrage by regulation of the proxy solicitation process but not by establishing voting rights standards.[54] The Business Roundtable also argued that support for the Rule could not be found in sections 11A, 6(b)(5), or 15A(b)(6), the other sections upon which the Commission relied for authority when proposing Rule 19c–4.[55]

The Commission also has received Congressional correspondence and testimony on the authority issue. The Congressional comments were mixed on the issue.[56]

Some commentators stated that Commission intervention into corporate governance issues constituted a federal intrusion into areas traditionally left to state regulation.[57] A number of these

---

[43] *See, e.g.*, CREF comment, *supra* note 29, at 2; Goldin comment, *supra* note 41, at 175–76; O'Connor comment, *supra* note 24, at 1.

[44] *See, e.g.*, CREF comment, *supra* note 29, at 3; Keystone comment, *supra* note 24 at 2; Valhi comment, *supra* note 24, at 2.

[45] *See, e.g.*, Fidelity comment, *supra* note 26, at 2; letter from Ronald Langley, President, Industrial Equity (Pacific) Ltd., to Jonathan G. Katz, Secretary, SEC, dated July 11, 1987; letter from Roberta S. Karmel, Professor of Law, Brooklyn Law School, to Jonathan G. Katz, Secretary, SEC, dated July 9, 1987.

[46] *See, e.g.*, Weiss comment, *supra* note 35, at 11–14.

[47] *See, e.g.*, Fidelity comment, *supra* note 26, at 2; ISS comment, *supra* note 38, at 4.

[48] *See* Gordon comment, *supra* note 31, at 1; Keystone comment, *supra* note 24, at 1.

[49] *See, e.g.*, FAF comment, *supra* note 39, at 2; ISS comment, *supra* note 38, at 4; Valhi comment, *supra* note 24, at 2. The ISS warned that a foreign issuer exception would lead to the unfortunate result of American companies reincorporating in foreign countries to avoid compliance with the Rule. *But see* NASD comment, *supra* note 38, at 8.

[50] *See, e.g.*, letter from Robert Todd Lang, Chairman, Task Force on Disparate Voting Rights, Section of Corporation, Banking and Business Law, American Bar Association, to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987 ("ABA comment"); letter from Clifford L. Whitehill, Chairman, Lawyers Steering Committee of the Task Force on Corporate Responsibility, Business Roundtable, to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987 ("Business Roundtable comment"); letter from Arthur Fleischer, Jr. and Harvey L. Pitt, Fried, Frank, Harris, Shriver and Jacobson, to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987 ("Fried Frank comment").

[51] ABA comment, *supra* note 50, at 12. *See also* Proposing Release, *supra* note 5, at nn. 60 to 78, 100 to 121 (summarizing original comments on Commission authority, and Commission response); notes 145 to 180 and accompanying text, *infra* (discussing Commission authority to promulgate Rule 19c–4).

[52] Business Roundtable comment, *supra* note 50, at 2.

[53] 15 U.S.C. 78f(b)(5), 78k–1(a), and 78n.

[54] ABA comment, supra note 50, at 15–18.

[55] *See* Business Roundtable comment, *supra* note 50, at 15–19.

[56] *See* letter from Senator Jake Garn, Ranking Republican Member, Senate Committee on Banking, Housing, and Urban Affairs, to Davis S. Ruder, Chairman, SEC, dated May 10, 1988; letter from Senator William Proxmire, Chairman, Senate Committee on Banking, Housing, and Urban Affairs, to Davis S. Ruder, dated April 20, 1988. Both Senator Garn and Senator Proxmire believe the Commission lacks authority to adopt a minimum voting rights standard, and that the Commission should defer to Congress in this area. Senator Garn also commented that both the Rule's preemption of the traditional role of the states in governing shareholder voting rights, and its retroactive effect, are inappropriate. *But see* letter from Senator Howard M. Metzenbaum to Jonathan G. Katz, Secretary, SEC, dated December 4, 1986; statement of Rep. John Dingell accompanying the proposed Tender Offer Reform Act of 1987, H.R. 2172, April 27, 1987; letter from Rep. Dingell to David S. Ruder, Chairman, SEC, dated May 19, 1988; letter from Senator William L. Armstrong to David S. Ruder, Chairman, SEC, dated May 12, 1988; and letter from Rep. Barton to Davis S. Ruder, Chairman, SEC, dated June 16, 1988. Senator Metzenbaum urged the Commission to mandate a uniform one share, one vote listing standard, asserting that the Commission has clear authority to do so. Similarly, the proposed Tender Offer Reform Act of 1987, introduced by Congressmen Dingell and Markey, included this statement in support of a one share, one vote standard: "In view of the long standing role of listing standards in sections 12(d), 12(f) and 19 of the Exchange Act * * * coupled with the 'investor protection and the public interest' and other Exchange Act standards applicable to self-regulatory organization rules by reference to the standards implicit in and the objectives of sections 11A, 14(a), 14(d) and 14(e), the Exchange Act clearly authorizes the SEC to prescribe shareholder voting rights in the context of self-regulatory organization listing and eligibility rules by Commission action under section 19(c) and enforced under section 19(b)." Rep. Dingell's May 19th letter reiterates his view that the Commission has clear authority to mandate a shareholder voting rights rule. Both Rep. Dingell and Senator Armstrong have urged the Commission to promulgate a minimum rule in this area. Finally, *see*, One Share, One Vote Hearing Before the Committee on Banking, Housing, and Urban Affairs, United States Senate, 100th Cong., 2nd Sess. (March 17, 1988).

[57] *See, e.g.*, letter from Richard H. Troy, Chairman, Securities Law Committee, American Society of Corporate Securities, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987.

commentators expressed concern regarding the effect of the proposed Rule on state control share acquisition statutes, such as the Indiana statute [58] upheld by the Supreme Court in *CTS Corp. v. Dynamics Corp. of America.*[59] A number of commentators testified that preemption of *CTS*-type statutes would be an inappropriate intrusion into state law.[60] Other commentators requested clarification concerning interaction between the proposed Rule and existing state control share acquisition statutes. For example, commentators questioned whether opting in or failing to opt out of a non-mandatory state control share acquisition statute would constitute a disenfranchising corporate action under the Rule.[61] Additional commentators questioned the effect, and opposed any application, of the proposed Rule on a variety of corporate provisions and actions, such as the adoption of poison pills, fair price provisions, lock-ups, limited partnerships, and "going private" transactions.[62]

Approximately forty commentators were concerned only about the effect of the Rule's grandfathering provision. A majority of these commentators were public companies with existing or anticipated disparate voting rights plans. Generally, companies that had such plans in place prior to May 15, 1987, the announced grandfather date, sought assurance that their plan would be unaffected by the Rule.[63] Other commentators were more specific, requesting clarification of the scope of the grandfather clause. The inclusion of a grandfather clause in the Rule raised a number of specific interpretative questions, generally concerning subsequent activities by grandfathered companies. Specifically, commentators addressed the legitimacy of continued issuances of disparate voting rights stock, issuances of authorized but previously unissued disparate voting rights stock, and the effect of the Rule on options for or securities convertible to super voting stock.[64]

Seven commentators specifically objected to any rule with other than a prospective effect.[65] For example, Carter-Wallace argued that the grandfather date was, in reality, the effective date of the Rule. Therefore, the May 15th date violated the notice requirement of section 553(d) of the Administrative Procedure Act ("APA"). Times Mirror argued that the grandfather clause made the application of Rule 19c–4 retroactive, that retroactive rules must meet a separate, more stringent standard, and that the Commission had failed to meet this standard. Times Mirror further argued that the application of a May 15 grandfather date is unconstitutional because it would not afford due process to those companies that adopted plans at a time when Rule 19c–4 was not in effect.

Commentators also argued that the Rule as proposed is too broad and will be difficult for the SROs to administer.[66] General Binding Corporation recommended that the Commission provide the SROs with "clear guidelines and minimum standards" and that the SROs implement a prior review mechanism to allow issuers to receive assurances by an SRO prior to taking any corporate action that could come under the Rule.[67] Another commentator argued that, because the goal of the Commission is to ensure fair corporate suffrage, it should do no more than require expanded disclosure of possible disenfranchisement in the proxy statement or require that the proxy be mailed a specified number of days prior to a shareholders meeting.[68]

III. Discussion

After a careful review of the record, including all comment letters received and testimony of witnesses, the Commission believes a minimum standard concerning voting rights listing standards is necessary, and has decided to adopt Rule 19c–4. In addition to providing the rationale, justification, and authority for the Commission's decision to adopt Rule 19c–4, the discussion below clarifies certain interpretations of the Rule as adopted and modifications made to the Rule as initially proposed.

A. Need for Rule 19c–4

In proposing Rule 19c–4, the Commission recognized that regulation of shareholder voting rights under the Federal securities laws raises difficult and complex issues. The Commission noted that the initial NYSE proposal to abandon its one share, one vote standard had important ramifications for management accountability, tender offers and changes in corporate control, the rights of majority and minority shareholders, competition among SROs, and the integrity of the nation's securities markets. The Commission continues to believe that the issue of shareholder voting rights has far-reaching implications, and that a rule ensuring a minimum level of shareholder protection from disenfranchising actions is appropriate and consistent with the purposes of the Act. Further, the Rule, which will operate through the listing standards of SROs, has been crafted to be consistent with federalism objectives by seeking to minimize intrusion into traditional state regulation.[69]

Until relatively recently, disparate voting rights plans were used primarily by smaller companies with significant insider ownership. Traditionally, these companies had gone public with a weighted voting scheme designed to

---

[58] Ind. Code section 23–1–42–1 *et seq.* (1986).

[59] U.S. 107 S Ct. 1637 (1987). The *CTS* decision upheld the constitutionality of an Indiana anti-takeover statute that allows disinterested shareholders to limit the voting rights of a purchaser of specified percentage of an Indiana issuer's stock. *See* text accompanying notes 121 to 125 *infra* (discussing interaction of state control share acquisition statutes and Rule 19c–4).

[60] *See, e.g.*, letter from Howard A. Vine, Alliance for Corporate Growth, to Jonathan G. Katz, Secretary, SEC, dated August 6, 1987 ("ACG comment"); Fried Frank comment, *supra* note 50, at 28–30.

[61] *See e.g.*, letter from James W. Guedry, Assistant General Counsel, International Paper Company, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987 ("International Paper comment"); letter from Powell McHenry, Senior Vice President, Procter and Gamble Company, to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987 ("Procter and Gamble comment"); letter from Robert S. Banks, Vice President, Xerox Corporation, to Jonathan G. Katz, Secretary, SEC, dated July 30, 1987 ("Xerox comment").

[62] *See, e.g.*, ABA comment, *supra* note 50, at 27–29; Fried Frank comment, *supra* note 50, at 7–20; Xerox comment, *supra* note 61, at 3.

[63] *See, e.g.*, written testimony of Henry Lowenthal, Senior Vice President, American Greetings Corp., July hearings; letter from James A. Linen, Vice President, Media General Corp., to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987; letter from Paul Smucker, Chairman of the Executive Committee, J.M. Smucker Co., to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987.

[64] *See* text accompanying notes 109 to 118 *infra* (discussing grandfathering issues).

[65] *See* ABA comment, *supra* note 50, at 24, n.10; letter from Theodore E. Somerville, Vice President and General Counsel, Alleghany Corp., to Jonathan G. Katz, Secretary, SEC, dated July 15, 1987 ("Alleghany comment"); letter from Robert Decherd, Chairman of the Board and Chief Executive Officer, A.H. Belo Corp., to Jonathan G. Katz, Secretary, SEC, dated April 7, 1988 ("A.H. Belo comment"); letter from Ralph Levin, Vice President, Carter-Wallace, Inc., to Jonathan G. Katz, Secretary, SEC, August 5, 1987 ("Carter-Wallace comment"); letter from David J. McDonald, President, Curtice-Burns, to Jonathan G. Katz, Secretary, SEC, dated July 20, 1987 ("Curtice-Burns comment"); letter from Gibson, Dunn and Crutcher (Counsel to Times Mirror) to Jonathan G. Katz, Secretary, SEC dated February 25, 1988 ("Times Mirror comment"); letter from Mark C. Pope IV, Vice President, Graphic Industries, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 15, 1987 ("Graphic comment").

[66] *See, e.g.*, letter from William G. Paul, Senior Vice President and General Counsel, Phillips Petroleum Company, to Jonathan G. Katz, Secretary, SEC, dated July 10, 1987. *See also* ABA comment *supra* note 50, at 35–39; Business Roundtable comment, *supra* note 50, at 21–22.

[67] *See* letter from Steve Rubin, Vice President, General Binding Corp., to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987.

[68] *See* letter from Robert B. Lamm, Chief Securities Counsel, W.R. Grace & Co., to Jonathan G. Katz, Secretary, SEC, dated July 31, 1987.

[69] *See* note 84 *infra.*

allow the founders to maintain control as the company grew. In the 1980s, however, corporate bidders began targeting increasingly large companies, and disparate voting rights plans became an important defensive tactic in response to the possibility of a hostile tender offer. As the use of these plans evolved, the Commission became concerned that, in many instances, the methods of issuing disparate voting rights stock were structured to disenfranchise existing shareholders and had consequences far beyond management desires to deter hostile takeover bids.

While certain disparate voting rights plans serve to disenfranchise existing shareholders, the Commission does not believe that the issuance of less than full voting rights stock is *per se* inappropriate. The Commission agrees that there may be valid business or economic reasons for issuing disparate voting rights stock, the effect of which is not disenfranchising to existing shareholders.[70] The Commission believes, however, that disparate voting rights plans that disenfranchise existing shareholders are inconsistent with the requirements of the Act. Shareholders who purchase voting shares in a company do so with the understanding that the shares will be accompanied by the voting rights attendant to the stock at the time of purchase. The diminution or limitation of these rights is inconsistent with the investor protection and fair corporate suffrage policies embodied in sections 6(b)(5), 15A(b)(6), and 14 of the Act.[71] In addition, in the year prior to the Proposing Release an increasing number of companies recapitalized in a manner that disenfranchised shareholders of their voting rights. Many of these issuers were more established companies with extensive public ownership. A continuation of these disenfranchisements would reduce investor confidence in the securities markets in the United States.

The Commission recognizes that under state law, disparate voting rights plans generally are permitted subject to shareholder approval.[72] The Commission also recognizes, however, that collective action problems may make defeating an issuer recapitalization proposal extremely difficult.[73] Many commentators in both the December and July hearings, including institutional investors, individual investors, and law professors, testified extensively about the difficulties involved in shareholders acting together in their collective best interest.[74] Frequently, a disparate voting rights plan is presented to shareholders in a form, such as an offer to exchange higher vote stock for lower vote stock with a dividend sweetener, that provides shareholders with an incentive to accept less than full voting rights stock rather than oppose the recapitalization, although, acting collectively, shareholders as a group might prefer to retain their voting rights and reject the sweetener offered by management. The coercive nature of some disparate voting rights plans may also be exacerbated by management's ability to set the proxy agenda and use corporate funds to lobby shareholders in favor of its proposal. The Commission also has heard testimony from institutional investors describing the pressure placed on managers of corporate pension plans during the shareholder voting process.[75]

Although the Commission does not believe that shareholders invariably are powerless to defeat an issuer-sponsored proposal to recapitalize, the Commission does believe that, because of the forces cited above, the shareholder voting process is not fully effective in preventing the adoption of disparate voting rights plans that disenfranchise shareholders. The Commission believes that it is preferable for a company's insiders wishing to gain voting control to do so through a repurchase of shares in which such repurchase is subject to market discipline and judicial review regarding state corporate fiduciary requirements.

Moreover, the Commission is concerned about the rights of minority shareholders, who are permanently disenfranchised by a proposal against which they voted. While the shareholder voting mechanism may be of limited effectiveness in protecting against disenfranchisement by management, it nonetheless has value in ensuring management accountability. For example, shareholders have occasionally elected dissidents in proxy contests for control of a company's Board of Directors. Moreover, the potential that shareholders will vote against management or at least amass a sufficient opposition vote to embarrass the company contributes to ongoing accountability.

The Commission has reviewed the empirical evidence regarding the wealth impact of disparate voting rights plans on common stock price. In the Proposing Release, the Commission stated its belief that the empirical evidence regarding the price effect of disparate voting rights plans required further consideration and investigation.[76] The Commission noted that although existing economic studies generally had not demonstrated statistically significant wealth reductions as a result of disparate voting rights plans, further empirical study would be useful to examine the extent to which such voting structures are beneficial, or at least not harmful, to shareholders.[77]

The Commission's Office of Chief Economist ("OCE"), now the Office of Economic Analysis, in a update to its initial study of the wealth effects of disparate voting rights plans,[78] did find significant negative wealth effect in connection with such recapitalizations. In particular, the OCE update found that negative price effects were concentrated in companies that had recapitalized after the NYSE announced its moratorium on enforcing its one share, one vote rule. Importantly, the OCE Update also noted that the post-moratorium firms were characterized by

---

[70] *See* text accompanying notes 88 to 97 *infra* (discussing permitted actions under the Rule).

[71] 15 U.S.C. 78f(b)(5), 78*o*-3(b)(6), 78n.

[72] *See, e.g.*, 8 Del. Code Ann. section 151(a).

[73] *See, e.g.*, Weiss comment, *supra* note 35, at 3–5; Ruback comment, *supra* note 34, at 1–3; oral testimony of James Heard, Investor Responsibility Research Center, December hearings. Professor Weiss referred to the "substantial body of literature" explaining why the shareholder vote is not always an accurate representation of shareholder preference. For example, Professor Weiss cited the "rational apathy" problem, which leads shareholders to suppport management proposals because the expected cost to any one shareholder of carefully evaluating these proposals will greatly exceed any potential benefit to the shareholder. Second, Professor Weiss outlined the "free rider" problem, which acknowledged that the typical shareholder will not make the effort to evaluate a management-sponsored proposal, but will rely on other shareholders to do that and "free ride" on their efforts.

[74] *See* Proposing Release, *supra* note 5, at 23669.

[75] *See* oral testimony of James E. Heard, Deputy Director, Investor Responsibility Research Center, December hearings; and oral testimony of Nell Minow, General Counsel, Institutional Shareholders Services, Inc., July hearings. *See also*, Weiss comment, *supra* note 35, at 106 (stating that institutional shareholders also may be susceptible to collective action problems). The Commission again notes that the comments by pension fund favored adoption of a minimum voting rights rule. These comments lead the Commission to believe that the collective action limitations noted above can result in the disenfranchisement of institutional shareholders, and also dispute claims that increased institutional holdings in the markets makes defeating a recapitalization more likely. *See, also*, the Labor Department Letter on Proxy Voting by Plan Fiduciaries, BNA Pension Reporter, February 29, 1988, Vol. 15 p. 391.

[76] Proposing Release, *supra* note 5, at 23672.

[77] *Id.* at nn. 34–35, 84 (citing studies evaluating wealth effects of disparate voting rights recapitalizations).

[78] *See* OCE, Update—"The Effects of Dual Class Recapitalization on the Wealth of Shareholders: Including Evidence from 1986 and 1987," July 16, 1987 ("OCE Update").

substantially lower insider holdings and substantially higher institutional holdings, as compared to companies that had recapitalized prior to the NYSE moratorium.[79]

Although the OCE Update is useful evidence of the negative effects of disenfranchisement, the measurement of immediate change in securities price is not a complete indicator of the negative effects of disenfranchising actions. As several commentators have suggested, the negative effects of a permanent deprivation of shareholder voting rights may not appear until some time after the disenfranchising action is announced or occurs, and may be impossible to measure precisely at the time of enactment.[80] For example, loss of independent shareholder control in a company may not manifest itself until sometime in the future through a lower takeover permium offered for the company's shares, or through management actions undertaken without the discipline of accountability to shareholders.[81] Accordingly, the Commission does not consider evidence on shareholder wealth effects to be critical to its conclusions. The Commission has relied in its analysis and decision on the coercive (and for minority shareholders involuntary) disenfranchisement resulting from issuer imposition of disparate voting rights structures, which can have long term negative effects on shareholders.

Moreover, the Commission believes that the investor protection and shareholder suffrage policies of the Act compel action in this area, rather than simple disapproval of the original NYSE proposal. The Commission recognizes the competitive pressures that initially led the NYSE to propose to abandon its one share, one vote standard. By facilitating the development of a national market system, the Commission has been a strong supporter of competition among the markets. Without suggesting that competition necessarily would result in the markets removing all voting rights standards, the Commission continues to note that many major corporations expressed concern in the initial proceeding about the potential of a hostile takeover bid and that such concern might lead corporations to adopt disparate voting rights plans as takeover defenses. It is therefore likely that companies may choose to move to a particular SRO primarily to implement disparate voting rights plans for defensive purposes.

The Commission finds significant that in both the December and July hearings, and in the written comments, almost all shareholders and shareholder groups testified that the Commission should protect voting rights by adopting the Rule or a more stringent version of the Rule, such as a one share, one vote standard. Both individual and institutional shareholders argued that unless the Commission acted in this area, more issuers eventually would institute disenfranchising voting rights plans. Moreover, the large majority of academics commenting or testifying argued that the Commission has both the authority and the responsibility to stop voting rights disenfranchisement. Further, the major securities marketplaces, as well as the representative organization for state securities administrators, testified that they look to the Commission for leadership in establishing a minimum marketplace standard to protect shareholder voting rights.

Finally, in adopting Rule 19c–4, the Commission intends to prohibit disparate voting rights plans that disenfranchise existing shareholders, while continuing to allow corporations flexibility in devising their capital structures.[82] In addition, the Commission does not seek to prohibit issuers from issuing stock with restricted or no voting rights, as those restrictions are a consideration the investor will take into account when deciding to purchase a security. Rather, the Commission seeks to prevent the deprivation of voting rights that occurs after a security has been purchased. Accordingly, as discussed in more detail below, the Commission's Rule 19c–4 focuses on the process by which certain disparate voting rights structures are created, not the issuer's capital structure *per se*. We believe this approach is consistent with the role of the Commission in regulating the public securities markets for the protection of investors.[83] Rule 19c–4 identifies those situations in which shareholders are disenfranchised and prohibit companies from continued access to the national securities marketplace if they take such action. In doing so, Rule 19c–4 is consistent with the federalism objective of minimal intrusion into areas of traditional state regulation.[84]

B. Description of Rule 19c–4

Rule 19c–4, as adopted, adds to the rules of national securities exchanges that make transaction reports available pursuant to Rule 11Aa3–1 under the Act

---

[79] The OCE also noted the increased use of the exchange offer method of creating disparate voting rights stock since 1984.

[80] *See* Proposing Release, *supra* note 5, at nn. 83–85.

[81] Recent transactions involving Resorts International illustrate this point. In 1986, there were 5.7 million shares of Class A stock outstanding, having one vote each, and 750,000 shares of Class B stock outstanding with 100 votes each. The Class B stock represented less than 12% of the outstanding shares but had 93% of the voting power. In early 1986, the Class B stock generally traded at a 2–3 point permium (5–7.5%) above the Class A stock, within the 50 dollar range. After the death of Resorts' Chairman in April 1986, negotiations for the Class B holdings of the estate, which constituted approximately 72% of the outstanding shares of the class, culminated with the sale of the Class B stock to Donald Trump at $135 per share in July 1987. Although the price of the Class A rose to the $60 range during July and August 1987, following the purchase of the Class B block it declined steadily to the point where it was trading at the $20 level during February 1988 and currently trades in the $30 range. *See also* letter from the Toronto Society of Financial Analysts, to John S.R. Shad, Chairman, SEC, dated November 14, 1986 (discussing trading in Class A&B stock of Canadian Tire Corporation). In that case, holders of voting stock sought to obtain control by purchasing blocks of voting stock that had been put up for sale. This attempt to change control avoided triggering a protective provision that would have required non-voting stock to be converted to voting stock if an offer was made to substantially all holders of common stock. As a result of this situation, in October 1986, the Class B voting stock was trading at over double the price of the Class A non-voting stock, despite the non-voting to voting conversion provision and that there were only 3.45 million voting shares as opposed to 81.8 million non-voting shares outstanding.

[82] The Commission, in adopting Rule 19c–4, is not commencing disapproval proceedings for the NYSE and PSE proposed rule changes to eliminate their one share, one vote listing standards (SR–NYSE–86–17 and SR–PSE–84–23). The NYSE proposed rule change may act as an appropriate supplement to the minimum protections accorded by Rule 19c–4. For example, even though Rule 19c–4 presumes to permit issuances of lower voting stock under certain circumstances, the SRO could still require a majority of independent shareholders to vote to approve such an issuance. The NYSE and PSE should consider how they want to treat their proposed rule changes in light of the adoption of Rule 19c–4.

[83] *See* text accompanying notes 160 to 180 *infra* (discussing Commission authority to promulgate Rule 19c–4 to further investor protection).

[84] The Commission has received a written request by the Business Roundtable to comply voluntarily with Executive Orders 12612 ("Federalism") and 12291 ("Federal Regulation") in its rulemaking. Executive Order 12612, 52 FR 41685 (1987); E.O. 12290, 3 CFR 127 (1982). *See* letter from Jim J. Tozzi, Director, Multinational Business Services, Inc., to David S. Ruder, Chairman, SEC, dated January 15, 1988. The Commission notes that it is expressly excluded from the coverage of the executive orders. Executive Order 12612 is directed to "executive departments and agencies," not independent agencies. Executive Order 12291 excludes the Commission by defining "agency" as "any authority of the United States that is an agency under 44 U.S.C. 3502(1)." The Commission is an independent agency specified in 44 U.S.C. 3502(10). Although the Commission is excluded from Executive Order 12291, and is not required to comply with Executive Order 12612, the Commission has been sensitive to the underlying objectives of the two orders. In drafting Rule 19c–4, the Commission has approached the issue of shareholder voting rights in a manner consistent with the doctrine of federalism. The Commission has attempted to limit its impact on state regulation of corporate structures by targeting only those corporate transactions that disenfranchise existing shareholders.

a prohibition on an exchange listing or continuing to list the common stock or other equity security of a domestic issuer[85] registered under section 12 of the Act, if the issuer issues any class of securities, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of any outstanding common stock of such issuer. Rule 19c–4 also adds to the rules of national securities associations a prohibition on an association from authorizing, or continuing to authorize, for quotation and/or transaction reporting on an automated inter-dealer quotation system[86] the common stock or other equity security of a domestic issuer registered under section 12 of the Act, if the issuer issues any class of securities, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of any outstanding common stock of such issuer.

Rule 19c–4 also provides a certain degree of flexibility by permitting an exchange or association to issue rules, policies, practices, or interpretations, subject to Commission review pursuant to section 19(b) of the Act, that would specify the types of securities issuances or corporate actions covered by, or excluded from, the prohibitions contained in Rule 19c–4.[87]

As discussed in more detail below, commentators suggested that the Rule include in its text those items previously described in detail in the Proposing Release regarding issuances of stock and other corporate action that would be either permitted or prohibited under the Rule. Accordingly, in response to commentators' suggestions and in order to clarify the operation and effect of the Rule, the Rule contains a non-exclusive list of issuances of stock and other corporate actions presumed to be permitted or prohibited under the Rule. In addition, the grandfather date has been changed from the proposed date of May 15, 1987, to the effective date of the Rule. Finally, the discussion below clarifies the interaction between the Rule and state control share acquisition statutes and corporate defensive takeover tactics, such as poison pills and lock-up options, and other interpretive issues that have been raised by commentators. Although modified slightly in form, the Rule as adopted is identical substantively to the Rule as proposed.

1. Permitted Actions Under Rule 19c–4

As adopted, the Rule contains a non-exclusive list of actions presumed to be permitted under the Rule.[88] The list of permitted actions reflects the belief by the Commission that there are valid business and economic purposes for the issuance or purchase of common stock with limited voting rights in certain situation.[89] The listing of certain actions that, standing alone, are presumed to be permitted is not intended to provide an exemption for a plan or scheme, involving such an action in conjunction with others, that disenfranchise existing shareholders.

a. *Initial Public Offerings.* First, the Commission presumes that the issuance of disparate voting rights stock pursuant to an initial registered public offering ("IPO") is not a disenfranchising action.[90] The purchase of limited voting rights stock in an IPO does not disenfranchise shareholders who purchase shares with the full knowledge, through adequate disclosure, of the limits on their individual and collective voting power. In such a situation, there is no existing class of public shareholders that is deprived of actual or potential voting control by the issuance of a class of disparate voting rights stock.

b. *Subsequent Issuances of Lower Voting Stock.* Second, a public corporation that wishes to raise capital and desires neither to burden the company with additional debt nor dilute present ownership may choose to raise that capital through the issuance of lower voting rights stock.[91] As with the IPO example, shareholders purchasing a new issue of lower voting stock are fully aware of the limits on their voting power, both individually and collectively, at the time of purchase. By restricting subsequent offerings to equal or lesser voting stock, no existing individual or class of shareholder is disenfranchised by this form of capitalization.[92] Although the Rule speaks in terms of public offerings, a private offering of lower voting stock would be subject to the same analysis, inasmuch as such issuance does not disenfranshise existing shareholders.

The simplest case under this section of the Rule involves a company that has one class of stock with one vote per share. The company could make a public offering of additional shares of this class or offer a new class with less than one vote per share. Once the company issues lower voting stock, a question arises as to whether it can issue subsequent offerings of regular voting stock, for such stock would have voting rights greater than an outstanding class of common stock of the issuer. While in many circumstances the subsequent issuance would not be disenfranchising, this type of interpretive question is best left to the SROs to determine when implementing the Rule.

c. *Bona fide Mergers and Acquisitions.* Third, the Commission believes that the issuance of lower

---

[85] A definition of "domestic issuer" has been added to the Rule. Paragraph (e)(4) of the Rule defines "domestic issuer" as any issuer that is not a "foreign private issuer" as defined in Rule 3b–4 under the Act. This definition is identical to the definition of "domestic issuer" discussed in the Proposing Release. *See* Proposing Release, *supra* note 5, at n.98.

[86] As noted above, NASDAQ is currently the only such inter-dealer quotation system. The rule would apply, of course to any other inter-dealer quotation systems that are formed in the future.

[87] Under section 19(b), if an exchange or association submits such a rule, policy, practice or interpretation to the Commission for review, in order to approve it the Commission must find that such rule, policy, practice or interpretation is consistent with the protection of investors and the public interest, and, generally, in furtherance of the purposes of the Act. *See* 15 U.S.C. 78s(b).

[88] *See* Rule 19c–4(d). The SROs may choose, subject to Commission review, to identify, by rule, other transactions involving disparate voting stock which do not raise disenfranchisement concerns.

[89] The Commission always has recognized that there exist legitimate uses for disparate voting rights stock for bona fide business purposes. *See* Proposing Release, *supra* note 5, at 23671. For example, Paragraph (c)(4) of the original Rule [now paragraph (e)(5)] exempted from the scope of the Rule ordinary preferred stock or nonconvertible debt, *i.e.*, securities that had preference over the issuer's common stock as a dividends, interest payments, redemption, or payment in liquidation whose voting rights only became effective as the result of specific events, not related to an acquisition, which reasonably could be expected to relate to the issuer's financial ability to meet its obligations to that senior class of securities.

[90] *See* Proposing Release, *supra* note 5, at 23671, 23673. The term "initial public offering" is intended to mean the offering of securities by a company by which it goes public. For example, if a company offers Class A stock to the public and a year later offers Class B super voting stock, only the Class A stock offering is an "initial public offering."

[91] *Id.* If the lower voting stock has features, such as convertibility from the full voting stock, that would in effect constitute an exchange offer or otherwise potentially affect or diminish the voting rights of existing shareholders, the presumption would be rebutted and the SRO would have to apply the Rule.

[92] Professor Gordon, in his comment letter, suggested that a subsequent offering of lower voting stock also could dilute the economic value of existing shareholders' stock. Gordon argues that a company will have to sell a larger number of limited voting shares than ordinary common or provide limited voting shares with greater than pro rata dividends in order to raise a given amount of capital. *See*, Gordon comment, *supra* note 31. While such issuances may affect the economic value of existing shares as compared to an issuance of fully voting shares, they may be preferable to other methods of raising capital without diluting the voting power of existing shareholders. In any event, these occurrences by themselves would not nullify, restrict, or disparately reduce the voting rights of the ordinary common shares.

voting rights stock in connection with a business combination to effect a bona fide merger or acquisition, in which the voting rights of the securities issued would not be greater than the voting rights of any existing class of common stock, is presumed to be appropriate under the Rule.[93] For example, when the lower voting rights stock is structured so that dividends or other substantive rights (*e.g.*, election of directors) are based on the assets or performance of the acquired company, such a recapitalization generally should be considered bona fide and consistent with the purposes of the Rule.[94]

d. *Stock Dividends.* Finally, the Commission believes that, in many instances, a straight issuance of a stock dividend to all holders of an outstanding class of common stock, in which the voting rights of the stock are equal to or less than the per share voting rights of the existing class, would be consistent with the rule.[95] The Rule generally is not meant to restrict additional issuances of stock with the same voting rights as existing common stock, even though such issuances may dilute the percentage voting power of shareholders.[96] An issuance of low vote stock as a dividend, however, also could be constructed in a manner to disenfranchise shareholders. For example, the low vote stock could contain transferability restrictions or other conditions that would cause the issuance to be, in effect, an exchange offer. In addition, the issuance could be part of a two-step transaction whereby voting control of a corporation is acquired by an inside group without purchasing a proportionate percentage of the issuer's equity.[97] Accordingly, the Commission has not placed a dividend of low vote stock in either the category of presumptively permitted or prohibited transactions. Instead, the SROs should review these transactions to determine if they are consistent with the purposes of the Rule.

2. *Prohibited Actions Under the Rule*

As adopted, the Rule also contains a non-exclusive list of issuances or other corporate actions presumed to be prohibited under the Rule. This list reflects the Commission's belief that the Rule should focus on the process by which disparate voting rights plans are created and their effect on existing shareholders.

a. *"Time Phased" Voting.* The Rule presumes to prohibit corporate action to impose any restriction on voting power of shares based on the length of time the shareholder has held the stock.[98] The Commission continues to find troubling the effect of these tenured or time phased voting plans, to the extent that shares subject to time phased voting were not sold as such in the company's initial public offering. Those plans usually involve a recapitalization in which all shareholders at the time of the recapitalization receive multiple votes per share for their holdings. Any investor that purchases stock subsequent to the commencement of the plan receives one vote per share unless and until that investor holds the stock for a stated period of time (usually three or four years). In these cases, shareholders generally have purchased stock in the company at a time when, in the aggregate, outside public shareholders enjoy voting control, or at least, have the potential to obtain voting control if and when insiders sell their shares. As outside shareholders sell their high vote shares which converts them to low vote shares, insiders, by holding their shares, gain voting control from the outside shareholders. As a result, public shareholders at the time of the recapitalization will, as a group, be disenfranchised, and the ability of an acquiror of the company's shares to obtain voting control will be restricted.

b. *"Capped" Voting Plans.* The Rule also presumes to prohibit, with one exception,[99] corporate action to impose any limitation on the voting power of shares based on the number of shares owned.[100] So-called capped voting plans generally are designed to insulate management from the threat of a hostile takeover by restricting the ability of the potential acquiror to obtain voting control. This type of recapitalization clearly restricts the per share voting power of the large shareholder, and, therefore is presumed to be violative of the Rule. As with tenured voting plans, capped voting plans frequently are implemented in companies in which public shareholders have voting control of the company. By instituting a capped voting plan, shareholders who purchase shares in excess of the triggering amount are disenfranchised of the voting rights for the excess shares.

c. *Super Voting Stock Distributions.* The Rule also presumes to prohibit the issuance of securities pursuant to a stock dividend or otherwise with voting rights greater than the per share voting rights of an outstanding class or classes of common stock.[101] The Rule then essentially presumes to prohibit all issuances of super voting stock. The Commission finds such issuances to be coercive and disenfranchising. Super voting stock usually is employed in recapitalizations in the following manner: super voting stock is issued as a stock dividend with transfer restrictions [102] that require the stock to

---

[93] *See* Proposing Release, *supra* note 5, at 23671, 23673. The Commission has decided to exclude from the final rule the phrase "accompanied by proxy material" when describing such permitted issuances in connection with a business combination or a stock dividend. Although, aside from short-form mergers, most mergers and acquisitions are accompanied by proxy material, the Commission notes that most issuances of stock dividends do not require shareholder approval. Therefore the inclusion of the phrase "accompanied by proxy material" in this section of the final rule would be unduly restrictive. *See also* text accompanying notes 95 to 97 *infra* (discussing the issuance of stock dividends).

[94] The Commission emphasizes that a merger or combination between a company with a disparate voting rights plan and a company with a one share, one vote capitalization must be scrutinized to ensure that it is being effected for a bona fide purpose. In particular, an attempt to merge a larger company with a single class or stock into a substantially smaller company or shell company with a disparate voting rights plan, or any merger other than at arm's length, could be considered disenfranchising under the Rule because it might disparately reduce the voting rights of existing shareholders. Such mergers would not, however, be presumed prohibited where the proportionality of voting rights between the two companies is maintained. Again, this would be consistent with the Rule's objective to avoid the disenfranchisement of existing shareholders, by permitting shareholders to retain their current voting power.

[95] *See* Proposing Release, *supra* note 5, at 23673.

[96] Five commentators suggested that the Rule should permit spinoffs of a company's operations where the spun off subsidiary has the same dual class structure as the parent company. *See, e.g.*, Carter-Wallace comment, *supra* note 65. Due to the varied forms that these spinoffs could take, the Commission believes that spinoffs should be analyzed by the SROs on a case-by-case basis under the Rule.

[97] *See* text accompanying note 103 *infra*.

[98] *See* Proposing Release, *supra* note 5, at 23671–73.

[99] *See* text accompanying notes 123–124, *infra*.

[100] *See* Proposing Release, *supra* note 5, at 23671–73. Disparate voting rights plans that limit the voting power of a shareholder based on the number of shares owned are commonly referred to as "capped voting" plans. These plans simply nullify or significantly restrict the voting rights of a shareholder after that shareholder acquires a certain percentage of equity ownership in the company (usually 10 or 20%). Generally, these plans provide that a shareholder may not vote in excess of the threshold, or only may exercise a minimal percentage of his or her voting rights over that threshold.

[101] *See* Proposing Release, *supra* note 5, at 23671–73.

[102] Transfer restrictions placed on super voting stock pursuant to a dividend or other distribution-type recapitalization are designed to make holding super voting stock more attractive to insiders and other long term holders and less attractive to the outside investor. Generally, these provisions drastically limit the ability of holders to sell their stock by narrowly prescribing the people or entities to whom the stock can be transferred. Further, these plans usually provide that when the holder does decide to sell, the holder must either sell the super voting stock back to the company, or convert it to

Continued

be converted into lower voting stock if sold. As a result, insiders will be able to gain voting control of the company by holding the super voting stock received as a dividend, while outside shareholders are forced by the transfer restriction to convert their super voting stock to limited voting stock when they want to sell. The Commission further believes that, even in situations where no restrictions on transferability are imposed, super voting shares could be issued as part of a two step transaction whereby voting control of the corporation is acquired without purchasing a proportionate percentage of the issuer's equity.[103]

d. *Exchange Offers.* The Commission believes that the issuance of disparate voting rights stock pursuant to an exchange offer should be presumed to be prohibited under the Rule.[104] These recapitalizations can be structured as a one-time opportunity to receive less than full voting rights stock in exchange for shares of the existing class of common stock. For example, a company will issue a new class of lower voting stock with a higher dividend, and make the existing voting stock convertible into the lower voting, higher dividend stock. In these situations, outside shareholders may be coerced to act in a manner contrary to their collective economic self-interest.

In these transactions, shareholders will face the choice of surrendering their voting control and receiving a small economic benefit (the dividend sweetener), or bypassing the exchange offer and maintaining the greater voting stock. The exchange offer is coercive because those shareholders wishing to hold the greater voting stock to defeat the plan would be taking a substantial risk that an insufficient number of outside shareholders will do likewise and majority voting control will shift to insiders. Accordingly, such shareholders may be "coerced" individually to opt for lower voting stock with a dividend sweetener to avoid holding ineffective full voting stock, without any dividend benefit. Given the prospect that the shareholders will be left with neither the increased dividend nor an effective vote if they decide not to participate in the exchange offer, the Commission believes that such offers coerce shareholders into a disenfranchising decision.

Even in situations in which shareholders are permitted to convert to lower voting stock for an extended period, or at any time after a recapitalization is approved, the collective action limitation still makes it unlikely that such a plan would be defeated. Shareholders in the minority, voting against a disparate voting rights plan, in this case, also eventually would be "coerced" by the dividend sweetener to exchange shares and would be disenfranchised unwillingly.[105]

3. *Foreign Issuers*

The Commission has decided not to extend Rule 19c–4 to foreign issuers. As noted above, Rule 19c–4 as proposed applied only to domestic issuers and, in the Proposing Release, the Commission solicited comment on whether the Rule should be applied to foreign issuers.[106] Although the majority of commentators indicated that the Rule should apply to foreign issuers, the Commission believes there are valid reasons for not requiring U.S. markets to apply the rule to foreign companies.

First, the Commission cannot reasonably expect foreign issuers to act in connection with voting rights so that they would be permitted to facilitate the development of a secondary market for their securities in the United States, especially when U.S. investors already can acquire the securities of foreign issuers overseas and the U.S. is not the primary market for the corporation's shares. This is especially true if the laws, customs, or practices of the home country permit disparate voting rights structures. If the Rule were mandatory for all issuers trading on U.S. markets, it might have the effect of keeping foreign issuers out of U.S. markets and forcing U.S. investors to trade such securities overseas. Because foreign markets may offer less protection to the investor than U.S. markets, U.S. investors could be harmed because they would not be provided the increased protection of the U.S. securities laws.[107] At a minimum, U.S. investors would incur additional transaction costs in purchasing foreign issuer securities overseas. Finally, because the Rule provides only a minimum voting rights standard, the U.S. SROs will be able to apply the Rule (or other appropriate standards) to foreign issuers if, in the SRO's judgment, it is appropriate to extend the Rule to cover these issuers.[108] The Commission concludes that investor protection and the public interest do not mandate that the Commission require application of Rule 19c–4 to all foreign issuers trading in U.S. SROs and that the SROs should be able to make a determination whether an extension of the Rule to foreign issuers is appropriate for their market individually.

4. *Grandfather Provision*

a. *Effective Date.* As noted above, the Commission is changing the grandfather date to July 7, 1988, the date of Commission approval of the Rule. Rule 19c–4, as proposed, provided that voting rights plans adopted prior to May 15, 1987, would be unaffected by the Rule. The grandfather provision also protected proposed voting rights plans for companies that submitted proxy materials to the Commission prior to May 15, 1987, so long as the issuer moved forward in a reasonable period of time to implement its recapitalization.

The Commission initially selected May 15, 1987 as the grandfather date for several reasons. First, the securities markets and corporate community had been aware that the Commission was considering action to restrict the issuance of dual class stock at least since December, 1986.[109] Second, the

lower voting stock. Accordingly, as with tenured voting plans, as outside shareholders sell their shares, insiders accrue increasingly greater control at the expense of the other shareholders.

[103] For example, a corporation could first issue nonrestrictive super voting stock to all shareholders. Insiders could then systematically increase their percentage of control over the company by buying up additional shares of outstanding super voting stock, using the proceeds from the sale of lower voting stock to effect their purchase. By buying super voting stock to effect their purchase. By buying super voting stock, the insiders could obtain control through a purchase of far fewer shares than if they bought the lower voting stock.

[104] *See* Proposing Release, *supra* note 5, at 23671–73.

[105] The ABA requested clarification as to whether an exchange by the shareholders of common stock for new non-voting debt securities or preferred stock, whether not accepted or underaccepted by a controlling group of shareholders, would be disenfranchising. The Commission does not believe that the form of such a transaction is determinative of whether the transaction would be disenfranchising. Rather, each such transaction should be examined to determine whether it is consistent with the Rule and, also whether it would fall under one of the actions expressly prohibited by the Rule.

[106] *See* text accompanying note 49, *supra.*

[107] This position is consistent with the Commission's approval of a proposal by the Amex and NYSE that permits them to waive or modify certain listing standards for foreign issuers when it can be shown that the foreign company's procedure is based on the laws, customs or practices of its home country. *See* Securities Exchange Act Release No. 24634 (June 23, 1987), 52 FR 24230. In that Release, the Commission weighed the potential competitive disadvantage to domestic issuers of allowing certain listing and reporting requirements to be waived for foreign issuers and concluded that the proposed rules would remove obstacles which have made foreign companies reluctant to list on either the Amex or the NYSE and could result in increased protection for U.S. investors. We also note that the rule changes allowed waiver or modification of voting rights listing standards. *See Id.* at n.21 (discussing foreign issuer rule's relation to proposed Rule 19c–4).

[108] Of course, any such listing standard would have to be approved by the Commission.

[109] In December, 1986, the Commission held public hearings on the NYSE's proposal to modify

Continued

Amex, NASD, and NYSE had notified their listed companies during the period following the December hearings that May 15, 1987 would be the grandfather date used in any uniform approach adopted by the SROs. Accordingly, in selecting May 15, 1987 the Commission was satisfied that issuers had sufficient notice concerning a possible restriction on voting rights plans. Further, the Commission believed that a later date would, in the interim, induce a rush of companies implementing voting rights plans that would disenfranchise shareholders primarily to avoid the deadline imposed by the Rule.[110]

As noted above, the Commission received numerous comments specifically addressing the grandfather issue, ranging from arguments that there should be no grandfathering of existing dual class plans,[111] to comments urging that the grandfather date be later than May 15.[112] Further, many of the corporate commentators argued that the Rule should be applied prospectively only, and that to do otherwise would constitute a violation of the notice requirement of the Administrative Procedure Act ("APA").[113]

The Commission believes that companies were on notice of potential Commission action concerning disparate voting rights plans as of May 15, 1987. Due to the length of time since the issuance of the Proposing Release, however, the Commission has concluded not to apply the Rule to those companies that adopted disparate voting rights plans prior to the Rule's effective date.

Second, the Commission estimates that since May 15 only 17 companies have recapitalized or filed plans to recapitalize with the Commission. Accordingly, not many classes of shareholders should be affected by the change in the Rule's application date.[114] We do, however, specifically reject any further delay past the effective date in requiring companies to comply with the Rule.[115] Such a delay would create an inappropriate "window of opportunity" for companies to rush to disenfranchise shareholders.

Additionally, we note that the SROs would still retain the right, consistent with section 9(g) of the Act, to enforce compliance with their rules by delisting or requiring a shareholder ratification vote with respect to any issuer that recapitalized in violation of SRO listing standards before Rule 19c–4 was approved (*e.g.*, NYSE companies that recapitalized during the moratorium). Indeed, the Commission requests that SROs address whether a requirement for public shareholder ratification for recent recapitalizations, similar to that contained in the NYSE's proposed rule, would be an appropriate supplement to Rule 19c–4.

The Commission finds good cause for establishing an effective date prior to 30 days after publication of the approval order in the **Federal Register.** As mentioned above, setting an effective date after the date of adoption would allow additional companies to disenfranchise shareholders in an effort to recapitalize before the Rule's effectiveness. Moreover, immediate implementation of the Rule would place no burden on companies without such plans.

b. *Effect on Existing Disparate Voting Rights Plans.* The application of the Rule raises a number of interpretive questions for companies that have disparate voting rights plans subject to the Rule's grandfather provision. The Commission has determined to apply the grandfather provision in a manner that permits grandfathered plans to operate as adopted, but does not permit existing holders of an outstanding class or classes of common stock to be further disenfranchised through subsequent issuances or recapitalizations.

First, the Commission has determined that the tenured or capped voting features of disparate voting rights plans should be allowed to continue, provided that the structure was implemented as of the effective date of the Rule, despite the fact that the aggregation by management of super voting shares or the limitation of voting rights of a large holder might not occur for a number of years. The Commission believes that any grandfathering of these types of long range disparate voting rights plans would be meaningless if limited to a period immediately following the promulgation of the Rule.

A related issue is whether disparate classes of stock or disparate voting rights plans authorized but unissued or not implemented prior to the Rule's effective date should be permitted to be implemented after the effective date of the Rule. In the Proposing Release, the Commission stated that a company filing proxy materials by May 15, 1987 to adopt a disparate voting rights plan would be grandfathered, provided the company moved forward in a reasonable period of time to implement the plan.[116] In structuring the grandfathering provision as such, the Commission was attempting to exclude two groups: (1) Companies that sought shareholder authorization after the publication of the Proposing Release and knew or should have known that such an issuance likely would be prohibited; and (2) companies that have had blank check preferred or other unissued securities on the shelf as a protective measure and had demonstrated no indication, until the commencement of the section 19(c) proceedings, that they intended to issue disparate classes of stock.

Despite the fact that the Commission is essentially grandfathering all issuers who issued disparate voting stock prior to the Rule's effective date, the Commission's concern about authorized but unissued dual class stocks remains valid. The Commission is sensitive to the needs of those companies that received specific shareholder approval for disparate voting rights plans prior to the Rule's effective date, but chose not to implement them because of concern that the plan would have to be dismantled if it were prohibited by the Commission's Rule.[117] Therefore, the Commission has determined that companies that filed proxy materials between January 1, 1987 and the Rule's effective date to issue disparate voting rights stock, but have yet to issue the disparate class or classes of stock, should have 90 days following publication of the Rule, as adopted, in the **Federal Register,** to issue their disparate voting rights stock. The Commission believes that this interpretation is consistent with its view

its one share, one vote rule. At that meeting, then Chairman Shad and several Commissioners raised questions concerning the development of a uniform approach similar to what was subsequently proposed as Rule 19c–4.

[110] The concern was substantiated by the fact that in the first four months of 1987, when there were indications that the SROs or the Commission might restrict disparate voting rights plans, approximately 25 major domestic corporations initiated a disparate voting rights plan.

[111] *See* text accompanying notes 45 to 48, *supra.*

[112] *See* text accompanying notes 65 to 66, *supra.*

[113] *See* ABA comment, *supra* note 50, at 24, n.10; Carter-Wallace comment, *supra* note 65, at 16–24; Times Mirror comment, *supra* note 65, at 16.

[114] This does not mean that the Commission is not concerned about those shareholders that were, in fact, disenfranchised between May 15, 1987 and the adoption of the Rule. Nevertheless, we believe the concerns noted below dictate applying the Rule as of the Rule's effective date.

[115] *See* text accompanying notes 116–117 *infra* (discussing application of Rule to those companies that recently had approved a disparate voting rights plan but have not yet actually issued stock under the plan).

[116] The Commission believed that it would be inappropriate to extend the grandfather exception to companies that had not at least taken the step of prosposing the stock issuance for a shareholder vote. *See* Proposing Release, *supra* note 5, n.88.

[117] *See, e.g.*, letter from J. Spratt White, Senior Vice President, Springs Industries, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 14, 1987.

that only those companies that have proceeded within a "reasonable period of time" to adopt a dual class plan should be permitted to issue authorized dual class stock after the Rule's effective date.

With respect to the subsequent issuance of additional authorized stock as dividends or stock splits, such an issuance may be permitted if it does not exacerbate the disparity in voting rights between classes or groups of shareholders. For example, super voting stock may be issued to existing super voting holders in a grandfathered disparate plan only if there are no transferability restrictions and all holders, both super and limited, receive a proportionate amount of securities such that the relative voting power of the lower voting stock toward the super voting stock is not reduced. Similarly, a reverse stock split could occur in a grandfathered disparate voting rights plan, but only if the split was applied to all classes of voting stock in a proportionate manner. The Commission believes that this analysis is consistent with the Rule because the voting power of the existing shareholders is not disparately reduced by the additional issuance.

Consistent with this position, the Commission believes that the subsequent issuance of options or convertible rights to purchase super voting stock is inconsistent with the Rule.[118] The Commission believes that such issuances could be used to deteriorate further the voting rights of the holders of limited voting stock, and therefore such options and convertible rights to purchase super voting shares should be changed to rights to purchase non-super voting shares.

5. Application of Rule 19c–4 to Control Share Acquisition Statutes and Other Takeover Defenses

As noted above, commentators expressed concern regarding the potential impact of the proposed Rule on state anti-takeover statutes and other corporate tactics designed to discourage hostile takeovers.[119] In particular, these commentators questioned the application of the Rule to state control share acquisition statutes, such as the Indiana statute upheld by the Supreme Court in the *CTS* decision, and other prevalent defensive tactics, such as poison pills. The Commission, when proposing the Rule, did not view it as a means to prohibit corporate defensive tactics in general, but merely as a prohibition against the disenfranchisement of existing shareholders' voting rights.[120]

a. *Control Share Acquisition Statutes.* Specifically, commentators have questioned whether corporate action pursuant to control share acquisition statutes would constitute an issuance of securities or other corporate action that disenfranchises shareholders.[121] In light of the *CTS* decision and the purposes of the Rule, the Commission has revised the Rule to clarify that it would not interfere with these statutes.

The Commission believes that deference to state-legislated control share acquisition statutes designed to specifically regulate changes in control is appropriate. We note that the SROs, in setting and enforcing their listing standards, historically have attempted to distinguish between areas in which generalized threshold standards have been set by the states and those areas in which the states have chosen specifically to regulate. For example, the NYSE traditionally has placed limitations on the listing of non-voting or lower voting stock, despite the presence of general state enabling legislation that permit corporations to have disparate voting stock. The NYSE, however, has deferred to state law in other areas of corporate governance, such as the rights of preferred shareholders to vote on mergers and acquisitions, when the states have chosen specifically to regulate or limit corporate activity.[122] Accordingly, the Commission has determined that the Rule should not apply to corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.[123] Consistent with this change, the Commission believes that the definition of the phrase "corporate action" in paragraph (d)(4) of the Rule should be read so as to include compliance with control share acquisition statutes by: (1) Reincorporating in a state that has such a statute; or (2) failing to opt-out of such a statute.[124] Outside of the state statutes permitted in paragraph (d)(4) of the Rule, it is possible that states will enact other types of statutes that limit shareholder voting rights in certain situations. The Commission believes that determinations as to whether corporate action pursuant to any such statute is consistent with the purposes of the Rule is best left to the SROs.

The Commission does not believe, however, that corporate voting structures required by a state or Federal statute, with no opportunity provided for the corporation to opt out of such requirement, involve corporate action which would be covered by the Rule.[125] Moreover, reincorporation into a state with such a statute would not constitute corporate action under the Rule.

b. *Shareholder Rights Plans.* Commentators also have questioned the effect of Rule 19c–4 on tender offer defensive shareholder rights plans.[126]

[118] Stock options or convertible rights to purchase super voting stock that were issued before the effective date of the Rule, however, would be "grandfathered" and thus could be exercised at any time.

[119] *See* text accompanying notes 59 to 62, *supra*.

[120] In this regard, the Commission does not agree with several commentators that the Rule would violate the Williams Act's principle of neutrality in the regulation of tender offers. *See, e.g.*, International Paper comments, *supra* note 61. The Rule is not intended to address defensive tactics, but to protect shareholder voting rights. Moreover, companies would retain the full panoply of defensive tactics, as long as a particular tactic did not disenfranchise shareholders.

[121] Ind. Code section 23–1–42–1 *et seq.* (1986). The Indiana Control Share Acquisitions Chapter is the forerunner of a number of state statutes designed to protect domestic corporations from hostile takeovers. Briefly, the statute provides that if a shareholder acquires 20% or more of the voting stock needed to elect directors of an Indiana corporation, the shareholder loses its right to vote the shares unless the disinterested shareholders vote to grant the "control" shareholder voting rights within 50 days of the commencement of the offer to purchase the shares. All Indiana corporations are covered by the statute, unless the corporation amends its articles of incorporation or by-laws to opt out of the statute.

[122] *See* NYSE listed Company Manual section 308.00.

[123] *E.g.*, Ind. Code section 23–1–42–1 *et seq.* (1986); Del. Code, Title 8, section 203; and N.Y. Bus. Corp. Law section 912 (McKinney 1986).

[124] The Commission's position is limited to the applicability of Rule 19c–4 to control share acquisition statutes. Accordingly, nothing discussed herein should be construed to indicate that the Commission believes such statutes are appropriate or that the Commission will not participate as amicus curiae opposing such statutes on Federal pre-emption and Commerce Clause constitutional grounds in the future. *See* Briefs of the Securities and Exchange Commission, Amicus Curiae, *Salant Acquisition Corp.* v. *Manhattan Industries, Inc.*, 88 Civ. 686, (S.D.N.Y., March 16, 1988); *RTE Corporation* v. *Mark IV Industries, Inc.* and *MIV Holdings, Inc.* v. *Loren D. Barre*, Civil Action No. 88–C–378 (E.D. Wisc., May 6, 1988); *RP Acquisition Corp.* v. *Staley Continental, Inc.*, Civil Action No. 88–190 (D. Del., May 9, 1988).

[125] *See* text accompanying notes 134 to 135 *infra*.

[126] *See, e.g.*, Fried, Frank comment, *supra* note 50, at 7–20. Predominantly, these inquiries questioned the applicability of the Rule to so-called flip-in shareholder rights plans. Under certain flip-in plans, rights or warrants are attached to the common stock of a company, entitling the holder, upon the right being triggered, to buy additional shares of common stock at a price substantially below market value.

Continued

Because some of these so-called "poison pills" can be viewed as diluting the voting rights of a potential acquiror or large shareholder by allowing stock to be sold below market value to a specific shareholder or shareholders, some commentators expressed concern that the implementation of a poison pill would be considered disenfranchising under the Rule.

The Commission has determined that such plans generally should not be covered by the Rule. As with any recapitalization or disparate voting rights plan, the focus should be placed upon the effect of the plan on the voting rights of existing shareholders. It is important, therefore, to note that unlike transactions prohibited by the Rule, shareholder rights plans are not adopted to restructure a corporation by disenfranchising an existing class or classes of shareholders in order to solidify the voting power of management or a control group. Rather, these plans are adopted by corporations to discourage tender offers, or to encourage the development of an auction for the company resulting in shareholders receiving a higher price for their stock.[127] In fact such plans are adopted with the intent that they will never be implemented.[128]

c. *Lock-Ups.* Commentators also questioned the effect Rule 19c–4 would have on the use of lock-ups, in which newly issued shares or options to buy additional shares, often at a discount, are issued to another party. Several commentators have questioned whether the purchase of additional shares, through a lock-up, at below market cost would disparately reduce the voting rights of existing shareholders. The Commission believes that lock-ups generally would not be prohibited by Rule 19c–4.[129]. The Commission believes that the fairness of the compensation paid for voting stock generally should be determined by state law, with the addition of possible shareholder voting requirements imposed by SRO rules.[130] Moreover, the Commission notes that a substantial body of state judicial decisions, applying general fiduciary and duty of loyalty principles, have accorded greater scrutiny to lock-up transactions, especially in regard to contests for corporate control.[131] Nevertheless, lock-ups effected by the sale of super voting preferred would be presumed to be prohibited under the Rule because they would involve an issuance of a new class of super voting stock, which presumably is prohibited under the Rule.[132]

6. Other Interpretative Issues

In the Proposing Release, the Commission requested comment on a variety of issues. These issues included whether certain issuers or securities should be exempted explicitly from the Rule; the applicability of the Rule to so-called two-step transactions in which a company goes private and subsequently goes public with an issuance of disparate voting stock; the effect of the Rule on companies in financial distress; whether a company should be barred from listing for violating Rule 19c–4, or should be able to take some curative action; and the effect of the Rule upon certain board and voting structures.[133] These and other interpretive issues are discussed below.

a. *Statutory Restrictions.* In response to the Proposing Release, several commenters noted that the voting rights of companies in certain industries might be subject to certain mandatory restrictions by applicable state and federal law.[134] The Commission recognizes the potential conflict between Rule 19c–4 and these statutes, and has concluded that the Rule should not cover action taken pursuant to such specific state or federal statutory requirements. The Commission notes that in such circumstances the issuer would not be required to obtain a waiver from compliance with the Rule because the alleged disenfranchising action is state or federal action, not corporate action.[135]

b. *Going Private Transactions.* In the Proposing Release, the Commission expressed concern that the process by which a company is taken private and subsequently goes public within a brief period could have a disenfranchising effect on existing shareholders.[136] In response to the Commission's solicitation of comments, certain commentators objected to the labelling of such a two-step transaction as disenfranchising.[137] The Commission notes that, when a company is taken private, existing shareholders are required to be paid fair value for their stock and therefore are not disenfranchised. Indeed, in such a transaction, shareholders are not just relinquishing voting rights, but are

---

These rights generally are redeemable at any time by the Board of Directors of the company prior to being triggered and exercisesd. The rights, however, are not exercisable until the occurrence of a so-called triggering event, usually the acquisition of a specified percentage of the company's stock by a hostile bidder or the commencement of a tender offer. Upon the occurrence of the triggering event, all shareholders except the potential acquiror may then purchase shares at below market value, crippling the takeover effort by the acquiror.

[127] Further, it is important to note that although the NYSE has prohibited disparate voting rights stock for over 60 years, it has differentiated between disparate voting rights plans in general and shareholder rights plans that are adopted to discourage hostile takeovers.

[128] The Commission emphasizes, however, that its position on anti-takeover shareholder rights plans should not be misconstrued as a blanket exception for all restructurings adopted under the guise of a "poison pill." If a corporation develops an anti-takeover device designed specifically to transfer voting control from existing shareholders to insiders, or a group favored by insiders, it may violate Rule 19c–4 irrespective of the fact that it is termed a "poison pill." The Commission notes that several firms have adopted "poison pills" which would affect voting rights of a large purchaser of the company's stock. *See, e.g., Asarco, Inc. v. MRH Holmes A Court,* 611 F. Supp. 468 (D.N.J. 1985). Moreover, the Commission also emphasizes that its decision to exclude poison pills from coverage of Rule 19c–4 should not be construed as implying either acceptance or rejection of the argument that poison pills can, in some circumstances, have discriminatory or disenfranchising effects.

[129] This is consistent with the views discussed above concerning flip-in plans. *See* text accompanying notes 126–128 *supra.*

[130] For example, Section 312 of the NYSE's Listed Company Manual requires shareholder approval where additional issuances of stock in an acquisition would increase the outstanding common stock by 18½% or more. *See also* section 712 of the Amex Company Guide. The Commission believes that the NASD should consider adoptiong a similar rule when implementing Rule 19c–4.

[131] *See* Terrell," The Delaware Business Judgment Rule In a High Risk Environment" *Representing Publicly Traded Corporations: Advising Corporate Management in a High Risk Environment* 526 P.L.I. May–June 1987, at 459.

[132] The Commission also notes that fair pricing provisions that require approval of a tender offer by a majority or super majority of disinterested shareholders are not covered by the Rule's prohibitions because no corporate action is being taken to disenfranchise shareholders.

[133] *See* Proposing Release *supra* note 5, at 23673–74.

[134] *See, e.g.,* ABA comment, *supra* note 50, at 27–28 (concerning Federal Home Loan Bank Board ["FHLBB"] regulation that limits voting rights of a potential acquiror to 10% in certain circumstances); letter from Royce N. Sanner, Senior Vice President, Northwestern National Life Insurance Company, to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987 (Minnesota statute that caps voting rights of shareholders and provides certain voting rights to policyholders); letter from James T. Lloyd, Vice President, U.S. Air Group, to Jonathan G. Katz, Secretary, SEC, dated July 16, 1987 (Federal Aviation Authority limits on voting rights of foreign stockholders).

[135] We note that such companies complying with a state or federal regulation would not obtain a blanket exemption from all aspects of the Rule, but simply those aspects necessary to comply with the mandatory requirement. For example, although the FHLBB rule permits banks to approve a charter provision to extend the mandatory voting restriction described in note 134 *supra* for 3 to 5 years, such voluntary action by an issuer would be considered corporate action prohibited by the Rule.

[136] Proposing Release, *supra* note 5, at n.93.

[137] *See* Gilson comment, *supra* note 25, at 3–4; International Paper comment, *supra* note 61, at 11.

selling their entire interest in a security. When the company subsequently goes public, regardless of the elapsed period of time since being taken private, purchasers, through proper disclosure, will be aware of the lack of voting control in the stock being purchased, just as with any IPO.[138] In both the going private transaction and subsequent initial public offering, the transactions are subject to market discipline. In light of these arguments, the Commission agrees that the above-cited transaction is not disenfranchising.[139]

c. *Distress Situations.* Several commenters urged the Commission to consider the effect of the Rule on companies in financial distress.[140] These commentators questioned whether an arrangement by which a party infuses capital into a company in financial distress in exchange for voting control or super voting stock would be considered disenfranchising under the Rule. After considering the arguments of the commentators, the Commission concludes that the financial distress situation should be resolved by the individual SROs pursuant to their authority to adopt exemptive rules under paragraph (f) of the Rule. The SROs, among other factors, should evaluate whether the proposed recapitalization is part of a plan to rescue the company.

d. *Working Control.* Another related comment questions whether the Rule should apply to companies that already have substantial insider voting control (*e.g.*, over 50%). The Commission recognizes two conflicting concerns. First, in a company where insiders have substantial control (so-called "working control") minority shareholders still should have a right to be protected from further disenfranchisement. On the other hand, if minority shareholders have little or no existing control vis-a-vis a majority control group, the Rule's protection will not necessarily benefit the minority shareholders. Nevertheless, the Commission believes it would be difficult and arbitrary, prior to the Rule's promulgation, to set a specific exception under the Rule based on the percentage of insider control.

e. *Board Composition.* Some commentators have raised questions concerning specific voting provisions in regard to board elections. The Commission notes that these provisions will be considered disenfranchising only if they restrict the voting rights of a class or classes of stock. For example, a recapitalization that creates two classes of stock, each having one vote per share, in which one class elects a percentage of the board disproportionate to its equity interest, would be violative of the Rule. In contrast, staggered board elections or cumulative voting provisions would not disenfranchise holders of a class or classes of stock and therefore would not violate the Rule.

f. *Limited Partnerships.* Commentators also have raised concerns over whether the reorganization of a company to a limited partnership form would be considered a transaction that disparately reduces the voting rights of the holders of the common stock in violation of Rule 19c–4.[141] There are fundamental tax reasons for a corporation to choose to recapitalize to a limited partnership form. According to applicable Treasury Regulations, however, a limited partnership will be taxed as a corporation if it possesses more corporate than non-corporate characteristics.[142] Accordingly, most limited partnerships do not provide the limited partners with the right to vote except in very limited circumstances. Thus, a switch from corporate to partnership form necessarily would reduce voting rights of existing shareholders. Such a switch, however, goes far beyond voting rights and substantially changes the nature of the investment, as opposed to the mere adoption of a disparate voting rights structure. Accordingly, the Commission believes that so long as a corporation has a bona fide business reason for transferring to a limited partnership form, other than to reduce the voting rights of existing shareholders, it should be a permitted transaction under Rule 19c–4.[143]

g. *Cure.* Finally, in the Proposing Release the Commission specifically solicited comment on whether companies delisted due to Rule 19c–4 should be permitted to "cure" the disenfranchisement and re-establish a trading market in a national securities exchange or association after a certain period of time. Commentators addressing this question indicated that a cure should be anywhere from one year to at least seven years after the prohibited action.[144] The Commission has decided not to place a specific "cure" period in the Rule. Instead, the Commission will consider proposed rule changes by the SROs that would permit issuers to "cure" the defect and re-establish a public trading market. Factors the SROs should consider in deciding whether to propose such a rule change would include the length of time since the disenfranchising action, the proposed cure, the purpose and use of the recapitalization while it was in place, and any other circumstances that would be relevant to permit a company to relist on an exchange or be reauthorized by an association.

h. *Other Situations.* Aside from the situations discussed above, there are likely to be further requests for clarification or interpretation of the Rule's coverage. For example, the Rule is drafted expressly to permit certain disparate stock issuances in registered public offerings. Some public offerings need not be registered with the Commission (*e.g.*, offerings of securities exempt under sections (3)(a)(10) and 3(a)(11) of the Securities Act of 1933). Rather than address this situation in this Release, the Commission will rely upon the SROs' implementation of the Rule to provide further guidance.

C. Commission Authority to Adopt Rule 19c–4

The Commission believes that, in adopting Rule 19c–4, it has met the statutory standards necessary to add to the rules of an SRO as set forth under section 19(c) of the Act. Although commentators continue to question the authority of the Commission to amend SRO listing standards pursuant to its 19(c) authority,[145] the Commission has

---

[138] *See* Gilson comment, *supra* note 25, at 3–4.

[139] The same analysis would apply to a partial tender offer for cash, which, by itself, would not be disenfranchising under the Rule.

[140] *See* letter from D.N. Maytum, Secretary, Chevron Corporation, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987; letter from Mudge, Rose, Guthrie, Alexander and Ferdon (counsel to Western Union) to Jonathan G. Katz, Secretary, SEC, dated August 7, 1987.

[141] *See* Business Roundtable comment, *supra* note 50, at 30–31.

[142] *See* Treas. Reg. § 301.7701–2.

[143] We note that, in recognition of the fact that limited partners generally do not have the right to vote, the NYSE historically has not applied its one share, one vote rule to master limited partnerships.

[144] *See* letter from Alice E. Hennessey, Senior Vice President, Boise Cascade Corporation, to Jonathan G. Katz, Secretary, SEC, dated July 14, 1987 (no more than 1 or 2 years); FAF comment, *supra* note 39, at 2 (7 years at least).

[145] The commentators critical of the Commission's authority to promulgate Rule 19c–4 generally fall within two main categories. First, they argue that Congress never intended the Commission to have rulemaking authority under Section 19(c) of the Act to modify exchange listing standards to impose corporate governance requirements on issuers. Second, they argue that, even if the Commission does have 19(c) authority to promulgate listing standards, Rule 19c–4 cannot be justified as necessary or appropriate in furtherance of the Act, as required to adopt a rule under section 19(c). *See* text accompanying notes 23 to 68 *supra* (summarizing comments) and 145 to 180 *infra* (discussing Commission authority).

concluded that Rule 19c–4 is consistent with the Act and in furtherance of the objectives of sections 6, 11A, 14, 15A, and 19 of the Act, in that it will protect against shareholder disenfranchisement and increase investor confidence in the securities markets in the United States. Moreover, the Commission, in crafting the Rule, sought to minimize the Rule's impact on areas traditionally subject to state regulation.[146]

1. Listing Standards Are Rules Subject to the Commission's Section 19(c) Authority

Section 19(c) of the Act grants the Commission authority to amend "the rules of a self-regulatory organization * * * as the Commission deems necessary or appropriate * * * in furtherance of the purposes of (the Act)."[147] The term "rule" is defined in section 3(a)(27) to include "stated policies, practices, and interpretations of such (exchanges or associations) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such (exchange or association)."[148] The Commission has defined the terms "stated policies, practices or interpretations" to include "any statement * * * that establishes or changes any standard, limit or guideline with respect to (i) the rights, obligations or privileges of specified persons, or * * * persons associated with specified persons."[149] "Specified persons" has been defined to include "all participants in or persons having or seeking access to facilities of (exchanges or associations)."[150] Listing standards and eligibility criteria are statements establishing standards or guidelines regarding the obligations and privileges of issuers seeking access to the exchanges and NASDAQ markets. Thus, the listing requirements of the exchanges and NASDAQ eligibility criteria clearly are "rules" that the Commission may amend under section 19(c) of the Act.[151]

Although listing standards are SRO rules, one commentator argued that they operate not pursuant to self-regulatory authority derived "by virtue of any authority conferred by (the Act)," but as a private contract between the SRO and the listed company.[152] That commentator argued that the scope of Commission review and amendment authority over SRO listing standards under section 19 is limited to the standard of unfair discrimination against issuers in section 6(b)(5), and for impact upon the SROs and their markets not in accordance with the standards concerning these markets, such as unfair competition between markets. The Commission disagrees with this analysis. The language of section 19(c) does not suggest that the scope of Commission jurisdiction over SRO rules varies depending on the type or content of the SRO rule involved.[153] Rather, the rulemaking authority over SRO rules provided in section 19(c) explicitly extends to all purposes of the Exchange Act without limitation.

The legislative history of section 19(c) further supports the Commission's authority to amend any listing standard or eligibility criterion of the SROs if it furthers the objectives of the Act. Prior to the 1975 Amendments to the Act, section 19(b) identified specified types of exchange rules as illustrative of the type of rules that the Commission was authorized to alter or supplement. Exchange listing and delisting standards were among the types of rules so identified. In the 1975 Amendments, however, Congress did not follow the pattern established in original section 19(b). Instead, the Committee Report accompanying the Senate version of the 1975 Amendments indicated that the broad language of section 19(c) was intended to provide the Commission with "authority to amend [SRO] rules in any manner in furtherance of the objectives of the Exchange Act."[154] Accordingly, because listing standards are rules of an SRO, as defined under the Act, and because such listing standards were recognized SRO rules when Congress conferred upon the Commission authority to amend such rules, Congress presumably intended the Commission to have the authority under section 19(c) to amend such rules if such an amendment is necessary or appropriate in furtherance of the purposes of the Act.

Other commentators argued that the SROs' lack of enforcement authority over issuers negates any Commission authority to require the SROs to impose rules affecting issuers.[155] These commentators suggested that SROs are not obligated to enforce listing standards against issuers because section 19(g) of the Act[156] requires that an SRO enforce compliance with its rules only by its members or their associated persons, and section 19(h) of the Act does not authorize the Commission to discipline an SRO for failing to enforce compliance with its rules by issuers.[157] These commentators argued that it would be meaningless for the Commission to impose upon SROs a rule that they were not required to enforce.

This argument ignores two basic points. First, exchanges do not require specific enforcement authority against issuers to enforce their listing standards;

---

[146] *See* note 84 *supra*.

[147] 15 U.S.C. 78s(c).

[148] 15 U.S.C. 78c(a)(27).

[149] 17 CFR 240.19b–4.

[150] Securities Exchange Act Release No. 11604 (August 19, 1975) (adopting Rule 19b–4).

[151] Further, revisions to exchange listing and NASDAQ eligibility criteria routinely have been submitted to the Commission for review and approval under section 19 of the Act without substantial comment regarding Commission authority. *See, e.g.*, letter from James J. O'Neill, Assistant Vice President, Amex, to Irving Pollack, Director, Division of Trading and Markets, dated July 21, 1972 (filing with the Commission the Amex policy prohibiting the listing of non-voting common stock); Securities Exchange Act Release No. 13346 (March 9, 1976) (approving NYSE audit committee listing requirements); Securities Exchange Act Release No. 22894 (February 11, 1986) 51 FR 6056 (amending Schedule D of the NASD's By-Laws to conform maintenance criteria for those companies in NASDAQ/NMS Designation Plans).

[152] *See* ABA comment, *supra* note 50, at 12–13.

[153] *See Aaron* v. *SEC*, 446 U.S. 680, 700 (1980) ("in the absence of a reasonably plain meaning and legislative history, the words of the statute must prevail"); *Ernst and Ernst* v. *Hochfielder*, 425 U.S. 185, 201 (1976) ("the language of a statute controls when sufficiently clear in its context").

[154] Senate Comm. on Banking, Housing & Urb. Aff's., *Report to Accompany S. 249: Securities Acts Amendments of 1975* S. Rep. No. 75, 94th Cong., 1st Sess. 131 (1975) ("Senate Report"). We note that, by providing the Commission with such broad authority over exchange rules in both sections 19(b) and 19(c), Congress can be viewed as having confirmed the Commission's practice of reviewing exchange listing standards, both qualitative and quantitative. Both prior and subsequent to the 1975 Amendments, the Commission has reviewed listing standards concerning shareholder suffrage and other so-called "corporate governance" matters in proposed rule filings submitted by the SROs.

For example, in 1974 the Amex filed a proposed change in its listing standards for foreign companies that would have reduced public share distribution requirements and eliminated the requirements of annual reports, voting common stock, and outside directors for these issues. The Commission decided to grant a hearing to determine whether to disapprove the rule change under Section 19(b) in part in response to concerns regarding the changes in voting rights. The Amex ultimately withdrew its proposal. *See* letter from Bernard Maas, Vice President, Amex, to Sheldon Rappaport, Associate Director, Division of Market Regulation, SEC, dated January 2, 1974. Senator Harrison Williams, a principal architect of the 1975 Amendments, clearly was aware of the Commission's activity in the listing standards area. In March 1974, he submitted a letter to the Commission arguing that the Commission should "disapprove" the Amex rule filing. Letter from Harrison Williams, U.S. Senator, to Ray Garrett, Jr., Chairman, SEC, dated March 22, 1974.

See also, letter from Paul Kolton, Chairman, Amex, to Ronald Hunt, Secretary, SEC, dated July 20, 1973 (requesting the Commission to review, pursuant to Sections 6 and 19 of the Act, an NYSE listing standard rule change).

[155] *See, e.g.*, Carter-Wallace comment, *supra* note 65, at 33–35.

[156] 15 U.S.C. 78s(g).

[157] 15 U.S.C. 78s(h).

they need only deny listing to securities not meeting those standards. Moreover, section 19(h) of the Act authorizes the Commission to bring an enforcement action against any SRO that fails to comply with its own rules. Therefore, failure by an SRO to apply its listing standards, or action by an SRO to enforce them in a manner inconsistent with its rules, would subject the SRO to discipline by the Commission. Further, notwithstanding the enforcement responsibilities of SROs vis-a-vis issuers, the SROs, as a condition of their registration, must have the "capacity to be able to carry out the purposes of [the Act]." [158] Accordingly, the Commission continues to believe that sections 19 (g) and (h) provide no basis for ignoring the clear language of section 19(c).[159]

2. Rule 19c–4 is Necessary or Appropriate in Furtherance of the Purpose of the Act

The Commission's concerns regarding the adoption of certain disparate voting rights plans arise because such plans can deprive existing shareholders of their voting rights in a coercive or involuntary manner. If the removal or limitation of voting rights or the creation of dual class stock is not subject to the discipline of the marketplace (*e.g.*, in the case of a public offering), existing shareholders can be disenfranchised of their right to have an impact on any future corporate decisions, as well as potentially their right to receive a control premium from a tender offer. When shareholders purchase a security, they do so with the reasonable expectation that they and their successors will retain their voting rights until they choose to relinquish them in a transaction subject to market discipline. The Commission is concerned that disenfranchisement, by overturning these expectations, may result in diminishing investor confidence in the securities markets.

Based on the above, as well as the analysis contained in this order, the Commission believes that it is necessary in furtherance of the purposes of sections 6, 11A, 14, 15A and 23 of the Act, to protect investors and the public interest from disparate voting rights plans that disenfranchise existing shareholders. Even, however, if the Commission could not make the determination that the Rule is necessary in furtherance of the Act, based upon the analysis contained in this order, we clearly find the Rule appropriate in furtherance of the purposes of the Act.[160]

The Commission believes that Rule 19c–4 furthers the purposes of sections 14 (a) and (b) of the Act, which are intended to ensure fair shareholder suffrage.[161] Certain commentators argued that the Commission can protect fair shareholder suffrage only through regulation of the proxy process. Under this view, when enacting section 14, Congress' sole concern was the solicitation of proxies and not shareholder voting rights.[162] The Commission believes that the concerns of Congress in enacting Section 14 were broader. The 1934 House Report on the proposed Securities Exchange Bill describes the broad purpose of section 14(a):

> Inasmuch as only the exchanges make it possible for securities to be widely distributed among the investing public, it follows as a corollary that the use of the exchanges should involve a corresponding duty of according shareholders fair suffrage.[163]

The widespread implementation of disparate corporate voting structures would render meaningless the purposes underlying Section 14(a). Moreover, it is not surprising that Congress did not attempt to regulate shareholder voting rights directly. Congress' assumption that securities holders possessed effective voting power was based on the NYSE's existing and widely publicized policy against listing non-voting and lower voting common stock. In light of the NYSE's position as the principal national securities market, Congress was able to base its statutory scheme on existing protections against disparate voting structures.

Section 14(a) contains an implicit assumption that shareholders will be able to make use of the information provided in proxy solicitations in order to vote in corporate elections. This is supported by the legislative history of section 14(a), which states, "[f]air corporate suffrage is an important right that should attach to every equity security bought on a public exchange." [164] Accordingly, with Rule 19c–4, the rules of the SROs will further the shareholder suffrage policy reflected in the section 14(a) proxy requirements by preventing the disenfranchisement of existing shareholders through transactions that are not fully subject to market discipline. Indeed, the disenfranchisement of shareholders could render ineffective the proxy protections embodied in section 14.[165]

Other commentators argued that any assumption by the Commission that the scope of section 14(a) extends beyond the proxy process is undercut by the failure of the 1964 amendments to the Act to extend voting rights standards to over-the-counter ("OTC") securities and by the existence of listing standards on the Amex that permitted disparate voting rights plans at the time of the 1975 Amendments.[166]

The Commission is not persuaded that Congress was unconcerned with shareholder suffrage when it applied section 14 to the OTC market without specifically addressing the absence of voting rights standards in that market. The Senate Report in the 1964 amendments noted that "[t]he purpose of the section (Section 14) and the Commission rules thereunder is to provide shareholders with an opportunity to exercise their corporate franchise on the basis of accurate and adequate information." [167] Although the

---

[158] 15 U.S.C. 78f(b)(1), 78*o*–3(b)(2). *See* text accompanying notes 160 to 180 *infra* (discussing purposes furthered by promulgation of Rule 19c–4). We also note that Congress added the requirement that SROs comply with their own rules when it deleted the issuer enforcement requirement. The inference from this action is that Congress sought to ensure that SRO's own rules regarding issuers would be followed even absent a direct obligation.

[159] As a practical matter, the different treatment of issuers can be easily explained. SROs can fine, censure or expel from membership their members and the associated persons of such members. In contrast, SROs, as a practical matter, only may delist their issuers, they may not fine or censure issuers listed on their markets. Accordingly, the statute recognizes that, apart from following their listing standards, SROs are not expected, under Section 19(g) of the Act, "to enforce compliance" (*i.e.*, issue fines or censures) against their issuers. *Compare* sections 6(b)(6) and 15A(b)(7) of the Act (15 U.S.C. 78f(b)(6), 78*o*–3(b)(7)) (authorizing expulsion, suspension, limitations on activities, fines and censure of members and persons associated with members) *with* section 12(d) of the Act (authorizing a security to "be withdrawn or stricken from listing and registration in accordance with the rules of the exchange").

[160] Section 19(c) of the Act allows the Commission to amend SRO rules as it deems necessary *or* appropriate.

[161] 15 U.S.C. 78n (a), (b).

[162] *See* ABA comment, *supra* note 50, at 16–18.

[163] H.R. Rep. 1383, 73d Cong. 2d Sess. 14 (1934). *See also* L. Loss, Fundamentals of Securities Regulation, 452–453 (2d ed. 1988). Professor Loss noted that the Commission's power under section 14(a) is not limited to requiring disclosure, and that the statutory language of the Section is more general than the language under the specific disclosure philosophy of the Securities Act of 1933.

[164] H.R. Rep. No. 1383, *supra* note 163, at 13.

[165] Moreover, in adopting section 14(b) of the Act, Congress sought to facilitate effective voting by beneficial shareholders in corporate elections, in part to reduce management dominance of elections through obtaining blank proxies from brokers and other custodial holders of securities. Section 14(b) provided the Commission with extensive rulemaking authority with respect to proxies on securities carried for customers. *See Stock Exchange Practices: Hearings before the Senate Comm. on Banking & Currency*, 73rd Cong., 1st Sess., 6677, 7711–12 (1934).

[166] *See, e.g.*, ACG comment, *supra* note 60, at 3.

[167] *See* S. Rep. No. 379, 88th Cong., 1st Sess. 7 (1963).

legislative history to the 1964 amendments is not more explicit regarding shareholders suffrage, we believe that the commentators' argument assumes too much from congressional silence.[168] Until recent concerns over tender offer defensive tactics, relatively few companies had disparate voting stock. Moreover, those companies that did have such structures generally were family controlled and had maintained their voting structure for some time. It would be wrong to construe Congressional inattentiveness to this issue in 1964 as a determination that the Commission did not have authority to address, through a section 19(c) proceeding, the dramatic increase in disenfranchising recapitalizations. The Commission also notes that initially the Act focused on exchange-listed securities because, as noted above, Congress believed that only the exchanges made it possible for securities to be widely distributed among the investing public. Not until the 1970s and 1980s, with the emergence of NASDAQ, coupled with the increased incidence of hostile takeovers, did the question of NASDAQ eligibility criteria concerning voting rights take on significance. In light of the foregoing, the Commission views proposed Rule 19c–4 as furthering the regulatory framework which underlies the enactment of section 14.

This conclusion is still valid despite the enactment of the 1975 Amendments at a time when the Amex had a policy permitting disparate voting rights stock. Unlike the Act, which was meant to create a new system "for the regulation of securities exchanges and of over-the-counter markets, (and) to prevent inequitable and unfair practices on such exchanges and markets," [169] the 1975 Amendments were intended primarily to address trading market problems that had developed in the 1960s and 1970s.[170] Without more concrete evidence in the legislative history, and in light of the continued absence of any dramatic expansion of the number of issuers with disparate voting stock by 1975, it is not credible to imply from Congressional silence the approval of the disparate voting policy of the Amex. Again, in contrast, the legislative history of the original enactment of the Act provides ample evidence of Congressional interest in corporate suffrage issues.

In addition to furthering the purposes of Section 14, Rule 19c–4 will enhance the ability of the exchanges and the NASD to fulfill their responsibility under sections 6(b)(5) and 15A(b)(6) of the Act to ensure that their rules protect investors and the public interest.[171] The Commission believes the term "public interest" should be interpreted in a manner which reinforces the policies implicit in the Act. Accordingly, it is appropriate for the Commission to amend exchange rules to address disenfranchising transactions, as such transactions make hollow the substantive proxy protections contained in Section 14 and frustrate the reasonable expectations of investors as to their voting rights.

Rule 19c–4 has been drafted carefully to identify only those situations in which shareholders would be disenfranchised.[172] As discussed above, the Rule protects investors from disparate voting rights plans that result in disenfranchisement, thereby eliminating a shareholder's right to have any effect on future corporate decisions through transactions that are not fully subject to market discipline. At the same time, however, the Rule is crafted to permit disparate voting rights plans that do not disenfranchise existing shareholders and assure that the creation of shares with lesser voting rights is subject to market discipline.

Finally, the Commission notes that the 1975 Amendments added Section 11A to the Act to "facilitate the establishment of a national market system for securities." [173] Section 11A of the Act directs the Commission to "use its authority * * * to carry out the objectives (of Section 11A and) by rule * * * designate the securities or classes of securities qualified for trading in the national market system." [174] Section 11A(a)(1) enumerates several statutory objectives including the maintenance of "fair competition among brokers and dealers, among exchange markets, and between exchange markets and [other] markets * * *." [175]

Congress intended that the rules promulgated under Section 11A ensure that "equal regulation" would be achieved within a national market system regarding the markets for securities qualified for national market system trading, as well as dealers, exchange members and brokers.[176] Congress has stated that "equal regulation" means "persons enjoying similar privileges, performing similar functions and having the potential for similar market impact are treated equally." [177] While that statement was made in the context of a discussion of market makers, the concept ultimately was "intended to guide the Commission in its oversight and regulation of the trading markets and the conduct of the securities industry." [178] Further, Congress viewed the Commission's power to designate securities qualified for trading in the national market system as an important tool in achieving, among other things, a market characterized by "fair competition." In discussing the concept of equal regulation, Congress stated that if the Commission decides that "any disparity in regulation * * * permits an unfair competitive advantage," it is authorized to modify such regulation.[179] This passage clearly refers to unequal SRO regulation, because the Commission already had general authority to modify its own regulations in this manner.

The objectives set forth under section 11A are relevant to all SRO rules. Although the 1975 Amendments did not specifically focus on voting rights, as did the original promulgation of the Act, there is no evidence that Congress in 1975 intended to limit the Commission's authority to ensure equal regulation and fair competition among markets. The Commission believes that a minimum standard regarding disparate voting rights plans for all markets furthers the equal regulation and fair competition requirements embodied in section 11A. Over the past several years, issuer recapitalizations have resulted in SROs attempting to compete for listings by lowering listing standards concerning shareholder voting rights. It is clear that

---

[168] The Special Study of the Securities Markets of the Securities and Exchange Commission ("Special Study") found that securities traded OTC were more heterogeneous than those traded on the exchanges and strongly urged further study of those markets. H. Doc. No. 95. Pt. 2, 88th Cong., 1st Sess. Chapter VIII at 814, Chapter XII at 568 (1963). It is, therefore, just as plausible to conclude that Congressional uncertainty over the functioning of these markets caused legislative silence on voting rights, instead of a purported Congressional determination that voting rights were unimportant for the purposes of section 14.

[169] Conference Report to Accompany H.R. 9323, 78th Cong., 2d Sess., 35 (1934).

[170] *See, e.g.*, H.R. Rep. No. 229, 94th Cong., 1st Sess. 92, 97, 191, 107 (1975) ("House Report").

[171] 15 U.S.C. 78f(6)(5), 78o–3(b)(6).

[172] We note that the SROs will be able to exclude from the Rule's coverage any non-disenfranchising transactions. Accordingly, the Rule's focus is related directly to the protection of investors and the public interest.

[173] *See* S. Rep. No. 75, *supra* note 154, at 101.

[174] 15 U.S.C. 78k–1(a)(2).

[175] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[176] House Report No. 229, *supra* note 170, at 93–99.

[177] S. Rep. No. 75, *supra* note 154, at 15.

[178] *Id.* at 94.

[179] *Id.*

despite substantial efforts, the SROs are incapable of agreeing on minimum protections for shareholder voting rights for their listed or NASDAQ eligible companies. The Commission believes a minimum rule would further the section 11A objective of fair competition among SROs.[180]

IV. Conclusion

In consideration of the above, the Commission has decided to adopt Rule 19c–4. The Commission's public proceedings in connection with its consideration of proposed Rule 19c–4 have been extensive. As noted above, the Commission has received and reviewed over 1,100 comment letters in response to proposed Rule 19c–4. In addition, the Commission has held two public hearings on the voting rights issue, one directly related to Rule 19c–4 and the other related to the NYSE's proposal to amend its one share, one vote standard. After careful review of the record, the Commission believes Rule 19c–4 is necessary and appropriate in furtherance of the Act, and specifically sections 6, 11A, 14, 15A and 19 of the Act. These sections, among other things, embody the principles of fair corporate suffrage, equal regulation, fair competition, and the protection of investors and the public interest.

When the shareholder voting rights issue began to attract attention in 1984, the overwhelming majority of issuers listed on the NYSE and Amex or quoted over NASDAQ did not have a disparate voting rights structure.[181] Most of those that did were growth companies with substantial family or insider holdings. In the year prior to the Proposing Release an increasing number of companies recapitalized to a dual class structure. These companies, which disenfranchised shareholders to convert to a dual structure, often were more established companies with extensive public ownership.[182] If Rule 19c–4 is not adopted, additional companies will disenfranchise shareholders in order to restructure themselves for defensive purposes. Such disenfranchisement of the shareholders of American companies would injure public investors and diminish investor confidence in the U.S. securities markets. Rule 19c–4 will ensure that the U.S. securities markets are not so harmed.

Rule 19c–4 prohibits the listing on a national securities exchange or the authorization by a national securities association of equity securities issued by companies that issue securities or take corporate action with the effect of nullifying, restricting, or disparately reducing the voting rights of existing shareholders. At the same time, Rule 19c–4 permits the listing and trading of securities that adopt disparate voting rights plans that do not have such a disenfranchising effort on the voting rights of existing shareholders. This avoids unduly burdening issuers and allows for flexibility in devising a corporation's capital structure.

The Commission believes that the Rule provides an appropriate balance between the concerns of those commentators that feared Rule 19c–4 would infringe on corporate capital structures and governance, and those commentators that support a rule that would prohibit corporations from adopting disparate voting rights plans that diminish or eliminate the voting rights of existing shareholders.

Further, the Commission is convinced it has authority to adopt Rule 19c–4. Concerns by issuers that the Rule would infringe unduly on state law because it could be interpreted to affect state anti-takeover statutes and defensive tactics such as poison pills are ill-founded. As discussed above, the Commission has made clear that Rule 19c–4 is not, as a general matter, designed to address specific tender offer defensive tactics that may be adopted by issuers but instead is intended to prevent disenfranchising corporate actions. Moreover, the Rule would exempt corporate action taken pursuant to mandatory state control share acquisition statutes. Adoption of Rule 19c–4 clearly falls within the Commission's mandate to protect investors and the public interest and ensure fair corporate suffrage.

Finally, we note that in this Release, the Commission has attempted to describe the Rule's coverage and address the interpretive issues raised by commentators. We believe that the Rule's standard of preventing issuances or actions that nullify, restrict or disparately reduce voting rights of existing shareholders, in addition to the list of transactions presumed to be permitted or prohibited, should provide sufficient guidance to issuers. To the extent new structures develop that raise questions on the Rule's applicability, we believe the SROs, with Commission oversight, should be able to determine whether a given transaction is disenfranchising.

V. Availability of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding Rule 19c–4 has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Sharon Itkin in the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, securities.

Text of the Rule

Title 17, Chapter II of the *Code of Federal Regulations* is amended as follows:

---

[180] The Commission also disagrees with the ABA argument that the Commission can only consider a rule's impact on markets and the competition among markets for listing securities in reviewing proposed rule changes of the SROs under section 19(b), and may only commence 19(c) proceedings to amend the rules of other SROs if the rule would result in unequal regulation and unfair competition. It appears anomalous to claim that the Commission can use its section 19(b) authority to prevent shareholder disenfranchisement if an SRO submits a rule that would result in unfair competition and unequal regulation, but that it does not have the same section 19(c) authority to protect directly investors and the public interest. The Commission also disagrees with the Business Roundtable argument that Congress' "delegation" of authority under section 19(c) to regulate matters of corporate governance would be unconstitutional under the "nondelegation" doctrine. Rule 19c–4 is not intended to regulate corporate governance, but to protect the voting rights of shareholders. This is consistent with the Commission's mandate, going back to its creation in 1934, to protect investors in the nation's securities markets.

[181] *See* Seligman, *Equal Protection in Shareholder Voting Rights: The One Share, One Vote Controversy*, 54 G.W. L. Rev. at 703–07. In his article, Professor Seligman stressed that the number of corporations contemplating dual class structures had been insignificant prior to 1984 and 1985. Professor Seligman noted that through 1976, there were 37 corporations listed on the Amex with multiple classes of stock. By 1985, this number had increased to approximately 60, or 7% of the 785 companies listed on the Amex. In addition, there were approximately 10 firms listed on the NYSE, and 110 of the 4,101 companies traded on NASDAQ, (2.7%), which had two classes of stock in 1985. Accordingly, Professor Seligman noted that there were relatively few corporations (170 of the 4,886 corporations traded on the Amex and NASDAQ) with disproportionate voting rights structures listed on the exchanges or traded on NASDAQ prior to and during 1985. In contrast, the Commission notes that, as of June 1, 1988, 55 companies listed on the NYSE, 117 companies listed on the Amex, and 182 companies traded on NASDAQ have dual class voting structures.

[182] *See, e.g.*, OCE Update, which found more NYSE companies recapitalizing with less insider holders after the NYSE imposed its moratorium on its one share, one vote rule.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * § 240.19c–4 also issued under secs. 6, 11A, 14, 15A, 19 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3, and 78s).

2. By adding § 240.19c–4 as follows:

§ 240.19c–4 Governing certain listing or authorization determinations by national securities exchanges and associations.

(a) The rules of each exchange shall provide as follows: No rule, stated policy, practice, or interpretation of this exchange shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer, if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to section 12 of the Act.

(b) The rules of each association shall provide as follows: No rule, stated policy, practice, or interpretation of this association shall permit the authorization for quotation and/or transaction reporting through an automated inter-dealer quotation system ("authorization"), or the continuance of authorization, of any common stock or other equity security of a domestic issuer, if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to section 12 of the Act.

(c) For the purposes of paragraphs (a) and (b) of this section, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

(1) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

(2) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

(3) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer.

(4) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(d) For the purpose of paragraphs (a) and (b) of this section, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

(1) The issuance of securities pursuant to an initial registered public offering;

(2) The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

(3) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(4) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

(e) *Definitions.* The following terms shall have the following meanings for purposes of this section, and the rules of each exchange and association shall include such definitions for the purposes of the prohibition in paragraphs (a) and (b), respectively, of this section:

(1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (*e.g.*, a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

(3) The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11–1 under the Act (17 CFR 240.3a11–1).

(4) The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b–4 under the Act (17 CFR 240.3b–4).

(5) The term "security" shall include any security defined as such pursuant to section 3(a)(10) of the Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

(6) The term "exchange" shall mean a national securities exchange, registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act, which makes transaction reports available pursuant to Rule 11Aa3–1 under the Act (17 CFR 240.11Aa3–1); and

(7) The term "association" shall mean a national securities association registered as such with the Securities and Exchange Commission pursuant to section 15A of the Act.

(f) An exchange or association may adopt a rule, stated policy, practice, or interpretation, subject to the procedures specified by section 19(b) of the Act, specifying what types of securities issuances and other corporate actions are covered by, or excluded from, the prohibition in paragraphs (a) and (b) of this section, respectively, if such rule, stated policy, practice, or interpretation is consistent with the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act and this section.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: July 7, 1988.

Commissioner Grundfest, Concurring

Section 19(c) of the Securities Act of 1934 (the "Act") grants the Commission authority to amend "the rules of a self-regulatory organization * * * as the Commission deems necessary or appropriate * * * in furtherance of the purposes of [the Act]."[1] The

[1] 15 U.S.C. 78s(c).

Commission today finds that Rule 19c–4 is both necessary and appropriate.[2] Our decision is based on review of a voluminous record describing recent trends in disenfranchisement transactions, combined with careful consideration of the language, structuure, and history of the Act.[3]

Adoption of Rule 19c–4 may, to some, raise concerns about potential encroachment by the Commission into areas of corporate governance traditionally subject to state control. While understandable, these concerns are easily overstated. The Act reflects a particular Congressional solicitude toward the exercise of voting rights and subjects few, if any, other incidents of share ownership to the degree of regulation and oversight directed at corporate suffrage.

The reasoning supporting Rule 19c–4 would therefore not necessarily support future Commission rulemakings imposing uniform listing standards regulating other aspects of corporate governance. Put another way, Section 19(c) does not provide the Commission *carte blanche* to adopt federal corporate governance standards through the back door by mandating uniform listing standards. The disenfranchisement problem addressed by Rule 19c–4 presents a narrow and special case that does not easily extend to other corporate governance standards that may be referenced by listing critera.

Rule 19c–4 also does not prohibit any corporation from adopting any capital structure. Corporations can continue to issue any number of classes of stock, some with little or no voting power and others with substantial or even dominant control.[4] The rule is, instead, carefully crafted to address concerns about the process by which disenfranchisement occurs. The transactions that most consistently cause concern involve exchange offers, dividends, or other distributions that dramatically increase the voting power of a relatively small, well defined group of stockholders at the expense of a larger group of public stockholders.

The Supreme Court has recently relied on the potential for collective action problems as a basis for unholding Indiana's control share acquisition statute.[5] As the Court noted, collective action problems can cause shareholders to vote in favor of propositions that they might oppose if given an opportunity to act together as a group.[6] Such collective action problems are hardly unique to shareholders—they appear in many voting contexts and have long been subject to careful analysis.[7] Here, the evidence of record suggests that collective action problems are associated with the process governing corporate disenfranchisement decisions.

The operation of collective action problems in disenfranchising decisions is most fully developed and explained by Professors Gilson,[8] Gordon,[9] and Ruback.[10] Rule 19c–4 addresses these concerns not by prohibiting a broad class of capital structures, as proposed by some commentators, but by channeling transactions most likely to suffer from collective action problems into a market mechanism less susceptible to those difficulties. The rule is thus narrowly crafted to address transactions that possess the greatest potential for the sort of coercion that motivates the Commission's concern over disenfranchisement.

While every electoral process is potentially subject to a collective action problem, there are sound reasons for the Commission to focus its concern on decisions that can lead to disenfranchisement. All voting choices fall into one of two categories: they are either "constitutional" or "parliamentary."[11] A constitutional choice involves a decision about how other decisions will be made. A parliamentary choice involves the application to a particular problem of a decision rule previously determined by a constitutional choice. An election that proposes to disenfranchise certain shareholders is a constitutional choice because it permanently alters the process by which later corporate decisions are made.

Constitutional choices are legitimately subject to greater scrutiny than parliamentary choices and are rationally subject to more stringent safeguards.[12] These safeguards can include supermajority requirements or absolute prohibitions on disenfranchisements.[13] They can also include requirements such as Rule 19c–4 that channel constitutional decisions through mechanisms less susceptible to collective choice problems. Indeed, the greater scrutiny rationally accorded to constitutional choices provides a sound and consistent rationale for the Commission's decision at least initially to focus its attention on the disenfranchisement process.

Finally, it is worthwhile to observe that Rule 19c–4 may, in the future, be criticized for generating alleged inconsistencies in its application and result. Some of these inconsistencies may be real while others will only be apparent. Some inconsistencies may be due to the Commission's effort to craft a rule that has a primarily prospective effect and that therefore provides some latitude for "grandfathered" transactions that might otherwise have been prohibited.[14] Moreover, some

---

[2] Because section 19(c) is phrased in the disjunctive, even if one disputes the Commission's conclusion that Rule 19c–4 is necessary, the Commission's independent finding that the rule is appropriate in futherance of the purposes of the Act provides a severable basis for unpholding adoption.

[3] Securities Exchange Act Release No. 24623 (June 22, 1987), 52 FR 23665 (June 24, 1987) ("Proposing Release"); Securities Exchange Act Release No. 25891 (July 6, 1988) ("Adopting Release").

[4] For example, suppose a corporation with a twenty percent shareholder seeks to concentrate voting powers in that shareholder. It can achieve that result by offering to repurchase the eighty percent of its outstanding voting shares held by the public and raising the necessary capital through the issuance of nonvoting shares. If control in the hands of the twenty percent shareholder truly enhances the corporation's value, this transaction will be financially feasible. If, however, the primary effect of the transaction is to transfer wealth from public shareholders to the dominant shareholder, then the transaction may be more difficult to finance. Further, if a corporation wants to raise additional equity capital without diluting the voting control of existing shareholders, Rule 19c–4 allows the issuance and sale of nonvoting shares. The market mechanism, which is a substitute for the electoral mechanism generally relied upon in transactions that raise disenfranchisement concerns, thus acts as a filter allowing beneficial recapitalizations and financings to continue while deterring transactions that tend primarily to disenfranchise and transfer wealth from public to inside shareholders without competitive compensation. *See*, R. Gilson, *Evaluating Dual Class Common Stock: The Relevance of Substitute*, 73 Va. L. Rev. 807 (1987).

[5] *CTS Corp. v. Dynamics Corp. of America*, 107 S.Ct. 1637 (1987).

[6] *Id.* at 1646.

[7] *See, e.g.*, P.C. Ordeshook, *Game Theory and Political Theory* (1987), Ch. 5 (Discussing nonzero-sum games, political economy, and the prisoners' dilemma, and noting that collective action problems were recognized and discussed by Hume in *A Treatise of Human Nature*, Rousseau in his *Discourse on the Origin and Basis of Inequality among Men*, and Hobbes in *Leviathan.)*

[8] Gilson, *supra* note 4, at 832–40.

[9] J. Gordon, *Ties that Bond: Dual Class Common Stock and the Problems of Stockholder Choice*, 75 Calif. L. Rev. — (1988) (forthcoming).

[10] R. Ruback, *Coercive Dual Class Recapitalization*, (MIT, Sloan School of Management, Working Paper) (Dec. 1986).

[11] *See, e.g.*, C. Mueller, *Social Choice* (1979); J. M. Buchanan & G. Tullock, *The Calculus of Consent* (1962); J. A. Rawls, *A Theory of Justice* (1971).

[12] Mueller, *supra* note 11; Rawls, *supra* note 11.

[13] *Compare, e.g.*, Securities Exchange Act Release No. 23724 (Oct. 17, 1986), 51 FR 37529 (proposed rule change filed with the Commission by the New York Stock Exchange that would establich a supermajority requirement for disenfranchising transactions) *with* NYSE, *New York Stock Exchange Listed Company Manual* section 313.00(c) (Unusual Voting Provisions), 313.00(D) (Proportionate Voting Power) (1933 & Supp. 1986).

[14] *See, e.g.*, discussion in adopting release of shareholder rights plans at Section III. B.5.b. and note that flip-in poison pill plans have been found to be discriminatory. *See, e.g., Amalgamated Sugar Co. v. NL Industries, Inc.*, 644 F. Supp. 1229 (S.D.N.Y. 1986) (applying New Jersey law); *R.D. Smith & Co. v. Preway Inc.*, 644 F. Supp. 868 (W.D. Wis. 1986) (applying Wisconsin law); *Spinner Corp. v. Princeville Development Corp.*, Civ. No. 86–0701 (D. Haw. Oct. 31, 1986) (applying Colorado law).

inconsistencies may be due to interpretations of Rule 19c–4 as applied by the self regulatory organizations. Here, I join in Commissioner Fleischman's exhortation to the SROs that they display meaningful backbone and apply Rule 19c–4 consistently according to its terms and intent.

More fundamentally, however, it should be recognized that Rule 19c–4 deals with one of the more intricate and difficult areas in all the social sciences: the problems of social choice. The entire field is rife with paradoxes, contradictions, and impossibility theorems.[15] Indeed, when subject to close scrutiny, even the simple majority voting procedure that we often take for granted as a fair and generally accepted method of social decisionmaking is revealed to be full of potential contradictions that can make it appear arbitrary and capricious.[16] Accordingly, it is neither reasonable nor possible to hold Rule 19c–4 to a standard that requires perfect logical consistency in all circumstances and all applications. No voting rule or rule regulating voting behavior can achieve that result, and Rule 19c–4 should not be held to such an unattainable standard. The rule should, instead, be understood for what it is: an effort to craft a carefully targeted standard that operates prospectively to substitute market mechanisms for voting processes in situations that involve a substantial danger of collective action problems and that raise disenfranchisement concerns of constitutional magnitude.

Commissioner Fleischman, Concurring

Adoption by the Commission of Rule 19c–4 initiates a new phase in the process, summarized in the Release, that began with the 1984 "moratorium" on enforcement by the NYSE of compliance with sections 313 (D) and (E) of its *Listed Company Manual.*[1] After four years the focus will now shift back to the NYSE Department of Stock List and its confreres on Trinity Place and on K Street NW. That will happen because the Commission's actions today not only expand the Code of Federal Regulations but also "add to" [2] the codex of rules of each affected national securities exchange and of the NASD. In my view, so it should be.

For most of this century, exchange (and, more recently, NASD) listing standards have interacted with the mandatory and permissive provisions of the corporate laws of the several states, subject to Commission rules of specific application, to provide an accepted framework for the safeguarding of public shareholder rights and the inhibition of corporate managers' overreaching.[3] For example, the corporate decision to grant stock options to employees was shaped by corporate law requirements such as Section 505 of the New York Business Corporation Law,[4] listing standards such as section 312 of the *Company Manual,*[5] and Commission rules such as Item 10 of Schedule 14A [6] and paragraph (a) of Rule 16b–3 [7] (plus, of course, the ever-changing provisions of the Internal Revenue Code). Over the years no small part in the process was played by exchange staff members who (returning to my example above) quietly insisted that, while it was nowhere in the canon to be found, an exchange "interpretation" would mandate the undertaking by the listed company not to replace out-of-the-money instruments with new at-the-market options in the absence of further shareholder action. As a result of that interaction, there was achieved a merger of substantive protections and procedural requirements, illuminated by Commission-mandated disclosure, that did somehow raise the level of generally accepted corporate practice among American public business enterprises.

Today the Commission deliberately challenges the exchanges and the NASD, and their respective "stock list" staffs, to demonstrate the resiliency and insight of which that interactive process is capable. A brief review of the rule added to each of their manuals demonstrates why this is so.

Pursuant to Rule 19c–4, a rule of each affected exchange and of the NASD will forbid that exchange or the NASD from listing, or continuing to list,[8] equity securities of a domestic company if the company takes corporate action *"with the effect* of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding (publicly-held) class or classes of common stock".[9] Recognizing that application, *i.e.,* interpretation, of its own rule will as always fall in the first instance to the exchanges and the NASD, paragraph (f) of Rule 19c–4 admonishes those organizations to adhere to interpretive policies "consistent with" and "otherwise in furtherance of" [10] the broad purposes of the Exchange Act to which Rule 19c–4 is directed. In addition, in order that the exchanges and the NASD may harbor no illusions about its views on key issues raised during the comment process, the Commission has listed in Rule 19c–4 four types of corporate action that will be "presumed to have the (prohibited) effect" and four types of corporate action that, *"standing alone"*, will be "presumed *not* to have the (prohibited) effect",[11] and has discussed in the Release each of these eight matters as well as a series of other substantive issues.[12] The lengthy discussion of such matters serves to alert company officials and their counsel, as well as the stock list staffs, not only to the applications and exclusions specifically covered but also to the approaches the Commission expects to be taken to interpretation and application questions generally.

Since Rule 19c–4 prescribes an "effects" test, it is clear to me that the corporate action to be scrutinized by the stock list staffs will, in many instances, include any action taken by the listed or applicant company as a second or subsequent step reasonably soon after an action that benefited from the presumption of permissibility. Since Rule 19c–4 describes both impermissible and permissible corporate actions in terms of a presumption, actions that on their face appear to fall in one category or the other may nevertheless qualify, or fail to qualify, the company for listing or

---

[15] The most famous of these is Arrow's impossibility theorem which demonstrates, among other things, that no voting rule satisfies a set of four seemingly innocuous and desirable conditions. *See* K. J. Arrow, *Social Classic and Individual Values* (1963); A. K. Sen, *Social Choice and Justice: A Review Article,* 23 J. Econ. Lit. 1764 (1985). For other discussions of the difficulties encountered in this area *see, e.g.,* Ordeshook, *supra* note 7, at 65–71 (the paradoxes of voting) and A. K. Sen, *Collective Choice and Social Welfare* (1970).

[16] *See, e.g.,* Sen, *Collective Choice and Social Welfare, supra* note 15, at ch. 10 (majority choice and related systems); A. K. Sen and P. Pattanaik, *Necessary and Sufficient Conditions for Rational Choice under Majority Decision,* 1 J. Econ. Theory 178 (1969); P.C. Fishburn, *Paradoxes of Voting,* 68 Amer. Polit. Sci. Rev. 537 (1974); T. Schwartz, *The Logic of Collective Choice* (1986).

[1] NYSE, *New York Stock Exchange Listed Company Manual* sections 313.00(C) (Unusual Voting Provisions), 313.00(D) (Proportionate Voting Power) (1983 & Supp. 1986) (hereinafter *Company Manual*).

[2] 15 U.S.C. 78s(c): "The Commission, by rule, may abrogate, add to, and delete from * * * the rules of a self-regulatory organization * * *."

[3] I am indebted to Professor Louis Lowenstein of the Columbia Law School for re-focusing my attention on this near-uninventable tripartite structure.

[4] N.Y. Bus. Corp. Law section 505.

[5] *Company Manual, supra* note 1, section 312.00 (Shareholder Approval Policy).

[6] 17 CFR 240.14a–101 item 10.

[7] 17 CFR 240.16B–3(a).

[8] In the case of the NASD, the correct term is "authoriz[ing] for quotation and transaction reporting through an automated quotation system"

[9] Rule 19c–4(a), (b) (emphasis added).

[10] Rule 19c–4(f).

[11] Rule 19c–4(c), (d) (emphasis added).

[12] *See* Exchange Act Release No. 25,891, at 37–69 (July 7, 1988).

continuance in the list. I believe the key admonitions are the following:

(1) The focus should be on the process by which the voting rights structure in issue is created (not on the company's capital structure *per se*) and its effect on existing holders of publicly-held stock.[13]

(2) Corporate action that, standing alone, is presumed to be permissible does not exempt a scheme that involves such action in conjunction with other action if, when taken as a whole, the combined action has the effect of disenfranchising existing public shareholders.[14]

(3) It is the Commission's intent to minimize the impact of Rule 19c–4 on state regulation of corporate structures and to defer to state law when states have chosen specifically to regulate or limit corporate action.[15]

(4) Analytical and interpretive issues are best left to the stock list staffs of the exchanges and the NASD to determine, in light of the Commission's statements in the Release, when applying the rule.[16]

Fundamental to the implementation of Rule 19c–4 in my view, however, is reliance on the respective stock list staffs of the exchanges and the NASD to abandon the vestiges of past practice in interpreting and applying listed company rules without notice of the substance of their actions to the Commission or to the listed companies and their counsel generally. Policies, practices and interpretations of the exchanges and the NASD are "rules" of those organizations by virtue of Rule 19b–4 under the Exchange Act [17] and must be treated as such under Section 19(b). Of course, not every stock list staff application of any rule qualifies as a "policy", but multiple application begins to resemble a "practice" and general application certainly rises to an "interpretation". If it is true that "historically the Commission has permitted the exchanges to interpret, and develop practices to implement, their listing standards in order to deal with the huge variety of circumstances to which they must be applied, without following the procedures required by section 19(b)",[18] it seems to me that modification of that practice is required to assure greater public understanding of exchange and NASD proceedings in the implementation of Rule 19c–4.

Requiring publicity and evenhandedness is not a demand for homogeneity. I still think as I thought a year ago: The responsiveness of each exchange and of the NASD may be expected to differ, and, given some parameters of consistency in view of Rule 19c–4 itself, their several resolutions will be consonant but needn't be uniform. That is as it should be.

It is the responsibility and care that the implementation of this rule should elicit from the stock list staffs—precisely the sort of responsibility and care that they have traditionally brought to the performance of their professional function. The Commission, I am sure, will demand and receive no less in this signal and challenging endeavor.

[FR Doc. 15609 Filed 7–8–88; 10:34 am]
BILLING CODE 8010-01-M

[13] *Id.* at 34, 43.

[14] *Id.* at 38.

[15] *Id.* at 35 n.84 (last two sentences), 58.

[16] *E.g., id.* at 39 n.31, 40, 60, 66.

[17] 17 CFR 240.19b–4(b).

[18] Letter from Robert Todd Lang, Chairman, Task Force on Disparate Voting Rights, Section of Corporation, Banking and Business Law, American Bar Association, to Jonathan G. Katz, Secretary, SEC 37 n.13 (Aug. 5, 1987).

Federal Register

Tuesday
July 12, 1988

Part IV

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1900 and 1980
Adverse Decisions and Administrative Appeals; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1900 and 1980

Adverse Decisions and Administrative Appeals

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to: (1) Establish a national appeals staff to hear and review all appeals of FmHA adverse decisions; (2) remove reference to an obsolete unfunded program; (3) require inclusion of the Equal Credit Opportunity Act Statement in all denial letters; (4) remove obsolete material and make other necessary clarifications and editorial changes; (5) reduce the frequency of financial statements required on new businesses from monthly to quarterly to reduce paperwork for Business and Industrial loan borrowers. The need for this action is to implement the applicable provisions of the "Agricultural Credit Act of 1987" (Pub. L. 100–233) and make other editorial changes. The major effect will be to establish an independent national appeals staff to hear and review formal appeals for FmHA and reduce the amount of time in which an appeal decision is rendered.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: John Gleason, Deputy Director, National Appeals Staff, Farmers Home Administration, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, telephone (703) 756–7008.

SUPPLEMENTARY INFORMATION:

Classification

This 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, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

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

Intergovernmental Consultation

This activity affects all FmHA financial assistance programs. The activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultations with State and local officials. Those FmHA financial assistance programs subject to intergovernmental consultation are delineated in Subpart J of 7 CFR Part 1940.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, has determined this action will not have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Programs Affected

These changes affect the following FmHA Programs as listed in the catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.427 Rural Rental Assistance Payments
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit National Corporation Loan and Grant Program

Discussion of Final Rule

1. On April 18, 1988, FmHA published a proposed rule in the **Federal Register** (53 FR 12695–12704) with a comment period ending May 18, 1988. A correction to that proposed rule was published in the **Federal Register** (53 FR 16615) on May 10, 1988. The purpose of this final rule is to amend Subpart B of Part 1900 to implement provisions of the "Agricultural Credit Act of 1987" (Pub. L. 100–233) which establishes a national appeals "staff." The Act establishes a national appeals staff to hear and review appeals of FmHA adverse decisions. Additionally, the Act requires appeal decisions involving farmer program loan restructuring to be made within 45 days of request for appeal and provide for submission of an independent appraisal for appeals of farmer program restructuring denials. The Act allows for an appeal review by the State Director and/or the national Director of Appeals and requires a transcript of this appeal hearing be made available to the appellant upon request.

2. Although the appeal provisions of the Agricultural Credit Act of 1987 only affect CONACT applicants and borrowers, FmHA has administratively chosen to provide these appeal rights for

all FmHA applicants and borrowers, and for lenders and holders of loans guaranteed by FmHA, because FmHA believes that review of adverse decisions by an independent staff will make it clear that appellants' rights are fully protected in all cases. Section 534 of the Housing Act of 1949, as amended, provides that rules and regulations affecting housing programs must be published in final form for at least 30 days *unless* the rule is published on an emergency basis. Due to the time constraints imposed by the Agricultural Credit Act of 1987, and in accordance with section 534(c) of the Housing Act of 1949, as amended, there will be no waiting period between the date this final rule is published and the effective date of the regulation.

3. On February 16, 1988, FmHA published a proposed rule in the **Federal Register** (53 FR 4414) with a comment period ending March 17, 1988. The purpose of that proposed rule was to amend Subpart B of Part 1900 to implement provisions of section 1313 of the Food Security Act of 1985 (Pub. L. 99–198) pertaining to the Business and Industrial (B & I) Loan Program. The intent of that proposed rule is to amend Subpart B of Part 1900 to include appeals of B & I loan decisions. That proposed rule also amends Subpart E of Part 1980 to reduce the frequency of financial statements required on new businesses from monthly to quarterly for B & I loans, reducing paperwork. All changes from this action are also made a part of this final rule.

4. On September 30, 1986, FmHA published an interim rule in the **Federal Register** (51 FR 34926) with a comment period ending October 30, 1986, regarding the Nonprofit National Corporations Loan and Grant Program, 7 CFR Part 1980, Subpart G. On July 8, 1987, FmHA published an amendment to that same interim rule in the **Federal Register** (52 FR 25586–25589) with a comment period ending August 7, 1987. The final rules have not yet been promulgated. To ensure consistency and fairness in the handling of FmHA appeals, an administrative decision was made to include appeals of all loan and grant programs under Subpart B of Part 1900. Accordingly, only Part 1980, Subpart G, § 1980.680 is affected by this final rule as it relates to appeals. The rest of both interim rules remains in effect.

Discussion of Comments

Forty-four comment letters were received. One respondent was a U.S. Congressman, 6 were FmHA employees, 27 were legal aid groups, one was a State Deputy Commissioner of Agriculture, 3 were from religious groups and 6 respondents were private citizens.

Most respondents made extensive comments and their comments are addressed by section number.

Section 1900.51. Three respondents felt the National Appeals Staff should report directly to the Secretary of Agriculture to ensure impartiality and independence. The Act provides for a national appeals division within FmHA and the Agency is in compliance with the law under the proposed organizational structure, which is administratively sound and provides for an efficient use of existing resources. Five respondents claim that Internal Revenue Service (IRS) offsets should cease. One respondent said that IRS offset regulations are not in final form and should be included under this Subpart. As set forth in the proposed rule, the stated purpose of this rulemaking action was to implement the requirements of the "Agricultural Credit Act of 1987." The collection of IRS offsets by the Agency is an unrelated issue and will not be discussed in this final rule. One respondent claims suspension and debarment procedures for all loan and grant programs should be handled in a special procedure. One respondent claims suspension and debarment regulations are not in final form and should be included in this procedure. Again, these are issues unrelated to the stated intent of the proposed rule and are not discussed or implemented here. One respondent requested clarification of Freedom of Information Act appeals, distinguishing between "public" and FmHA "borrowers." Public requests for information are handled as Freedom of Information requests, appealable under 7 CFR Part 1. Borrower requests for information from their case files are handled as Privacy Act Requests and are further clarified in section 1900(a)(2) of the subpart.

Ten respondents claim the Equal Access to Justice Act (EAJA) and the Administrative Procedure Act (APA) should be applicable to this subpart. One respondent claimed no reference to these Acts should appear, as applicability is decided by the courts.

The rule will not be changed either to delete the references to the Administrative Procedure Act or to the Equal Access to Justice Act. While it is true that, in the ultimate sense, all questions of statutory construction are for the courts, the case law is well settled with respect to both of these issues. Section 554 of the Administrative Procedure Act and the Equal Access to Justice Act apply only to formal adjudications conducted by administrative law judges (and, in the case of the Equal Access to Justice Act, to adjudications in which both the appellant and the agency are represented by counsel), not to informal appeals conducted by agency personnel as is set out in the statutory provisions that these regulations implement. Deleting the statement in the proposed rule would thus make the regulations less informative to members of the public.

Eight respondents objected to the statement that "releases for certain family living and farm operating expenses will not be terminated until the borrower has received an opportunity for administrative appeal * * *." The respondents claim FmHA does not have the authority to terminate any expenses. FmHA is amending this section to conform with the statutory language requiring the release of essential family living and farm operating expenses.

Section 1900.52. One respondent suggested that the definition of appellant be expanded to include rural rental housing tenants when FmHA makes a decision directly affecting an individual tenant. Individual tenant grievance procedures are covered in Subpart L of Part 1944 of this chapter. The borrower may appeal this action under Subpart B of Part 1900 of this chapter. The Agency finds the existing procedures adequate and will not adopt this comment.

One respondent suggested that a farmer applying for a guaranteed loan be allowed to request an appeal without the lender participating in the appeal. This is impractical since the lender is the real applicant for the guarantee, and any complaint on this subject therefore must be made by the lender. Therefore, the Agency will not adopt this suggestion.

One respondent stated that hearings held under this subpart are not informal while another respondent suggested a definition of "informal" be written. These regulations set forth an administrative appeals procedure and are not intended to be formal judicial proceedings. Also, defining what "informal" means would have the opposite effect and add needless regulatory complications. The Agency will not adopt these suggestions.

One respondent suggested that the definition of hearing officer be revised to conform with the definition of review officer in regards to the authority to uphold, modify or reverse decisions. The Agency will amend the regulations to include this change.

One respondent suggested a revision to the definition of "directly and adversely affected" to include all decisions regarding processing, servicing and collection of loans which have a direct effect on the appellant or the appellant's property. The Agency believes the proposed definition is sufficient and the suggested change could conflict with other Agency regulations regarding the collection of debts.

One respondent said that if an appellant's representative must be authorized in writing, the appellant should be so informed. The Agency adopts this comment and Exhibit B–3 of this subpart is revised accordingly.

Section 1900.53. One respondent suggested that copies of all documentation necessary to initiate an adverse decision be provided to the appellant when notified of the adverse decision. Accessibility of information in the appellant's case file is covered under § 1900.56(a)(2) and is sufficient to afford the appellant the opportunity to prepare for the appeal hearing. The Agency will not adopt this comment.

One respondent endorsed the need for the denial letter to include specific reasons for the adverse action and suggested further clarification with examples. The Agency finds the present wording sufficient.

One respondent wrote that appellants applying for assistance under the Housing Act of 1949 be given the rights to skip the informal meeting with the decision maker and request a hearing directly. The suggestion makes a valid point and provides for more consistency in the regulations. The Agency has adopted this comment and has amended the regulations accordingly.

Seven respondents raised questions concerning the appeal of appraisals and the State Director's role in review of the appraisal, requesting clarification of this paragraph. The regulations have been amended to clarify this paragraph. Appeals for farmer program primary loan servicing are exempted from this requirement. The appeals process is suspended while this review is undertaken and the paragraph is revised to require appeal rights at the completion of the review. The State Director may opt not to review the appraisal and may inform the appellant of their appeal rights at the outset of he/she chooses. A review of the appraisal by the State Director does not preclude the State Director from acting as a review officer in the appeal process on the same case, since the appellant may also choose the Director of Appeals to review the case.

One appellant suggested that farmer program writedown request be changed to "any primary loan servicing program." The Agency is in agreement and amends the regulations accordingly.

One respondent suggested that multi-family housing appraisals be exempt from prior review by the State Director due to complexity and the costs invested by the appellant at that point. The Agency believes that many appraisal problems can be resolved by the method set out in the proposed rule without necessitating an appeal and, therefore, will not revise the paragraph as suggested.

One respondent suggested that single family housing appraisals not be included in this paragraph. The Agency believes for consistency and fairness that all programs be included, and the comment is not adopted.

Four respondents felt that an appellant should be given 15 days from the receipt of the denial letter to request an appeal. Four respondents suggested that a 30-day response time was necessary. The Agency amends its final rule to require a 30-day response time with an appellant's letter postmarked on or before the 30th day.

Section 1900.54. Two respondents suggested that appellants not be required to travel more than 100 miles to a hearing site, or to the nearest FmHA office. While this comment has merit, the Agency does not foresee a problem in this area and is not aware of any in the past. Hearings will be arranged at a mutually convenient time and place for all parties involved. Since the decision maker and the appellant are typically in the same geographic area, the hearing officer will do all that he or she can to arrange for a hearing site convenient to all. This is an operational matter of the National Appeals Staff and additional regulatory language is unnecessary.

Thirty-two respondents were opposed to telephone conference calls unless specifically requested by the appellant for the appellant's convenience. One respondent, while opposed to conference calls, recognized the need for such in remote areas of Samoa, Guam, the Western Pacific areas and Alaska. The Agency amends its final rule to provide that conference calls cannot be used against the wishes of the appellant. The Agency also amends its final rule to retain language of the proposed rule concerning the use of conference calls for appeals in remote areas.

One respondent requested a clarification that the area supervisor is a member of the National Appeals Staff. This is covered sufficiently in § 1900.54(a) and no further clarification is necessary.

Section 1900.55. One respondent claims that all decisions are appealable and each appellant has the right to appeal and lose. Two respondents claim the National Appeals Staff should have the authority to overrule decisions based on regulations that do not meet applicable law. One respondent suggests that an appellant be allowed to appeal if the underlying facts are in dispute. Another respondent suggested wording that if the grounds for denial is fully dispositive, the decision is not appealable. The Agency recognizes that this is a sensitive issue and does not intend to delay or obstruct an appellant's rights. However, contrary to the respondent, the National Appeals Staff does not have the authority to overrule decisions based on regulations, even if they do not satisfy applicable law in the opinion of the hearing/review officer. Such interpretation is reserved for the courts. Accordingly, the Agency will advise appellants that certain decisions cannot be reversed in an appeal because they are based on clear and objective statutory or regulatory requirements. Appeals of these decisions are unproductive for the appellant and FmHA. Exhibit C is used to inform appellants of this decision. The exhibit letter does afford the appellant the opportunity to request the National Appeals Staff to review the accuracy of the finding that the decision is not appealable. The Agency believes this is sufficient to protect the appellant's rights in the event the underlying facts do not support the conclusion that the decision is unappealable. The suggested wording for Exhibit C is cumbersome and not readily understood by the average appellant. The Agency finds Exhibit C sufficient as proposed in this matter.

One respondent questioned the authority to deny a Section 514 grant to an applicant less than 62 years of age. This statutory mandate is set out in the annual appropriations act funding this program.

One respondent requests further clarification of when an application is considered filed. Applications are considered filed when they are received in the FmHA office responsible for processing of the requests. Receiving and processing applications are covered in Subpart A of Part 1910 of this chapter and are not further discussed or clarified in this final rule.

One respondent stated that a borrower with a non-program (NP) loan would lose all administrative appeal rights in a non-judicial foreclosure state, under this section. NP loans are not made pursuant to the Acts administered

by FmHA and the Agency is not required to extend program benefits to NP borrowers.

Four respondents suggested that an appellant be given the right to appeal the use of an incorrect interest rate. The Agency is not aware that the use of interest rates different from those published in FmHA Instructions is a frequent problem. Agency procedures for processing and loan closing are designed to detect such an error before a loan is closed. However, the Agency has modified the final rule to allow an appeal if such an instance occurs.

One respondent claims that denial of loan assistance because an appellant has been convicted of planting, growing, cultivating, producing or harvesting a controlled substance, does not apply to those appellants seeking assistance under the Housing Act of 1949. Section 1764 of the Food Security Act of 1985 provides for denial of assistance when convicted of the aforementioned for all applicants seeking assistance under the Consolidated Farm and Rural Development Act and any other provision of law administered by FmHA. The Agency will not adopt this suggestion.

One respondent suggested a clarification to include chattel appraisals. The Agency amends the final rule accordingly.

One respondent questioned if the use of "reversible" and "non-reversible" equated to "appealable" and "non-appealable". The Agency amends the final rule of this section to use the terms "appealable" and "non-appealable" consistently.

Eleven respondents commented that hearing officers should be able to overturn in appeal an unfavorable recommendation by the County Committee on a debt settlement offer. The agency amends its final rule to adopt this suggestion. A decision by the hearing officer to overrule the County Committee will not constitute approval of the debt settlement offer, and does not preclude a later denial of the offer by the approval official or subsequent appeal rights as a result of that denial.

Ten respondents suggested that denial of assistance because of confirmed income should be appealable, since the term "confirmed income" could be open to degrees of interpretation. Since confirmed income is that income agreed to by the appellant and the employer, the Agency sees no need to exempt this type of decision. As discussed earlier, the use of Exhibit C to inform the appellant of the denial affords the opportunity to request further interpretation.

Section 1900.56. Ten respondents suggested that a delay of an appeal should be based on whether the reasons for delay were beyond the control of the appellant. The Agency adopts this comment and revises the final rule accordingly.

Twelve respondents stated that the availability of information from the case file should not exempt cases of real estate acceleration. This was the result of an error in the proposed rule and the Agency amends its final rule to remove the exception.

Four respondents stated that more than 10 days is necessary to review the case file, with one respondent suggesting unlimited access to the case file. One respondent suggested the case file remain with the decision maker. The intent of the Agency is not to deny access to the case file, but to solve a logistical problem of allowing file access to the appellant, yet still provide the file to the hearing officer in time to prepare for the hearing. This paragraph has been clarified to address the concerns of the respondents.

Nine respondents made further comments under this section suggesting a 150 mile limit for hearings. These issues were discussed previously and the Agency will not adopt the comments. One respondent suggested a definite time frame to schedule a hearing. The Agency does not wish to remove the flexibility of hearing officers in scheduling hearings. This is an operational issue and will not be the subject of a rule unless experience suggests a need for a regulatory standard.

One respondent stated that since the Area Supervisor could grant exceptions to appeal request deadlines, the regulations should specify how an appellant may request an exception. One respondent requested verification on how a continuance may be granted. The Agency does not wish to overburden these regulations with formalized procedures for every specific circumstance that may arise. The Agency believes the regulations presently provide enough guidance to appellants without restricting flexibility to National Appeal Staff officials to grant extensions for good reasons without further regulatory language.

One respondent suggested that the regulation be amended to specifically prohibit FmHA officials from destroying material in the case file. The proposed language already prohibits destruction of case file material and no further clarification is necessary. One respondent requested a written waiver form be developed so an appellant could waive a hearing. The Agency believes this is unnecessary and the appellant's request for waiver as part of their written request for appeal is sufficient.

Fourteen respondents commented on the submission of new reasons for denial after the initial decision has been made. The responses ranged from submission of new reasons only if the appellant has adequate time for preparation and rebuttal to no new submissions in any case. The Agency partially amends and clarifies the final rule to allow the hearing officer some discretion in these cases as to how to proceed.

Section 1900.57. One respondent claimed that placing the burden of proof on the appellant is a violation of the Administrative Procedure Act (APA). One respondent stated that FmHA should bear the burden of proof in real estate foreclosure cases. In all appellate review systems, whether informal administrative appeals, or before administrative law judges, or conducted by judges in the Federal or State courts, the person who appeals a decision has the burden of explaining why the decision appealed from is incorrect, and this provision of the regulation was designed to make this fact clear to applicants and borrowers using these rules. While "burden of proof", it is true, can be distinguished legally from the "burden of persuasion", or the "burden of presenting evidence", depending on the facts and legal issues presented by a particular case, it would be counterproductive to use arcane terms and hence to make these rules so complex that they would be confusing to some of those who will use them. The term "burden of proof" is well known, and will convey to appellants their responsibility to open the hearing with an explanation to the hearing officer of why they think they should have been given the relief they were denied by the decisional officer. The proposed language therefore will be retained in the final rule, for all type of appeals.

One respondent suggested that the appellant should be able to prove why a decision should be modified as well as reversed. The Agency adopts this comment in the final rule.

One respondent suggested the appellant be given the right to request a hearing to be held open for 15 days to submit new information. Another respondent suggested new information could be submitted at any time. The Agency believes the proposed language regarding a continuance is sufficient and flexible enough to give the hearing officer sufficient flexibility to meet the needs of appellants.

One respondent suggested that information from unidentified third parties should not be admissible in the hearing. While the agency agrees that the use of evidence from unidentified third parties should usually be entitled to little or no weight, the regulations will not be amended to provide for a blanket exclusion of all information that could be so categorized. The hearing officer should have the discretion to decide when evidence lacks reliability, and the agency sees no need to provide for a blanket prohibition directed against any particular kind of evidence in these informal proceedings.

Two respondents requested written notice in advance of all FmHA witnesses to be present. Two respondents claimed that all FmHA witnesses should always be made available. Four respondents said information presented by witnesses should be limited to denial issues only. One respondent said that non-government witnesses should be compensated for their time. One respondent claimed a necessity to subpoena reluctant witnesses, and one respondent said the hearing officer had too much discretion.

The Agency has stated that this administrative appeals process is informal in nature and does not wish to overjudicialize the process with regulations concerning the admissibility of evidence and use of witnesses. The intent is to give the hearing officer enough flexibility to determine what information is needed to reach a conclusion of the matter. FmHA employees will be made available whenever possible and the Agency is committed to cooperate with the appellant in this regard. However, scheduling, travel and other expenses may preclude FmHA witnesses being available at a hearing. Furthermore, the Agency is not empowered to subpoena witnesses or to compensate them for their time. The Agency does agree that information by witnesses should be limited to denial issues only and the final rule is amended to incorporate this suggestion.

Four respondents stated that the decision maker should always be an FmHA official. One respondent said an appointed delegate must be an FmHA official and one respondent stated that FmHA officials should not represent the County Committee as decision maker at hearings. The Agency is not aware of any instances where a decision maker or delegate would not be an FmHA official and believes no further clarification is necessary. County Committee members are not full-time FmHA employees and mandatory attendance at hearings would be difficult and unnecessary. The appellant may request a meeting with the County Committee prior to the hearing.

Five respondents suggested the hearing be tape recorded in all instances. One respondent suggested the appellant pay for a copy of the tape. One respondent claimed hearing tapes should be available to the public. The cost of duplicating the tape is nominal and the Agency will not charge for the tape. The hearing tape is part of the appeal record and the appellant's case file and, therefore, protected under the Privacy Act. The Agency amends its final rule to require a tape recording of all hearings.

Twenty-eight respondents stated that the Act requires a transcript be prepared for all appeals and the cost of a transcript to the appellant should be limited to the cost of reproduction only. The Agency's interpretation of the Act is that a transcript will be provided to the appellant upon request. No transcript is required if the appellant does not request one. In fiscal year 1987 only 20 percent of the appeal requests resulted in a further request for appeal review. The Agency expects, under the new appeal procedures, that more appeals will be resolved at the hearing level. It is reasonable to project that 20 percent of future appeal hearings may result in a request for further review by the State Director or Director, National Appeals Staff. If the Agency chose to order transcripts in all cases it would result in a delay of all appeal decisions while transcripts were being prepared. In addition, there would be an unnecessary cost to the taxpayer since a transcript is only useful in those cases where an appellant seeks further review. Appellants who have had an adverse decision reversed in appeal have no need for a transcript, yet the decision to reverse the adverse action would be delayed until the transcript was prepared and made part of the record.

The Agency will provide all appellants with a free copy of the hearing tape. In most cases the tape will be sufficient for an appellant to decide if an appeal review is needed. The Agency will provide the appellant a transcript of the hearing upon request as required by the Act, but will not arrange for a transcript unless there is a request.

One respondent suggested arrangements be made for hearing and sight impaired appellants. The Agency adopts this comment in the final rule.

One respondent requested information on how to request a copy of the hearing record. This information is provided in the decision letter from the hearing and/or review officer and can also be requested by the appellant at the hearing itself.

One respondent suggested clarification on what constitutes good cause for a continuance. The Agency believes the proposed rule language is sufficiently flexible to allow the hearing officer discretion on this issue and further clarification would become, instead, too restrictive.

One respondent stated that the regulations should define the hearing officer's general knowledge of FmHA programs. Another respondent suggested the hearing officer state background, experience and general knowledge at the outset of the hearing. The Agency believes these suggestions are unnecessary and run contrary to the intent that these appeal proceedings are informal in nature.

One respondent suggested an appellant be given no less than seven days to review additional information. One respondent suggested the appellant be given copies of additional information. The Agency finds the present wording sufficient for time to review the information (no more than 15 days) and the right to review additional information already exists in the proposed rule language.

One respondent stated that appeal decisions on housing and farmer programs should both be rendered within 45 days. One respondent suggested a hearing in 30 days and a decision in 45 days. While the Agency desires to render appeal decisions in the shortest time possible, the logistics of travel and scheduling for all parties involved will always be an obstacle to this end. Delays in scheduling an appeal hearing are as often a result of an appellant's time conflicts, as they are with FmHA. Accordingly, the Agency does not wish to impose an arbitrary deadline for an appeal decision except for appeals involving primary loan servicing programs as required by the Act. The Agency will not adopt these suggestions.

Three respondents requested that Guide Letter 1900–B–1 be published for comment. Since this is a guide letter and may require an individual alteration with each appeal decision reached, it is not published as part of this regulation. Guide Letter 1900–B–1 will be available in any FmHA office upon publication of this final rule.

One respondent stated that all reasons for denial be stated in the denial letter and no new reasons are admissible. The proposed rule language already requires all reasons for denial

be listed and the submission of new reasons has already been addressed in this final rule.

Seven respondents suggested that the list of appraisers for appeals involving primary loan servicing of farmer program loans be limited to individuals who have not worked for FmHA in the past. One respondent suggested the independent appraisal be used as the new basis for valuation. Five respondents suggested a minimum of three appraisers but allow as many as available. One respondent asked how the appraisers would be selected. One respondent suggested the appellant be notified of the appraisal right in the denial letter.

The Agency will promulgate regulations similar to those found in § 1980.113 (d)(9)(c)(ii) of Subpart B of Part 1980 of this chapter to determine the appraisers used. The Agency believes that in some areas it would be impractical to limit appraisers to those who have not worked for FmHA in the past. The Agency does amend its final rule to require a minimum of 3 appraisers and to notify appellants of their appraisal rights. The Act does not require the new appraisal to become the basis of valuation, but only that it be considered in the appeal decision.

Section 1900.58. Five respondents suggested all review decisions be rendered in 45 days. As previously discussed, the Agency desires that all appeal decisions will be rendered as soon as possible but will not arbitrarily set deadlines not imposed by law since exceptions will occur.

Three respondents recommended that an appeal review by the State Director is unnecessary and should be eliminated. This requirement is statutory and not within the discretion of the Agency to change.

Section 1900.59. Eight respondents suggested that all dates and deadlines should be put on hold pending the outcome of an appeal. The Agency believes the only deadline of consequence here relates to an acceleration notice and the final rule is amended to suspend foreclosure action until an appeal is resolved. One respondent suggested language to cover cases where statutory or case law has changed while the appeal is in process. The final rule is amended to use regulations in effect at the time the initial adverse decision was taken.

Two respondents suggested that rural housing loan application processing be resumed within 15 days after a decision is overturned on appeal. This applies to loans made under the Consolidated Farm and Rural Development Act (7 U.S.C.) only as amended, as required by section 1312 of the Food Security Act of 1985 (Pub. L. 99–198).

Three respondents suggested the word "loan" be substituted for application in this section. The Agency does not adopt this comment since a reversal of an unfavorable eligibility determination does not necessarily mean a loan is approved. An application may be denied by a loan approval official after further processing.

Four respondents suggested the regulations address recordkeeping requirements and accessibility of those records to the public. Recordkeeping requirements on appeals will become the responsibility of the National Appeals Staff and an automated system of tracking appeal workload is under development. This is an administrative function of the NAS and not necessary to address in this rule. Accessibility of records is covered under Freedom of Information request in FmHA Instruction 2018–F (available in any FmHA office).

Four respondents, all FmHA employees, suggested amendments to allow a decision maker to appeal a hearing officer's decision to over rule or modify a denial of assistance. The Agency will address this issue as a separate proposed rule at a later date.

Exhibit A—Six respondents suggested that no government attorney be allowed at a hearing to question the appellant or witnesses. The presence of government attorneys at appeal hearings is extremely rare and the Agency has no reason to believe this situation will change. However, circumstances may arise in a complex appeal case where the Agency may wish legal counsel to be present as a resource. The Agency does not wish to preclude this option and will not adopt the comment.

Four respondents claimed that hearings should not be conducted in FmHA offices or adjoining offices. One respondent requested the physical comfort of the hearing room be considered. One respondent suggested each State have designated areas for hearings. One respondent suggested that an appellant could also arrange a hearing location. The scheduling of hearing locations is an administrative function of the hearing officer and it is not the intent of this rule to provide operational regulations. The hearing officer needs flexibility in scheduling hearings and it is impractical to set out restrictions for hearing locations.

Situations may arise where an FmHA office is the only area available convenient to all parties, particularly in rural areas. The proposed language that the hearing officer will attempt to hold a hearing in a neutral place is sufficient and allows necessary flexibility.

One respondent suggest wording that the hearing officer will not fraternize with the decision maker. This comment is adopted in the final rule. One respondent suggested that contact between the hearing officer and the decision maker be limited to scheduling only. The Agency believes this is unnecessarily restrictive and will not adopt the comment. One respondent suggested a hearing officer may postpone a hearing as well as terminate it, if an appellant becomes unruly. Another respondent questions if a terminated hearing results in forfeited appeal rights. The Agency does not foresee termination of a hearing as a common occurance. Instances of severe disruption of a hearing are possible, however, and it will be at the discretion of the hearing officer to reschedule the hearing or notify the appellant that appeal rights have been forfeited.

One respondent stated that the decision maker inform all parties of the reason for denial. One respondent suggested clarification that further review rights are to the State Director and/or Director, National Appeals Staff. Again, this rule does not set out complete operational procedure for the NAS and the Agency believes further clarification is unnecessary. Further appeal rights will be discussed at the hearing as well as reasons for denial.

One respondent claimed that the phrase "unduly setting the tone" is vague, could be abused by the hearing officer, and should be removed. The Agency believes the hearing officer must control the hearing to limit discussion to relevant issues only. Frequently hearings have taken considerable time discussing unrelated issues surfaced by both the appellant and the decision maker. Other hearings have become too formalized with swearing in of witnesses, submission of exhibits testimony, etc. The Agency retains the language in the final rule as necessary for the hearing officer to perform his/her duties.

Exhibits B–1, B–2, B–3, B–5. One respondent stated that these exhibits should inform the appellant of all available farmer program loan servicing and debt restructuring options as well as a business reply card to respond. The intent of this rule and these exhibits is to inform the appellant of appeal rights after denial of assistance. The availability of and notice of loan servicing options were addressed in a separate proposed rule on May 23, 1988, set out in the **Federal Register** at Vol. 53, No. 99, pages 18392–18523.

Three respondents suggested clarification or changes on the number of days to report a meeting and/or appeal. The Agency has amended these exhibits to conform with other changes and to address these concerns. Exhibit B–1, B–2, B–3 and B–5 have been consolidated and revised into just two exhibits. Exhibit B–1 advises appellants of the adverse decision and the right to a meeting and/or a hearing. Exhibit B–2 notifies appellants of the results of the meeting and also of their further appeal rights. Both exhibits and Exhibit B–4 are revised to require an appeal request be postmarked within 30 days.

The exhibits are also revised to specify the actual date of postmark and to allow an appellant to write as well as call the decision maker, as requested by two respondents.

Exhibit B–4. One respondent suggested items in the case file that are considered confidential should be identified in this Exhibit. The Agency does not adopt this comment and refers to the discussion of section 1900(a)(2) of this rule for access to the case file material.

Exhibit C. Two respondents suggested revised language to this exhibit as part of their comments under § 1900.55 of this rule. The Agency will not adopt these comments for the reasons set out in the discussion of that section as a part of this rule. One respondent suggested the appellant be informed that if a decision of denial is based on non-appealable and appealable reasons and the appealable reasons are used in a separate denial action, they may be appealed at that time. The Agency believes this is unnecessary since the appellant would be informed of their appeal rights at the time of the subsequent denial action.

One respondent stated that non-appealable decisions could only be based on those specific reasons set out in § 1900.55. The Agency did not intend for this section to be an all inclusive list and will not adopt this comment.

Exhibit D. One respondent stated that copies of recommended decisions being transmitted internally from a designated hearing/review officer to the National Director of Appeals should be provided to the appellant. The Agency's intent is that a designee will recommend a decision based on their review of the case. The recommendation serves only as a basis for discussion as an internal document and it would not be appropriate to send it to the appellant.

One respondent stated that Note 4 was unclear and implied a different appeal process for non-farmer program appellants. The Agency amends the final rule to delete Note 4 as well as Note 6 since both are no longer relevant.

General Comments. Three respondents requested the Agency not delay the inclusion of rural housing appeals in this procedure. One respondent suggested the NAS only conduct appeals for farmer programs and single family housing. One respondent suggested the Agency delay implementation of all but farmer program appeals. The Agency has determined that all appeals of adverse actions will be handled by NAS beginning on the effective date of this final rule.

One respondent said that a 30 day comment period was insufficient time to comment on the issues relating to housing programs. The 30 day comment period was discussed and authorized in the proposed rule, pursuant to 42 U.S.C. 1480.

One respondent stated that hearing/review officers not be assigned to cases where they have worked for the past two years. The Agency will implement this to the extent practical but does not recognize a need to address this issue in the final rule.

One respondent suggested that hearings involving multifamily housing late fee waivers be conducted entirely in writing. The Agency finds this suggestion inequitable and impractical and will not adopt in the final rule. Four respondents stated that all hearing officers be thoroughly trained and that training agenda be published for comment. While the Agency recognizes the need and statutory requirement for training, it is an operational issue and not needed as a part of this final rule. One respondent stated that a list of reimbursable administrative expenses for NAS be published for comment. The Agency sees no need to publish for comment the internal budgetary expenditures and accounting methods of the NAS. One respondent said the final rule should contain a statement that the Secretary will commit adequate resources to NAS to insure a timely appeals process. The Agency believes this responsibility is implied in the Act and inherent duties of the Secretary. Publication of such a statement in this rule adds no more authority or validity to this responsibility.

Section 1980.680 of Subpart G of Part 1980. One respondent suggested this section be revised so that any adversed decision may be appealed by the National Nonprofit Corporation (NNC) or the lender.

Applicants for assistance under the Nonprofit Corporations loan and grant program and borrowers and lenders under the program may appeal certain FmHA decisions. Appeal rights are not extended beyond those entities to others, such as ultimate recipients under the program. Those entities have no direct relationship with FmHA under the program and FmHA decisions do not directly affect these entities. The Agency adopts this comment in the final rule.

The Agency received no comments on the proposed rule change for Subpart A, part 1980 and Subpart E, Part 1980.

Discussion of Changes. Upon further review of the Agricultural Credit Act of 1987 (Act), a change was made that differs from the proposed rule. Section 615 of the Act requires FmHA to give borrowers 45 days to purchase the security property at net recovery value, after receipt of notification of ineligibility for primary servicing actions. The final rule is amended to require the hearing/review officer to send the decision letter, certified mail, return receipt requested, to the initial decison maker in those cases.

On June 18, 1987 the Agency suspended all appeal conferences, hearings and reviews for borrowers who were sent forms FmHA 1924–25 "Notice of Intent to Take Adverse Action" and Form FmHA 1924–26 "Borrower Acknowledgement of Notice of Intent to Take Adverse Action". This action was taken as a result of pending litigation in *Coleman vs. Block.* Those appeals and appeal requests that were suspended by this action are superseded by new servicing procedures required by the Agricultural Credit Act of 1987. Therefore, all hearing requests and hearing procedures then in process that were suspended by that action are hereby terminated.

Section 1980.67 of Subpart A of Part 1980 is also revised with minor editorial and punctuation changes.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—Housing and Community Development.

7 CFR Part 1980

Loan programs—Business and Industry-rural development assistance, rural areas-Nonprofit Corporates, Grant programs-Nonprofit Corporations

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for Part 1900 continues to read as follows:

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

2. Subpart B of Part 1900 is revised to read as follows:

Subpart B—Adverse Decisions and Administrative Appeals

Subpart B—Adverse Decisions and Administrative Appeals

§ 1900.51 General.

(a) This subpart contains operating instructions to be used by the Farmers Home Administration ("FmHA") personnel to ensure that full and complete consideration is given to affected members of the public when certain adverse program administrative decisions are being made. It also sets out the authority and procedures of the National Appeals Staff, which gives administrative appeals and further review of these decisions. The National Appeals Staff is an organization within FmHA which is independent from FmHA State and local officials, and from all other agency officials making program administrative decisions. The FmHA official heading the National Appeals Staff, the Director of Appeals, reports directly to the Administrator of FmHA.

(b) The provisions of this subpart apply to program administrative decisions concerning all loans and grants made by FmHA. These include farmer program loans, housing loans (both single- and multi-family), community and business program loans, and all grant programs administered by FmHA.

(c) The provisions of this subpart do not apply to any decisions made by FmHA other than those referred to in paragraph (b) of this section, nor to decisions made by organizations outside FmHA even when those decisions are used as a basis for decisions falling within paragraph (b) of this section. Examples of the first kind of decision are Freedom of Information Act decisions to release or deny the release of information sought by members of the public (appealable under 7 CFR Part 1), decisions to purchase or not to purchase goods and services from members of the public under the Federal contracting laws and regulations (which decisions are appealable to the Department's Board of Contract Appeals under 7 CFR Part 24), FmHA multi-family housing tenant appeals covered by the appeals provisions of 7 CFR Part 1944, suspension and debarment disputes falling within the scope of 7 CFR Part 1944 and offsets against tax refunds. Examples of the second kind of decision are decisions of the Federal Crop Insurance Corporation concerning claimed crop losses (which may determine whether the producer of the crop can or cannot qualify for an FmHA Emergency loan), decisions of the Soil Conservation Service on whether particular farmland is or is not "highly erodible" (which may determine whether an applicant is eligible for participation in FmHA loan programs), and decisions by State governmental construction standards-setting agencies (which may determine whether FmHA will finance certain houses).

(d) The provisions of the Administrative Procedure Act, 5 U.S.C. 551–559, as amended, are not applicable to proceedings under this subpart except for the requirements concerning public information. The Equal Access to Justice Act, 5 U.S.C. 504, as amended, does not apply to these proceedings.

(e) Assistance will not be discontinued pending the outcome of an administrative appeal of a complete or partial adverse action. For borrowers with farmer program loans, as defined in § 1900.52(d) of this subpart, releases for essential family living and farm operating expenses will not be terminated until the borrower has received an opportunity for administrative appeal and, if the borrower elects such an appeal, until the appeal and any further review is complete.

§ 1900.52 Definitions.

(a) *Appellant* means an applicant for FmHA assistance or an FmHA borrower holder (only as to decisions involving the repurchase of the holder's interest), or grantee, either individual or organizational, that is directly and adversely affected by an administrative decision by FmHA. The appellant may also be an applicant for or a recipient of a loan guarantee.

(b) *Hearing*, as used in this subpart, is an informal proceeding at which an administrative appeal from an adverse decision is heard.

(c) *Decision maker* is the FmHA official who actually makes the specific decision but not the official who serves in an advisory capacity in interpreting instructions, policies, or technical items, or who performs routine supervision. For example, if an FmHA official reviews a preapplication from an organization and directs a subordinate to include specific items in Form AD–622, "Notice of Preapplication Review Action," the official is the decision maker. However, when the official or designee serves only in an advisory capacity and is not significantly involved in the decision, the subordinate will be considered the decision maker.

(d) *Farm program loans* means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Individual Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST) loans and/or Rural housing loans for farms service buildings (RHF).

(e) *Hearing officer* is the member of the National Appeals Staff who conducts the administrative appeal hearing and has the authority to uphold, reverse or modify the decisions of the decision maker. See Exhibit D of this subpart for the designations of hearing officers.

(f) *Review officer* is the member of the National Appeals Staff who has the authority to uphold, reverse, or modify decisions of the hearing officer. See Exhibit D of this subpart for the designations of review officers.

(g) *Record* means the FmHA file, papers filed by an appellant, tapes, written version of the transcript (if any) of a hearing, and decisions made by FmHA.

(h) *Official positions.* The terms County Supervisor and District Director may vary in a few geographical areas. These terms will also mean Assistant Area Loan Specialist and Area Loan Specialist, respectively.

(i) *"Directly and adversely affected"* means having a request for FmHA assistance denied in whole or in part or having FmHA assistance reduced, cancelled, or not renewed.

(j) *"Representative"* means an attorney or other person authorized in writing by an appellant to act for that person in an administrative appeal. Representatives will be presumed to

retain their authority to act for an appellant until the written authorization is revoked in writing.

§ 1900.53 Adverse action procedures.

(a) The following actions must take place before adverse program administrative decisions are made. These steps are the responsibility of FmHA program decision makers.

(1) All documentation and calculations necessary to the determination to initiate an adverse action must be accurate, complete, and included within the administrative file.

(2) The specific reason or reasons for an intended adverse action should be clearly explained to the applicant or borrower. Vague reasons should be avoided. For example, avoid "you lack repayment ability." Calculations and documentation which demonstrate the lack of repayment will be provided and explained to the borrower or applicant.

(3) All appellants are entitled to an opportunity for a separate informal meeting with a decision maker before the appeal process is begun. The decision maker must give the applicant or borrower notice of his or her right to this meeting at a time no later than 10 days after the decision to deny the application or to accelerate a borrower's loan or loans or otherwise to terminate assistance.

(4) When the person or organization officials attend a meeting with the decision maker and the meeting results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting, setting forth the conclusions reached. If the meeting does not result in a resolution of the matter, Exhibit B–2 with attachment Exhibit B–3 of this subpart will be sent within 7 calendar days of the meeting to notify the person or organization of their rights to an administrative appeal. If an applicant or borrower who requests a meeting fails to agree to a time and place or to attend, the appellant is still entitled to a hearing.

(b) When an applicant or borrower wishes to contest an appraisal of property value (except for appraisals made in connection with farmer program loan write-down requests), the applicant must be advised that he or she must request review of the appraisal by the State Director of FmHA before the appeal. If an applicant or borrower seeks such a review, the time for seeking administrative review will be extended until after the State Director has acted on the request. The State Director will review each such request and, when in his or her sole discretion it is deemed appropriate, may send a representative to make an on-site review. If this does not result in a resolution of the matter, Exhibit B–2 with attachment B–3 of this subpart will be sent to the appellant to notify them of their appeal rights. Appraisals involving farmer program primary loan servicing may be appealed directly to the Area Supervisor, National Appeals Staff without prior review by the State Director. The appellant bears the burden of showing why the appraisal is in error. The appellant may submit an independent appraisal, at their cost, from a qualified appraiser, who is a designated member of a National appraisal society or organization. The appraisal must conform to Agency appraisal regulations applicable to the loan program. If the two appraisal values vary by no more than five percent, the FmHA appraisal will be considered as the basis of valuation.

(c) If an applicant, guaranteed lender, a holder, borrower or grantee is directly and adversely affected by a decision covered by this subpart, the decision maker will inform that person or organization by letter of the decision within 10 calendar days of the decision.

(1) Letters, as indicated in Exhibits B–1 and B–2, and Exhibit C of this subpart, as appropriate, will be used to notify the applicant, borrower or grantee. The notice will advise how to request an administrative appeal and to obtain the record. All such letters shall contain the statement: "The request for an administrative appeal must be sent to the National Appeals Staff, Area Supervisor, (show complete mailing address), no later than (give date 30 days after the date of mailing the letter). Requests which are postmarked by the U.S. Postal Service on or before that date will be considered as timely received."

(2) When a program administrative decision is required by a clear and objective statutory or regulatory reason listed in § 1900.55 of this subpart as being non-appealable, the decision maker will notify the applicant or borrower of such reason and that the decision is not appealable by notice to the applicant or borrower given with Exhibit C of this subpart.

§ 1900.54 National Appeals Staff.

(a) The National Appeals Staff consists of a Director of Appeals, Area Supervisors, Hearing Officers, Review Officers, and such other subordinate officers as may from time to time be necessary to hear and determine administrative appeals from decisions made appealable under this subpart.

(b) Appeal hearings will ordinarily be face-to-face hearings, held in the State of the appellant's residence, except in the following circumstances.

(1) With the consent of the appellant, hearings may be held in a place outside his or her State of residence when more convenient to the appellant, the hearing officer and the program officials who must attend the hearing.

(2) Appeals originating in Samoa, Guam, remote areas of Alaska, and the Western Pacific areas may be acted upon without a hearing when, in the discretion of the Area Supervisor, travel time and expense make such a hearing impracticable. In such cases, the Hearing Officer will allow a reasonable period of time for the appellant to examine or obtain copies of relevant documents and will make such other arrangements as are necessary to determine the appeal expeditiously and fairly. A telephone conference call may also be used as set forth in paragraph (b)(3) of this section.

(3) At the request of the appellant, the Hearing Officer, or the program officials who must appear at a hearing, the Area Supervisor may authorize use of a telephone conference call or calls to conduct a hearing. The Area Supervisor will solicit and consider the views of all parties before using this authority, and will not use it when any party other than the appellant shows that a face-to-face hearing is necessary to resolve issues of credibility or for other good reasons, or when the appellant, for any reason, prefers a face-to-face hearing.

§ 1900.55 Appealable and non-appealable decisions.

(a) Program administrative decisions of the Farmers Home Administration that directly and adversely affect a person are appealable by that person to the National Appeals Staff under the provisions of this Subpart. All matters concerning the application of the law and applicable regulations to the facts of the matter may be considered. The National Appeals Staff and its officers do not, however, have the authority to change or waive applicable laws or regulations. Program administrative decisions based on such clear and objective statutory or regulatory requirements are therefore not appealable. Exhibit C of this subpart will be used in these cases. Examples include:

(1) Denial of a Section 504 grant to an applicant less than 62 years of age.

(2) Denial of a loan and/or grant to an individual or organization in an ineligible area.

(3) Denial of a loan and/or grant to a type of organization not identified as an eligible applicant by the regulations.

(4) Denial of a loan because an application for an Emergency loan was not filed before a prescribed termination date.

(5) Denial of loan because of confirmed income that is above FmHA published limits.

(6) Interest credit reduction that is the result of a confirmed income increase.

(7) A determination of ineligibility for Emergency loans based on confirmation or verification by the Agricultural Stabilization and Conservation Service (ASCS) or the Federal Crop Insurance Corporation (FCIC) that the applicant did not have the required production losses of 30 percent or more.

(8) Denial of compensation for construction defects when it has been determined that the contractor is willing and able to correct the deficiencies.

(9) Requirements and conditions designated by law to be developed by agencies other than FmHA. They include, but are not limited to: Davis-Bacon wage rates; flood plain determination; archaeological and historical areas preservation requirements, and designation of areas that have been determined to be inhabited by endangered species.

(10) Applicable State development standards for construction and other development. An appeal may only be made when the appellant claims FmHA is misapplying the written standards.

(11) Interest rates as set forth in FmHA procedure, except denial of limited resource rates, or an application of an incorrect interest rate.

(12) A rent increase rejection when the borrower fails or refused to apply for rental assistance according to Exhibit C of Subpart C of Part 1930 of this chapter.

(13) Decisions involving non-program loans.

(14) Denial of assistance (including a subordination request or transfer and assumption) because of a conviction under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance. "Controlled substance" is defined in Exhibit C of Subpart A of Part 1941 of this chapter (available in any FmHA office).

(b) Appraisals of property value including chattels, may be appealed through the hearing and review process provided for in this subpart only after review by the State Director as provided in § 1900.53(b) of this subpart. Appraisals involving farmer program primary loan servicing may be appealed without prior review by the State Director.

(c) In cases where denial of assistance is based upon both appealable and nonappealable actions, the denial of assistance is not appealable. Exhibit C of this subpart will be used in these cases and will include all reasons for the decision.

(d) Appeals from applicants for, or borrowers, of, Farmer Programs loans or loans to Indian Tribes and Tribal Corporations who are denied assistance based on reasons relating to highly erodible land, wetland, or converted wetland (see Exhibit M of Subpart G of Part 1940 of this chapter for applicable FMHA requirements) will be handled as follows: Appeals questioning either the presence of a wetland, converted wetland, or highly erodible land on a particular property or application to a property of the exemptions identified in paragraph 11 b and c of Exhibit M of Subpart G of Part 1940 of this chapter must be filed directly with the USDA Agency making the determination in accordance with its administrative appeal procedures. If the denial of assistance involves an adverse decision based on determinations made both by FmHA and another USDA Agency, the appeal will be handled by both agencies in two separate appeals which as much as possible should be handled concurrently. See § 12.12 of Subpart A of Part 12 of Subtitle A (Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter which is available in any FMHA office).

§ 1900.56 Appeal requests.

(a) When an applicant appeals a decision and requests a hearing, the appeal will be handled as follows:

(1) Upon receipt of the request, the Area Supervisor, National Appeals Staff will verify whether the appeal was submitted within the authorized period. If the appeal was not submitted within the authorized time period, appeal rights are terminated unless the delay of the appeal was beyond the appellant's control or for other good reasons as determined by the Area Supervisor.

(2) The appellant's case file will be made available to the appellant or his representative at the FmHA decision maker's office for 10 working days following the receipt of a request for appeal. If the appellant has made a request to inspect or to receive copies of FmHA material concerning the case, the material will be made available to the appellant or the appellant's representative at the FmHA decision maker's office as soon as possible, but no later than 10 working days following the receipt of the request for the material. A written request from the appellant will not be required. Requests for information of a confidential nature exempt from disclosure under § 2015.204 of FmHA Instruction 2015-E, (available in any FmHA office), will be handled in accordance with that instruction. An FmHA employee will insure that no material is destroyed or removed from the file.

(3) If, upon review of the file, the hearing officer determines that the decision will be reversed, he or she will notify all parties of the determination and of the actions to be taken. Otherwise, the hearing officer will arrange for a hearing to be held as soon as possible, but normally within 45 calendar days of the receipt of the request for a hearing.

(4) An appeal hearing as a result of a denial of a borrower's request for release of normal income security must be held within 20 days of such request unless the borrower agrees to a longer time.

(5) The hearing will be held at a location convenient to the appellant, decision maker and hearing officer. The hearing must be held in the state of residence of the appellant unless the appellant agrees to another location. If no place can be agreed on, the hearing officer will select the location within the appellant's state of residence.

(6) When the appellant or appellant's representative or counsel, without reasonable cause, fails to appear at the hearing, the appellant's appeal will be considered concluded. If the appellant's failure to appear is for reasons beyond the control of the appellant or a request for postponement is with reasonable cause, the hearing officer will reschedule the hearing at a time convenient to all interested parties, but usually not later than 15 calendar days after the initially scheduled date.

(7) At any time before the scheduled hearing, the appellant may waive the opportunity for a hearing and, instead, request that the hearing officer make a decision based on the file, any written statements or evidence the appellant may submit and any other information the hearing officer deems necessary.

(8) The hearing will ordinarily be based on the material before the decision maker at the time the decision was made and on the reasons for the adverse decision set out in the decision letter. If any changes of circumstances or other occurrences material to the decision arise after the appeal has been requested, the decision maker must immediately advise the hearing officer (or, if one has not been assigned, the area supervisor) and the appellant. The hearing officer or area supervisor will, in such event, delay the hearing, return the decisional file to the decision maker for reconsideration, or take such other action as is appropriate.

§ 1900.57 Hearing rules.

(a) The hearing will be an informal proceeding at which the appellant has the responsibility of showing why the initial decision should be modified or reversed. To do so the appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses (when appropriate, FmHA witnesses requested by the appellant will be made available at the hearing) and arguments in support of appellant's appeal, controvert evidence relied on by FmHA, and may question all witnesses. Any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings. A suggested guide for the order of presentation at a hearing is included in Exhibit A of this subpart.

(b) The decision maker (or successor) or informed delegate (who must be one who participated in the decision making process) will be at the hearing and will present information if necessary. Any other witnesses or FmHA personnel the decision maker thinks necessary to support the initial decision will be at the hearing to present evidence.

(c) During the hearing, the hearing officer may request additional witnesses to appear or request further information if the hearing officer considers this necessary to reach a proper decision. Information presented by witnesses will be limited to denial issues only.

(d) Recording the hearing:

(1) The hearing officer will tape record hearings. With prior permission of the Area Supervisor, the hearing officer may arrange to also have the hearing recorded by some other means.

(i) Appellants may tape record the proceedings at their own expense. Appellants must state when the taping begins.

(ii) At the time the decision is rendered and upon request, the record will be made available to the appellant as set out in the hearing officer's decision letter. Also upon request, a transcript of the hearing will be provided for a fee approximately equal to the government's cost of having the transcript made. The appellant may request and receive a copy of the hearing tape at no cost. The appellant may also make their own arrangements, independent of FmHA, for a transcript of the hearing.

(2) File documents and other written materials used in the hearing will be included as part of the record.

(e) For good cause, the hearing officer will, at the request of either the appellant or an FmHA official, continue the hearing to a future time. The length of the continuance will be in the hearing officer's discretion.

(f) The decision of the hearing officer shall be based on facts presented at the hearing or in writing, rebuttal by appellant and decision maker of new evidence, additional information requested by the hearing officer, appropriate FmHA files, applicable statutes and regulations, and the hearing officer's general knowledge of FmHA program functions.

(g) If an appellant waives the opportunity for a hearing and the hearing officer reviews any information the appellant or decision maker has not previously reviewed, the appellant and decision maker will be advised by the hearing officer of the additional information and be allowed an opportunity to review it and respond accordingly. Usually, the total time given the appellant or decision maker to review and respond to this additional information will not exceed 15 calendar days.

(h) The hearing officer will render a decision within 30 calendar days of the date set for the hearing, unless this would not allow sufficient time to consider the appellant's response to any additional information. For appeals involving farmer program primary loan servicing programs, a decision will be made within 45 days after the receipt of the appeal request.

(i) If the initial decision is reversed, the hearing officer will inform the appellant, original decision maker, and any other official servicing the account, by letter, of the decision, the reason for it, and what action will be taken.

(j) If the initial decision is upheld or modified but not reversed, the hearing officer will inform the appellant by letter of the decision giving specific reasons, with a copy to the decision maker and any other official servicing the account. Normally the hearing officer's decision letter will be similar to FmHA Guide Letter 1900–B–1. For appeals involving the denial of farmer program primary loan servicing programs, the hearing officer's decision letter will be sent by certified mail with a return receipt to the initial decision maker.

(k) If the appellant does not request in writing a review of the hearing officer's decision within the 30 calendar day period provided in the letter, the appeal will be considered concluded.

(l) For farmer program loans, an appeal may include a request by the borrower for an independent appraisal of any property involved in the decision. On such request the hearing officer shall present the borrower with a list of at least three appraisers approved by the county supervisor, from which the borrower shall select an appraiser to conduct the appraisal, the cost of which shall be borne by the borrower. The results of such appraisal shall be considered in any final determination concerning the loan. A copy of any appraisal shall be provided to the borrower. If an independent appraisal is requested, the 45-day decision deadline referred to in paragraph (h) of this section is extended as necessary to allow completion of the appraisal.

§ 1900.58 Review rules.

If the appellant requests a review:

(a) The review officer may obtain a copy of the transcript of the hearing if one was arranged for by the appellant.

(b) The review officer will review the certified record, applicable law and regulations, any additional written information furnished by the appellant including appellant's comments on the transcript, and any additional information as the review officer deems necessary. However, if the review officer reviews any information the appellant has not previously reviewed, the appellant will be advised by the review officer of the additional information and be allowed an opportunity to review it and respond accordingly. Usually, the total time given the appellant to review and respond to this additional information will not exceed 15 calendar days. Normally, the review officer will render a decision within 45 calendar days of receipt of a review request from the appellant.

(c) The review officer's decision will be based on written facts presented for the review, the certified record, additional information requested by the review officer, appellant's or decision maker's written response to the additional information reviewed by the review officer, applicable statutes and regulations, and the review officer's general knowledge of FmHA program functions.

(d) The appellant will be informed of the final decision by letter. A copy will be sent to the decision maker, the hearing officer and any other official servicing the account. If the decision is upheld, the letter must contain the following statement:

"This review concludes the administrative appeal of your case."

If the State Director is the review officer, the appellant will be given further review rights to the Director of Appeals. The appellant will be notified as set forth in § 1900.57(j) of this subpart. For appeals involving farmer program primary loan servicing the

review officer's decision letter will be sent by certified mail with a return receipt to the initial decision maker.

§ 1900.59 Effect of appeal decision.

(a) *Effective date.* When an appeal is concluded, the effective date of the action to be taken will be the date of the initial decision from which the appeal was taken. Foreclosure action will not be pursued until time for appeal has expired or the appeal is terminated or resolved. Regulations in effect on the effective date will govern the action. Any loan made as the result of an appeal will bear interest at the lower of the interest rates in effect for that type of loan on the date of actual loan approval or loan closing.

(b) *Finality.* A decision made when an appeal is concluded will be administratively final.

(c) *Timeliness.* Whenever an adverse decision concerning a loan or loan guarantee (except for RH, RRH, RCH, RHS, and LH loans and grants) is appealed and the hearing officer or review officer reverses or modifies the initial decision, the decision maker shall resume processing of the application and notify the applicant of this within 15 days after the decision maker is notified of the decision of the hearing or review officer. The decision maker will inform the applicant of any further information needed.

§ 1900.60 Records.

Appeal records will be maintained in the applicant's or borrower's case folder.

§ 1900.61–1900.99 [Reserved]

§ 1900.100 OMB control number.

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0129.

Exhibit A—Guide to Conducting a Hearing

A. Upon receipt of the file, the hearing officer will become familiar with the case to be sure that pertinent information is presented at the hearing.

B. The hearing office personnel will arrange a hearing at a place convenient to the appellant, decision making official, and hearing officer in the state of residence of the appellant, unless the appellant consents to holding the hearing in another state. The hearing officer should make arrangements when necessary for the hearing and/or sight impared.

C. The hearing officer must be an unbiased presiding officer.

1. The hearing officer should have no preconceived opinions concerning the issues.

2. To preserve this unbiased atmosphere—

a. It is preferable that the hearing not be held in an FmHA office. Places such as Conference Room-Agricultural Service Center, SCS, ASCS, Extension Service, etc. should be first considered. This may not be possible, but an attempt should be made to hold the hearing at a neutral place.

b. The hearing officer should not fraternize with the decision maker or other FmHA personnel before, during, or after the hearing. The hearing officer should be seated separate from the others at the hearing.

D. The hearing proceedings should be conducted informally.

1. The appellant has the responsibility of showing why the initial decision should be reversed.

2. The hearing officer may receive evidence without regard to whether that evidence could be employed in judicial proceedings, but evidence clearly unrelated to the issues being appealed need not be accepted.

3. The hearing must be conducted in a manner to get facts on the record. Therefore, the hearing must deal in facts and professional opinions.

4. The hearing officer should keep control over the hearing and not allow any of the participants, including counsel for the appellant or the decision maker, to unduly attempt to set the tone of the hearing. If any person(s) become uncontrollable, they may be requested to leave. If they refuse to leave, the hearing may be terminated or postponed.

5. As a fact-finder, the hearing officer may question any witness, request additional witnesses to appear, and/or request further information if this information is necessary to reach a proper decision. If the hearing officer is going to request additional witnesses, these witnesses should be given adequate notice of the time and place of the hearing.

E. Order of presentation. The order listed below should be followed:

1. The opening statement by appellant setting forth why original decision was erroneous. This is an outline of how appellant plans to proceed.

2. The opening statement by decision maker to show why the decision is correct.

3. The appellant presents evidence including documents, witnesses, and arguments supporting the appellant's position. The decision maker can be questioned at this time by the appellant. Any witnesses presented by the appellant can be questioned by the decision maker or other Government representative.

4. The decision maker or other Government representative then has an opportunity to rebut appellant's arguments and/or evidence by presenting evidence including witnesses. Any witnesses may be questioned by appellant.

5. The hearing should be concluded with a summary by both sides.

6. The appellant may arrange to have a transcript of the hearing made at the appellant's expense.

7. The appellant may request a copy of the hearing tape.

F. The hearing officer will make a decision based on the following:

1. Facts and materials presented at the hearing.

2. Appropriate FmHA files.

3. Applicable statutes and regulations.

4. The hearing officer's general knowledge of FmHA program functions.

G. After reaching a decision, the hearing officer must prepare the appropriate letter setting out the decision and forward it to the appellant, with a copy to the decision maker or any other official servicing the account.

1. This letter must set out specific reasons for the decision, and the facts on which the decision is based.

2. The decision will be normally communicated by letter to the appellant within 30 calendar days of the hearing.

a. If the initial decision is reversed, the letter will so inform the appellant and the decision maker, giving the reasons and action to be taken.

b. If the initial decision is upheld or modified, the letter will contain a statement set out in the regulations that the appellant may have the decision reviewed further if the appellant files a request for review within 30 calendar days of the date of the letter.

Exhibit B–1—Letter for Notifying Applicants, Lenders, Holders and Borrowers of Adverse Decisions Where the Decision is Appealable

United States Department of Agriculture

Farmers Home Administration

(Insert address)

—Date _____

Dear _____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative [or legal counsel] with you. You also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with [this office] [the County Committee]. See attachment for your appeal rights.

If you do not wish a meeting, as outlined above, a request for a hearing should be sent to the Area Supervisor, National Appeals Staff

_____,

(address)

postmarked no later than

_____, _____

(month) (date)

(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

Exhibit B–2—Letter for Notifying Applicants, Lenders and Holders and Borrowers of Unfavorable Decision Reached at the Meeting

United States Department of Agriculture

Farmers Home Administration

(Insert Address)

—Date ———————

Dear ———————:

We appreciated the opportunity to review the fact relative to [your application/request for FmHA services] [the assistance you are presently receiving]. We regret that our [meeting] [conference] with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action).

See attachment for your appeal rights.

A request for a hearing should be sent to the Area Supervisor, National Appeals Staff ———————, (address) postmarked no later than ———————, ——————— (month) (date) (insert date 30 days from date of letter)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

Exhibit B–3—Appeals of Adverse Actions

(Use as an attachment to Exhibits B–1 and B–2)

The decision described in the attached letter did not grant you the FmHA assistance you requested or will terminate the assistance you are presently receiving. You have the right to appeal this decision and to have a hearing or a review in lieu of a hearing. In order for this decision to be changed, you will have to show why the decision should be reversed. If you wish to appeal the decision, the request for a hearing must be received in the office of the Area Supervisor, National Appeals Staff at the address shown in the letter to you informing you of the adverse decision and your appeal rights postmarked within 30 days after the date of that letter. If you wish to meet with the decision maker first, you will be informed of your further appeal rights at the conclusion of that meeting and given 30 days to request a hearing.

The hearing will generally be held within 45 days of the receipt of your request.

You or your representative or counsel may contact to this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photostatic copies will be provided in accordance with the Freedom of Information Act. Your representative or counsel should have your written authorization to represent you and review your file.

No earlier than 11 days after the Area Supervisor receives your request for appeal, we will forward the file, and any additional documents to the Hearing Officer designated by the Area Supervisor to conduct your hearing.

The Hearing Officer will contact you regarding a time and place for the hearing. You may have a representative or counsel with you and may present your own witnesses. The FmHA decision maker or representative will be there and available for you to question, as will all other witnesses presented by FmHA. If you wish to have other FmHA employees present as your witnesses, let the Hearing Officer know and, if possible, they will be there.

You may also request a teleconference hearing in lieu of a face to face hearing.

FmHA will record the hearing. You may request a copy of the tape. You may also tape record the hearing. You may request FmHA to have a transcript of the tape made at your expense.

At any time before the scheduled hearing you may request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the FmHA file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

The Hearing Officer will advise you by letter of the decision made, the reasons for it, and, if your request for assistance is not granted, what further administrative appeals may be available to you.

A more complete description of the hearing (A Guide to Conducting an Appeals Hearing) may be obtained from any FmHA office.

If your denial involves an appraisal related to farmer program primary loan servicing programs you may request an independent appraisal as part of your appeal from a list of appraisers provided by your county supervisor. The cost of the appraisal is your expense.

Exhibit C—Letter for Notifying Applicants, Lenders and Holders and Borrowers of Adverse Decisions When Part or All of the Decision is Not Appealable

United States Department of Agriculture

Farmers Home Administration

(Insert address)

(date)

Dear ———————:

After careful consideration we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are canceling/reducing the assistance you are presently receiving].

(Insert and number all of the *specific* reasons for the adverse action. Examples of nonappealable reasons are listed in § 1900.55(a).

If you have any questions about this action, we would like the opportunity to explain in detail why your request has not been approved, explain any possible alternative, or provide any other information you would like. You may bring any additional information you may have and you may bring a representative or counsel if you wish. Please call (*telephone number*) for an appointment.

Applicants and borrowers generally have a right to appeal adverse decisions, but FmHA decisions based on certain reasons are not appealable. We have determined that the reason(s) numbered ——— for the decision in this case make(s) the decision not appealable under FmHA regulations. You may, however, write the Area Supervisor, National Appeals Staff (insert address) for a review of the accuracy of our finding that the decision is not appealable.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

Exhibit D—Hearings/Review Officer Designations

Decisions maker or decision	Hearing officer	Review officer
County Supervisor	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
County Committee	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
District Director	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
State Director	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.
Division Director or Assistant Adminsitrator	As appointed by National Appeals Staff	Director, National Appeals Staff.
Assistant Administrator	As appointed by National Appeals Staff	Director, National Appeals Staff.
Deputy or Associate Administrator	As appointed by National Appeals Staff	Director, National Appeals Staff.

Notes

1. District Director also means Assistant District Director or District Loan Specialist.
2. County Supervisor also means Assistant County Supervisor with loan approval authority.
3. The Director of Appeals may designate a member of the National Appeals Staff to conduct a hearing or review. When the hearing/review is completed, the designee will send the complete case file, hearing notes, tape recordings, and a recommended decision to the Director of Appeals for final decision. The Director of Appeals may for individual cases delegate final decision authority to a designee.
4. For decisions not directly covered above, advice should be sought from the Director of Appeals.
5. An appellant may elect to have an appeal reviewed by the State Director, or the Director of Appeals. The decision of the State Director will be subject to further review by the Director of Appeals upon requested by the appellant.

PART 1980—GENERAL

3. The authority citation for Part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1490; 5 U.S.C. 301; 7 CFR 2.23 7 CFR 2.70.

Subpart A—General

4. Section 1980.67 is revised to read as follows:

§ 1980.67 Lender's request to terminate Loan Note Guarantee or Contract of Guarantee.

If the Loan Note Guarantee has not automatically terminated the lender may request FmHA to terminate the Loan Note Guarantee(s) or Contract(s) of Guarantee, for any reason, provided the lender holds all the guaranteed portions of the loan. (See paragraph 12 of Form FmHA 449–34, or paragraph 5 of Form FmHA 1980–27.) The lender will provide the County Supervisor (State Director for B&I) with a written notice that the loan(s) or Line(s) of credit is (or are) paid in full and/or termination of the Loan Note Guarantee(s) or Contract(s) of Guarantee, enclosing the original Form(s) FmHA 449–34 or Form FmHA 1980–27 for cancellation. Within 30 days, the County Supervisor (State Director for B&I) will forward a memorandum to the Finance Office through the State Director. The memorandum will indicate that: "the loan(s) or line(s) of credit is (or are) paid in full," and/or "the Loan Note Guarantee or Contract of Guarantee has been cancelled at the request of the lender."

5. Section 1980.80 is revised to read as follows:

§ 1980.80 Appeals.

Only the borrower, lender and/or holder can appeal an FmHA decision. The borrower must jointly execute in the written request by either party for review of an alleged adverse decision made by FmHA and both must participate in the appeal. In cases where FmHA has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. A decision by a lender adverse to the borrower is not a decision by FmHA, whether or not concurred in by FmHA. Appeals will be handled in accordance with directions set out in Subpart B of Part 1900 of this chapter.

Subpart E—Business and Industrial Loan Program

6. In § 1980.454, under the heading "Administrative," paragraph A.1 is revised to read as follows:

§ 1980.454 Conditions precedent to issuance of the Loan Note Guarantee.

* * * * *

Administrative

A. * * *

1. The loan agreement between the borrower and lender which provides for the frequency of submission of financial statements to the State Director. Quarterly financial statements should be required on new business enterprises or those needing close monitoring. However, the annual audit report will always be required. In cases of loans determined by the lender to require especially close monitoring, nothing herein shall be considered an impediment to the lender's requiring financial statements more frequently than quarterly.

* * * * *

Subpart G—Nonprofit National Corporations Loan and Grant Program

7. Section 1980.680 is revised to read as follows:

§ 1980.680 Appeals.

Any adverse decision made by FmHA relative to the loan guarantee and/or grant may be appealed by the NNC or lender under Subpart B of Part 1900 of this chapter.

Dated: June 22, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88–15611 Filed 7–11–88; 8:45 am]

BILLING CODE 3410–07–M

federal register

Tuesday
July 12, 1988

Part V

The President

Executive Order 12644—Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the Transportation Communications Union-Carmen Division

Public Papers of the Presidents of the United States

Federal Register
Vol. 53, No. 133
Tuesday, July 12, 1988

Presidential Documents

Title 3—

The President

Executive Order 12644 of July 9, 1988

Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the Transportation Communications Union-Carmen Division

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Transportation Communications Union-Carmen Division.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

Parties empowered by the Act have requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. Section 159a).

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective July 10, 1988, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
July 9, 1988.

[FR Doc. 88-15793
Filed 7-11-88; 11:42 am]
Billing code 3195-01-M

Editorial note: For the President's remarks on signing Executive Order 12644, and an announcement of the appointment of three board members, both dated July 9, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 28).

Reader Aids

Federal Register

Vol. 53, No. 133

Tuesday, July 12, 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, JULY

24921-25128.....1
25129-25300.....5
25301-25480.....6
25481-25590.....7
25591-26022.....8
26023-26216.....11
26217-26418.....12

CFR PARTS AFFECTED DURING JULY

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.

1 CFR

305.....26025
310.....26025

3 CFR

102.....25872
Proclamations:
5836.....24921
5837.....25300
5838.....25301
5839.....25479
Administrative Orders:
Memorandums:
May 23, 1988.....26023
Executive Orders:
12644.....26417

5 CFR

Ch. XIV.....25129
723.....25872
1207.....25872
1262.....25872
2416.....25872

7 CFR

2.....26217
210.....25303
220.....25303
226.....25303
246.....25310
250.....26217
272.....26219
273.....26219
301.....24923
910.....24928, 26033
947.....24929
1126.....26226
1900.....26398
1940.....26228
1980.....26400
Proposed Rules:
1d.....26076
927.....24953
929.....25495
967.....25495
989.....25496
999.....25496
1030.....26369
1408.....26081

8 CFR

103.....26034
214.....26230
271.....26034

9 CFR

78.....24929, 26231
Proposed Rules:
50.....26262
51.....26262
77.....26262
78.....26262
92.....26262
94.....25498
201.....26082
203.....26082

10 CFR

Proposed Rules:
2.....25345
50.....25169

12 CFR

204.....24930
549.....25129
569a.....25129
569c.....25129
606.....25481
748.....26232
Proposed Rules:
336.....26262
535.....25500
569c.....25169

14 CFR

71.....26232
97.....26233
21.....26036
23.....26134
25.....26036, 26134
27.....26134
29.....26134
39.....25134-25140, 25315, 25317, 26038-26040, 26042-26045
71.....25141, 25143, 25321, 25322, 26046
73.....25323
75.....25143
91.....26134
121.....26134
125.....26134
135.....26134
1215.....26235
1251.....25872
Proposed Rules:
21.....26086
25.....26086
39.....25171, 25172
71.....25174, 25175, 25345-25347, 25406, 26087, 26275-26278
91.....25050
221.....25615
389.....25615

15 CFR

4b.....26235
8c.....25722
371.....26047
375.....25144
385.....25325
386.....25145

399.....25146, 26047
Proposed Rules:
370.....26131
386.....26131

16 CFR

13.....26236
305.....26237
Proposed Rules:
13.....25502
419.....25503

17 CFR

200.....25872
240.....26376
Proposed Rules:
180.....24954

18 CFR

161.....25240
250.....25240
Proposed Rules:
284.....25628, 25629
385.....25628, 25629

19 CFR

12.....26238

20 CFR

404.....25481
416.....25150, 25481

21 CFR

5.....26048
81.....25127
193.....26131
510.....25151
524.....26242
558.....25152
561.....26131
862.....25050

22 CFR

711.....25872
1510.....25872

23 CFR

160.....25484
645.....24932
658.....25484

24 CFR

511.....25462
888.....25326
990.....25152
Proposed Rules:
125.....25576
200.....25434
203.....25434
234.....25434
964.....25276
965.....25348

25 CFR

179.....25952

26 CFR

1.....26050, 26243
Proposed Rules:
1.....26279

27 CFR

19.....25155
20.....25155
252.....25155
Proposed Rules:
71.....26088

28 CFR

2.....24933
51.....25327

29 CFR

100.....25872
2610.....25591, 25722
2644.....24933
Proposed Rules:
1910.....24956

30 CFR

7.....25569
18.....25569
250.....26066
251.....25242
280.....25242
901.....25486
934.....26246
Proposed Rules:
7.....25569
25.....25569
250.....25349
917.....24957
934.....26280

31 CFR

25.....25422

32 CFR

199.....25327
266.....26246
292.....25157
706.....25487, 25488
1636.....25328

33 CFR

1.....25118
3.....24934, 25118
4.....24936
19.....25118
26.....25118
54.....25118
67.....25118
81.....25118
89.....25118
100.....24936, 24937, 26246, 26247
114.....25118
116.....25118
117.....25118, 26248, 26249
130.....25118
131.....25118
132.....25118
135.....25118
136.....25118
137.....25118
140.....25118
144.....25118
148.....25118
149.....25118
150.....25118
153.....25118
154.....25118
156.....25118
157.....25118
159.....25118
160.....25118
164.....25118
174.....25118
179.....25118
181.....25118
183.....25118
Proposed Rules:
100.....26281
117.....24958
166.....24959, 26282

34 CFR

562.....24937
600.....25489
602.....25088
603.....25088
Proposed Rules:
200.....26214
316.....26190
318.....26190

36 CFR

9.....25160
1208.....25872

38 CFR

1.....25489
4.....24938
15.....25872

39 CFR

111.....26249

40 CFR

52.....25329, 25330, 26250–26256
85.....25331
185.....26131
186.....26131
600.....25331
Proposed Rules:
52.....25176, 25177, 25509
65.....24938
81.....25178
141.....25108
142.....25108
156.....25970
170.....25970
261.....26283
440.....24939
761.....25049
796.....25049
Proposed Rules:
52.....24964
180.....25049
300.....26090

41 CFR

101–41.....25162

42 CFR

405.....26067
Proposed Rules:
50.....25631
412.....25240
1003.....25240

44 CFR

16.....25872
59.....25332
60.....25332
64.....25591

45 CFR

31.....25592
85.....25595

46 CFR

Proposed Rules:
4.....25926
5.....25926
16.....25926
581.....26091

47 CFR

22.....26073
43.....24940
63.....24940
65.....26074
73.....24940, 24942, 25167, 25168, 25332–25337, 25490, 26074, 26075
90.....25607
Proposed Rules:
15.....26092
22.....25633, 26268
36.....24964
73.....24966, 24967, 25178, 25350–25352

48 CFR

Ch. 6.....26158
Proposed Rules:
15.....25572
42.....25102
45.....25084
52.....25102
53.....25085
542.....26092
701.....25634
715.....25634
717.....25634
752.....25634

49 CFR

191.....24942
192.....24942, 25892
193.....24942, 25892
195.....24942, 25892
501.....26257
510.....26257
511.....26257
571.....25337
Proposed Rules:
192.....24968
195.....24968
382.....25353
571.....25354
653.....25910, 26289
1105.....24971
1152.....24971

50 CFR

17.....25608, 26369
20.....24951
642.....25611
672.....25491
674.....25492
675.....25493
Proposed Rules:
17.....25179–25185, 25511
20.....26197

LIST OF PUBLIC LAWS

Last List July 11, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal**

Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 304/Pub. L. 100-363

Designating July 2, 1988, as "National Literacy Day." (July 7, 1988; 102 Stat. 820; 2 pages) Price: $1.00